SPONSOR: Sen. Poore & Rep. Brady
Sens. Lopez, Pettyjohn, Sokola, Townsend ;
Reps. Bennett, Bolden, Outten, Peterman

DELAWARE STATE SENATE

147th GENERAL ASSEMBLY

SENATE BILL NO. 150
AS AMENDED BY
HOUSE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO SUSTAINABLE ENERGY UTILITY.

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

Section 1. Amend Chapter 80, Title 29 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 8059. Sustainable Energy Utility.

(a) Definitions. -- As used in this section:

(1) "Affected electric energy provider" means an electric distribution company, rural electric cooperative, or municipal electric company serving energy customers in Delaware.

(2) "Affected energy provider" means an affected electric energy provider or affected natural gas distribution company.

(3) "Affected natural gas distribution company" means a natural gas distribution company serving energy customers in Delaware.

~~(1)~~ (4) "Agency" means any state agency, authority, or any political subdivision of the State or local government, including, but not limited to, county, city, township, village or municipal government, local school districts, and institutions of higher education, any state-supported institution, or a joint action agency composed of political subdivisions.

(5) “Commission” means the Delaware Public Service Commission.

~~(2) "Contract Administrator" means an entity or person contracted through competitive bid by the Delaware Energy Office that manages the functions and responsibilities of the SEU.~~

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~~(3) "Fiscal agent" means an entity or person contracted by the Delaware Energy Office to assist in the financial management of the SEU.~~

~~(4) "Implementation contractor" means any entity competitively contracted by the SEU to implement specific programs and services.~~

(6) "Energy efficiency" means a decrease in consumption of electric energy or natural gas on a per unit of production basis which does not cause a reduction in the quality or level of service provided to the energy customer, achieved through measures or programs that target consumer behavior, or replace or improve the performance of equipment, processes, or devices. Energy efficiency can also mean the reduction in transmission and distribution losses associated with the design and operation of the electrical system.

(7) "Energy savings" means reductions in electricity consumption, reductions in natural gas consumption, electricity peak demand response programs resulting in reduced electricity consumption, or measurable efficiency gains from the transition to lower-emission fuels, as determined by the Secretary through regulations pursuant to §8059(h)(3) of this title.

(8) “Secretary” means the Secretary of the Department of Natural Resources and Environmental Control.

~~(5)~~ (9) "SEU Oversight Board" ("the Board") means ~~a~~ the board ~~comprised of public, academic and private sector representatives that acts to establish and revise SEU performance targets and to oversee SEU program planning, implementation, and evaluation to ensure compliance with performance targets~~ created pursuant to this section.

~~(6)~~ (10) "Sustainable Energy Utility" ("SEU") is the nonprofit entity ~~under which the contract administrator must operate according~~ created pursuant to the provisions of this section to develop and coordinate programs for energy end-users in Delaware for the purpose of promoting the sustainable use of energy in Delaware.

(b) Intent of legislation. -- The General Assembly finds that there remain in Delaware significant, cost-effective opportunities to acquire end-user energy efficiency savings that can lower customers' bills and reduce the environmental impacts of energy production, delivery, and use. Delaware has an opportunity to create new markets for customer-sited renewable energy generation that will help build jobs in Delaware, improve our national security, keep value within the local economy, improve energy reliability, and protect Delawareans from the damaging effects of recurrent energy price spikes.

(c) Sustainable Energy Utility administrative organization. --

(1) This section creates the "Sustainable Energy Utility" ("SEU"). The SEU ~~program through the contractor administrator~~ shall design and deliver comprehensive end-user energy efficiency and customer-sited renewable energy services to Delaware's households and businesses. The SEU shall be unaffiliated with any of the State's electric or gas utilities, public or private. ~~, and it will operate through the contract administrators under contract to the Delaware Energy Office ("Energy Office" or "DEO") under the direction of the State Energy Coordinator. The SEU shall be known by a trade name to be determined by the Delaware Energy Office.~~

(2) Routine administration of the SEU shall be managed by ~~a contract administrator. The funds to support~~ an executive director selected by the Board through an open and competitive selection process. ~~the SEU's activities shall be managed by a fiscal agent. This institutional structure, with ultimate responsibility for oversight residing with the Delaware Energy Office under the direction of the State Energy Coordinator and the Oversight Board, as detailed in subsections (d) and (e) of this section, is intended to protect not only the SEU's independence, but also to assure that its performance is continually and closely monitored and that it always has the strongest incentives to operate as efficiently as possible. The SEU contract administrator ("CA") and fiscal agent ("FA") will be selected by the Delaware Energy Office through an open, competitive bidding process.~~

~~(d) Responsibilities of the Delaware Energy Office. -- The Delaware Energy Office shall assume the following responsibilities relating to the development, implementation, and monitoring of the SEU:~~

~~(1) The Energy Office shall prepare requests for proposals (RFPs) to solicit bid proposals to engage each of the 2 administrator contractors: the SEU contract administrator and the fiscal agent. The RFPs shall be open to public comment, amended if necessary, and then submitted to the Oversight Board for approval prior to release. To maintain independence between each of the administrative functions, any bidder for an administrator contract, and any bidder's affiliate, shall not concurrently hold or be awarded the other administrator contract. Neither shall any bidder for the contract administrator be affiliated with a utility, public or private, that operates in Delaware, or any agency of Delaware, or any entity providing power or fuel to Delaware's distribution utilities or residents.~~

~~a. The Energy Office shall determine and describe in detail in the RFPs the following: the roles of each contracted position; the relevant performance targets set by legislation, the Energy Office or the Oversight Board; the bidding and contract procedures; the criteria for evaluation of bid proposals; and the~~

~~annual reporting requirements. In addition, the Energy Office shall define performance incentives such that if the SEU exceeds program targets by 120% it shall receive a bonus, and if the SEU achieves less than 80% of program targets it shall be charged a penalty. By written agreement between the DEO and the SEU, performance incentives may be passed through to implementation contractors when the DEO and SEU decide this is in the best interest of the State's development of sustainable energy resources.~~

~~b. The Energy Office must require bidders for the SEU contract administrator to present, in their proposals, plans including, but not limited to: evaluation, monitoring and verification of program performance; data collection and management; and financial management.~~

~~c. The Energy Office shall ask bidders for the SEU contract administrator to describe how they will obtain information from, and be responsive to, the public, and how bidders intend to resolve disputes with stakeholders and customers.~~

~~d. The Energy Office shall evaluate the proposals based on criteria outlined in the RFP and then select and hire the contractors for the 2 positions.~~

~~e. The Energy Office shall determine the contract period for each administrator position, but such periods shall be no less than 3 years and no more than 5 years. The Energy Office may offer a renewal contract to a current contractor for 1 additional contract term, provided the contractor has met or exceeded expectations and the Oversight Board approves of the renewal. The contract must be open to the public through the RFP process after 2 consecutive terms by 1 contractor.~~

~~(2) The Energy Office shall report biannually to the Oversight Board on the progress of the SEU and the management of the contract administrator and fiscal agent contracts.~~

~~(3) The Energy Office shall ensure continuity of program implementation and sufficient carry-over funding during the transition period between the end of 1 SEU contract term and the beginning of another SEU contract term, so that Delawareans may still have regular access to sustainable energy services during transitional periods.~~

~~(4) The Energy Office must use the appropriate responsibilities outlined in the subsections (f) and (g) of this section to develop additional RFP guidelines for each contractor.~~

~~(5) The Energy Office shall develop appropriate means to issue Renewable Energy Credits and Solar Renewable Energy Credits, as defined in § 352 of Title 26, for renewable energy technologies sited in Delaware.~~

~~(e)~~ (d) SEU Oversight Board. --

(1)a. The business and affairs of the SEU shall be managed by or under the direction of the SEU Oversight Board. The SEU Oversight Board shall consist of 11 members and shall include the Secretary of the Department of Natural Resources and Environmental Control ("DNREC") or the Secretary's designee, and the Public Advocate or the Public Advocate's designee. The Board shall include representation from each county. Seven members of the SEU Oversight Board shall be appointed by and serve at the pleasure of the Governor~~: 1 representative from academia, 1 representative from the nonprofit community with experience servicing the low to moderate income community, 1 representative from the nonprofit environmental community, 1 representative from the nonprofit energy community, 1 representative from the business community, and 2 representatives from the financial/accounting community~~ , and may include, but not be limited to, representatives from the nonprofit environmental community, the nonprofit energy community, the nonprofit community servicing the low and moderate income community, the financing/accounting community, business, labor, and education. ~~Two members~~ One member of the SEU Oversight Board ~~shall be members of the General Assembly: 1 from the Senate, who~~ shall be appointed by and serve at the pleasure of the President Pro Tempore, and ~~1 from the House of Representatives who~~ one member shall be appointed by and serve at the pleasure of the Speaker of the House. The Board shall elect 1 of its members to serve as a chairperson by a majority vote. The ~~State Energy Coordinator in the Delaware Energy Office~~ Director of the Division of Energy & Climate of DNREC, or the director's designee, shall serve on the board in an ex officio nonvoting capacity. ~~The existing SEU Oversight Board shall continue to serve until the Governor has appointed 7 members of the SEU Oversight Board. The initial Board members appointed to replace the existing SEU Oversight Board shall be appointed for terms of 2 to 4 years.~~ The terms of the Board members shall typically be 4 years, and shall be staggered. The Governor may appoint members for terms of less than 4 years to ensure that the terms are staggered. The Governor may, at any time, remove any gubernatorial appointee to the SEU Oversight Board for gross inefficiency, malfeasance, misfeasance or nonfeasance, in office. A gubernatorial appointee may be deemed to have resigned their position if they are absent from 3 consecutive Board meetings without good cause. ~~After the initial appointments to the SEU Oversight Board have been made, any subsequent Board member appointed or reappointed to replace any sitting Board member shall be appointed for a term of 4 years.~~

b. The SEU Oversight Board shall be governed by and subject to the Delaware Freedom of Information Act [Chapter 100 of this title].

c. The SEU Oversight Board shall include a provision in its bylaws pertaining to conflicts of interest and Board members shall be required to sign conflict of interest statements.

(2) ~~After it has been constituted, the~~ The SEU Oversight Board may, from time to time, appoint ~~an~~ one or more advisory committees. ~~The~~ An advisory committee may include representatives of organizations which represent low and moderate income energy consumers, low and moderate income housing consumers, civic organizations, environmental organizations, the energy industry, the energy efficiency and energy conservation community, the renewable energy community, marketing and public relations, small business, agriculture, accounting, business management, banking, finance, nonprofit communities, the general public, and the academic community. The Board shall decide the number of advisory committee members (including ex officio members).

a. ~~The purpose of the advisory committee is to~~ Among other things, the advisory committee may provide advice to the Board on issues of public policy and public education which may enhance the performance and quality of service of the SEU.

b. ~~Selection of the~~ A candidate for an advisory committee shall ~~occur by~~ require a two-thirds vote of Board members in order to serve. ~~Advisory committee members will be recommended by a 3-person selection committee appointed by the Board.~~ Criteria for the advisory ~~Board~~ committee members shall include professional experience, community service, reputation, significance to Delaware, a diversified representation of the Delaware community and geographical representation of the State.

c. Nominations for the advisory committee may be submitted by Board members and public solicitation.

(3) Board members shall serve without compensation except for travel allowed in paragraph (e)(8) of this section.

(4) No Board member shall receive financial gain from service on the Board.

(5) Board members shall not be employed by any organization directly or indirectly affiliated with the SEU or its contractors for a period of not less than 2 years after the end of their service on the Board.

(6) The Board shall adopt by-laws, by September 28, 2007, to govern itself.

(7) The Board shall have the following responsibilities, among others permitted by law:

~~a. Review and approve RFP's developed by the Energy Office for the contracts of the SEU contract administrator and fiscal agent.~~

~~b.~~ a. Review and approve the ~~annual and~~ contract-term ~~SEU~~ and performance targets recommended by the ~~contract administrator~~ executive director.

~~c.~~ b. Review and approve any proposed modifications to SEU performance targets or program designs ~~during the contract term of the contract administrator~~.

~~d. Contract an independent professional agency to monitor and verify results reported by the contract administrator in annual and contract-term reports.~~

~~e. Receive biannual reports from the Energy Office, as described in paragraph (d)(2) of this section, and offer recommendations to the Energy Office regarding the management of the SEU.~~

~~(8) In order for the Board to meet its obligations, the SEU shall annually set aside a budget at the beginning of the State fiscal year not to exceed 75,000 real 2007 dollars, and not to be less than 50,000 real 2007 dollars. Use of these funds shall be limited to the following:~~

~~a. Payment of consultant fees for independent analyses of policy and program options to improve SEU performance voted by two-thirds of board members.~~

~~b. Supported travel by Oversight Board members to conferences and workshops of direct relevance to sustainable energy market development and performance. Supported travel is capped for individual members at 3,000 real 2007 dollars and only 1 supported travel can be requested by a member in a fiscal year.~~

~~c. Sponsorship of annual statewide competitions by elementary, middle and/or high school students in Delaware to recommend SEU service logos, mottos or new sustainable energy measures.~~

~~d. Other uses as voted by two-thirds of the members of the Oversight Board that can be shown to directly improve the performance of the SEU and/or the State's development of sustainable energy resources.~~

~~(f) Responsibilities of the fiscal agent. -- The fiscal agent shall assist the Energy Office with the financial management of the SEU program. The fiscal agent is the SEU's "Treasury." The FA may be contracted by fee only or by a fee-plus-incentive structure as determined by the Energy Office. The primary responsibilities of the fiscal agent are to:~~

~~(1) Receive funds for the SEU from the funding sources outlined in subsection (j) of this section, disburse these funds to the SEU contract administrator under the direction of the Energy Office, and keep accurate records of such transactions;~~

~~(2) Interface with bonding and revenue authorities;~~

~~(3) Oversee financial transactions involving Renewable Energy Credits (RECs) and possible Solar Lifeline activities; and~~

~~(4) Pay SEU invoices.~~

~~(g)~~(e) SEU ~~contract administrator~~ Executive Director responsibilities. The SEU ~~contract administrator will manage~~ executive director is responsible for the day-to-day functions and responsibilities of the SEU. The ~~contract administrator's~~ executive director's chief responsibilities ~~are program research and design, administration of the implementation contracts, and oversight to ensure the implementation contractors meet~~ include oversight of program management, and setting and compliance with appropriate performance and budgetary targets. ~~The contract administrator may be contracted by fee only or by a fee-plus-incentive structure as determined by the Energy Office.~~

(1) Program research and design. --

~~a. The contract administrator shall undertake a comprehensive resource analysis ("Analysis") to support initial program planning for the SEU. The Analysis must include demographic energy use assessments, population and economic growth estimates, energy consumption forecasts, regional energy efficiency trend analyses, technical and economic potential estimates, and market potential assessments. The comprehensive resource analysis must:~~

~~1. Assess energy end-user markets, including electricity end-uses, natural gas end-uses, clean vehicles, green buildings, weatherization, and affordable energy services;~~

~~2. Assess energy end-user demographic sectors, including low-income, residential, commercial, industrial, agricultural, and transportation sectors; and~~

~~3. Assess energy end-use equipment, including appliances, lighting, heating, cooling, industrial processes, and vehicles.~~

~~b. Using the results from the Analysis from paragraph (g)(1)a. of this section, the contract administrator shall select markets, end-users, and end-use equipment for the SEU to target through its programs.~~

~~c.~~ a. The ~~contract administrator~~ executive director shall develop a comprehensive suite of program designs. ~~based on the Analysis and selected markets, end-users, and end-use equipment, as described in paragraphs (g)(1)a. and (g)(1)b. of this section.~~ Each program design must specify, at minimum, program goals, performance targets, an estimated budget, an implementation strategy, and an evaluation strategy. The ~~contract administrator~~ executive director is not required to design or initiate all programs at once, but ~~it~~ he or she must demonstrate how each program fits within the ~~contract administrator's~~ SEU's overall strategy to meet ~~its own performance targets as well as~~ the SEU's long-term performance targets ~~established in subsection (i) of this section~~.

~~d.~~b. The ~~contract administrator~~ executive director is expected to fulfill the following responsibilities through program designs, RFPs ~~for Implementation Contractors~~, and program implementation:

1. To be responsive to customers and market forces in implementing and redesigning the programs ~~it delivers~~;

2. To design a portfolio of programs to allow all energy end-users, regardless of electricity or gas retail providers, and regardless of market segment or end-use fuel, to participate in the SEU programs;

3. To promote program initiatives and market strategies that address the needs of persons or businesses facing the most significant barriers to participation;

4. To promote coordinated program delivery, including coordination with low income ~~weatherization~~ programs, other efficiency programs, and utility programs;

5. To coordinate with relevant regional and national energy efforts and markets, including markets for pollution emissions offsets and credits, and renewable energy credits;

6. To consider innovative approaches to delivering sustainable energy services, including strategies to encourage third party financing and leveraged customer contributions to the cost of program measures, as consistent with principles of sound program design;

7. To offer "one-stop shopping" and be the point-of-contact for sustainable energy services in Delaware;

8. To create a comprehensive website that provides easy access to SEU programs and information for all Delawareans, allowing them to participate in SEU programs electronically;

9. To emphasize "lost opportunity" markets, which are sustainable energy measures that can only be cost-effectively captured at particular times, such as during new construction or extensive remodeling; and

10. To emphasize market strategies to deliver services.

~~e. The contract administrator shall continue to research and assess the resources and market needs for sustainable energy services in Delaware, as described in paragraph (g)(1)a. of this section, while program implementation is ongoing. The contract administrator and other stakeholders will use this research to assess the impacts and effectiveness of SEU programs; to make adjustments to SEU program performance targets; to reassess targeted markets, end users, and end uses; and to recommend further policy initiatives for consideration by the General Assembly.~~

(2) Administration of ~~implementation~~ contracts. --

~~a. With the exception of education and public outreach programs, which the contract administrator may implement itself with approval of the Energy Office and Oversight Board, all other SEU programs must be delivered by competitively selected implementation contractors.~~

~~b.~~ a. The SEU shall propose and adopt rules to guide the bidding process and criteria to guide bid selection. The RFPs shall specify a contract term not to exceed the limitation set forth in The Energy Performance Contracting Act set forth in subchapter V of Chapter 69 of this title.

~~c. The contract administrator shall be responsible for selecting winning implementation contractor bids.~~

~~d. Any entity, including electricity or gas utilities in Delaware, may bid for an implementation contract. If an affiliate of the contract administrator bids, or intends to bid, for an implementation contract, both the contract administrator and its affiliate must ensure that the affiliate does not benefit from any unfair advantage resulting from insider information.~~

~~e. RFP's for competitively bid implementation contracts should include provisions for performance-based incentives as appropriate to ensure that program targets are achieved or exceeded.~~

~~f. If an implementation contractor is not successfully selected through the RFP bidding process, the contract administrator may implement its own program delivery process subject to approval by the Energy Office and Oversight Board.~~

(3) Oversight~~, monitoring, and verification~~ and reporting. --

~~a. The Oversight Board must review the contract administrator's proposed program designs, performance targets, and RFPs before the contract administrator submits RFPs for bid. When reviewing and approving the SEU's programs and RFPs, the Oversight Board must ensure that program coordination between the contract administrator, implementation contractors, and customers is as streamlined and simple as possible from the customer's perspective. The Oversight Board shall ensure that the SEU's programs will provide packaged-services. Rather than simply providing the most cost-effective or easiest-to-provide services, packaged-services must be designed to provide customers with as many relevant end-use services at once, each time the contract administrator or the implementation contractors have contact with a customer.~~

~~b. The contract administrator must develop and maintain information services to collect all performance, market, and financial data necessary to monitor and evaluate SEU performance as specified in its contract with the Energy Office. The contract administrator must make such data available to the Energy Office and Oversight Board upon request.~~

~~c. Consistent with the specific terms of its contract and generally accepted accounting principles, the contract administrator must prepare and submit detailed documentation and invoices for administrative, management, and program costs to the fiscal agent for review in order to receive payment.~~

~~d. The contract Administrator must develop appropriate mechanisms to accurately evaluate, monitor, and verify program performance and implementation contractor performance.~~

~~e. The contract administrator shall have 30 days to respond to complaints from, or disputes among, affected persons or entities. After 30 days any unresolved complaints shall be presented to the Energy Office and Oversight Board.~~

~~f. The contract administrator shall submit to the Oversight Board for approval any reports produced by the contract administrator that codify current practices or detail new practices or substantive changes in the SEU's implementation of programs and services.~~

~~g. The contract administrator shall conduct site visits and review the files of the implementation contractors as necessary to ensure contract compliance.~~

~~(h) Evaluation, monitoring, and verification. -- The Energy Office must ensure that adequate evaluation, monitoring, and verification mechanisms are in place so that:~~

~~(1) The Energy Office and Oversight Board can verify that both SEU and Implementation Contractor expenditures result in verifiable energy savings over the expected lifetime of each energy-saving measure.~~

~~(2) The SEU and implementation contractors are held responsible for the energy savings reportedly achieved through program activities and expenditures.~~

a. The SEU Oversight Board shall develop a three to five year strategic plan, with input provided by Board members, stakeholder groups across the State, and the public at large. The strategic plan shall be made available to the public on the SEU's website. The SEU's strategic plan shall include an educational component for the general public with a continued focus on residential energy efficiency projects.

b. The SEU shall publish a comprehensive annual report which shall be submitted to the Governor and the General Assembly and made available to the public on the SEU's website.

c. The SEU shall have certified financial statements prepared at the end of each fiscal year and make them available to the public on the SEU's website.

d. The SEU's financial statements shall be audited every other year by an independent certified public accounting firm qualified to perform such an audit, and the audit results shall be made available to the public on the SEU's website.

~~(i) SEU initial program targets. --~~

~~(1) Energy efficiency. -- By December 31, 2015, the SEU shall have achieved an average 30% reduction in annual energy usage for SEU participants, with a target of one-third of the participant savings occurring for residential clients, based on January 1, 2006 baseline levels. The Energy Office and Oversight Board may increase or accelerate this target if a comprehensive resource analysis indicates a greater cost-effective end-user energy efficiency potential exists or if the SEU achieves performance targets ahead of schedule.~~

~~(2) Delaware Solar Lifeline. -- For the purposes of this subsection, a low-income household shall be defined as a household that qualifies for Low-Income Home Energy Assistance Program (LIHEAP) assistance in Delaware. The SEU shall have the authority to administer the Delaware Solar Lifeline program, which shall provide, by December 31, 2015, each low-income household with a life-sustaining supply of at least 200 kilowatt-hours per month of low-cost electricity not to exceed $.05 per kWh in real 2007 dollars from in-state solar electric resources, the electricity generated thereof dedicated entirely for use by low-income households in the Solar Lifeline program. The Energy Office shall devise annual Solar Lifeline program goals that specify a targeted amount of installed photovoltaic capacity and a targeted number of households to be served. Such targets shall increase at a reasonable rate each year until sufficient in-state photovoltaic capacity has been installed to provide, by December~~

~~31, 2015, each low-income household with at least 200 kilowatt-hours per month of low-cost solar electricity. Implementation of the Solar Lifeline program and the obligation to meet the December 31, 2015 target shall depend upon the DEO and SEU obtaining the approval of the Oversight Board, as voted by a majority of board members. The chief criterion for board approval shall be that the DEO and SEU have identified self-sustaining funds for the program or that the General Assembly has approved designated funds for the purpose of maintaining the Solar Lifeline program.~~

~~(3) Affordable energy. -- The SEU shall assess strategies and funding mechanisms to weatherize at least 800 low-income households per year, not counting those households served with Weatherization Assistance Program funding. The SEU shall target services to households living in single-family owner-occupied units and mobile homes, single-family rental units, rental buildings with 5 units or less, and large multifamily buildings with greater than 5 units. The SEU shall target three low-income levels: 200% of the federal poverty level, 60% of the state median income, and 80% of the state median income.~~

~~(4) Green Buildings and Clean Vehicles. --~~

~~a. The Delaware Energy Office shall define "green buildings" and "clean vehicles" as appropriate to meet statewide energy efficiency targets established in paragraph (1) of this subsection, and with consideration for current best-practice definitions.~~

~~b. To establish initial SEU performance targets for Clean Vehicles and Green Buildings programs, the Delaware Energy Office, under the leadership of the State Energy Coordinator, and the Oversight Board shall either:~~

~~1. Determine appropriate initial SEU performance targets for Clean Vehicles and Green Buildings market programs to be included in the SEU Contract Administrator request for proposal,~~

~~2. Or the Energy Office and the Oversight Board may require that bidders for the SEU contract administrator propose such performance targets.~~

~~(5) Customer-sited Renewable Energy. -- Targets and rebate levels for Customer-sited Renewable Energy Technologies ("Customer-sited Renewables") shall be established by the DEO, under the direct supervision of the State Energy Coordinator. Customer-sited Renewables shall include solar electric, solar thermal, geothermal and wind energy systems not to exceed in capacity the levels specified in net-metering regulations of § 1014 of Title 26. Under the direct supervision of the State Energy Coordinator, the DEO shall develop incentive tiers for different customer-sited renewables and customer classes based on identified state best practices. Rebates shall not~~

~~exceed 50% of the incremental cost of Customer-sited Renewables compared to the retail cost of electricity. Rebates shall decline over time unless the DEO and SEU agree that doing so will prevent SEU clients from maximizing installed capacity of Customer-sited Renewable Energy in a least-cost manner. Under the direct supervision of the State Energy Coordinator, the DEO shall specify a certain fraction of SEU-supported Customer-sited Renewables to be located at residential locations. The SEU shall furnish 3 services to participants who purchase Customer-sited Renewables. First, it shall provide incentives sufficient to cover the incremental cost of investing in Customer-sited Renewables, in accord with DEO incentive tiers and current retail energy prices. Second, the SEU shall obtain, on behalf of participants, Renewable Energy Credits ("RECs") and Solar Renewable Energy Credits ("SRECs"), as defined in § 352 of Title 26. Third, the SEU shall negotiate the wholesale price for RECs and SRECs for SEU participants, using its ability to aggregate Customer-sited Renewables to the best advantage of SEU participants. For these services, the SEU shall charge a fee sufficient to pay its costs and to maintain incremental cost investments in Customer-sited Renewables. This fee can be assessed as a 1-time charge or an annual payment subject to the mutual agreement of the SEU and the participant. The Energy Office, under direct supervision of the State Energy Coordinator, shall determine a fair and reasonable rate that the SEU may charge for aggregating RECs and SRECs. The SEU fee shall not exceed 35% of the retail value of RECs or SRECs.~~

~~(j)~~ (f) Funding for the SEU. --

(1) ~~The Delaware Energy Office shall contract~~ DNREC may partner with the SEU ~~contractor administrator~~ to assist in the administration of some or all of the Green Energy Fund in accordance with § 8057 of this title.

(2) Bonds of the SEU. –

a. The SEU may from time to time issue bonds for any corporate purpose and all such bonds, notes, bond anticipation notes or other obligations of the SEU issued pursuant to this section shall be and are hereby declared to be negotiable for all purposes notwithstanding their payment from a limited source and without regard to any other law or laws. In anticipation of the sale of such bonds, the SEU may issue negotiable bond anticipation notes and may renew the same from time to time, but the maximum maturity of any such note, including renewals thereof, shall not exceed 5 years from the date of issue of the original note. Such notes shall be paid from any revenues of the SEU available therefor and not otherwise pledged, or from the proceeds of sale of the bonds of the SEU in anticipation of which they were issued. The notes shall be issued in the same manner as the bonds. Such

notes and the resolution or resolutions authorizing the same may contain any provisions, conditions or limitations which a bond resolution of the SEU may contain.

b. The bonds and notes of every issue shall be payable solely out of the revenues of the SEU, subject only to any agreements with the holders of particular bonds or notes pledging any particular revenues and subject to any agreements with any participating facility. Notwithstanding that bonds and notes may be payable from a special fund, they shall be and be deemed to be, for all purposes, negotiable instruments subject only to the provisions of the bonds and notes for registration.

c. The bonds may be issued as serial bonds or as term bonds, or the SEU, in its discretion may issue bonds of both types. The bonds shall be authorized by resolution of the members of the SEU Oversight Board and shall bear such date or dates, mature at such time or times, not exceeding 50 years from their respective dates, bear interest at such rate or rates, payable at such time or times, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in lawful money of the United States of America at such place or places, and be subject to such terms of redemption, as such resolution or resolutions may provide. Such resolution or resolutions may delegate to any combination of 3 of the members of the SEU Oversight Board, the power to determine any of the matters set forth in this paragraph (j)(2) and the power to award the bonds to a purchaser or purchasers at public sale or to negotiate a sale to a purchaser or purchasers. The bonds or notes may be sold at public or private sale for such price or prices as the SEU shall determine. Pending preparation of the definitive bonds, the SEU may issue interim receipts or certificates which shall be exchanged for such definitive bonds.

d. Neither the members of the SEU Oversight Board nor any person executing the bonds or notes shall be liable personally on the bonds or notes or be subject to any personal liability or accountability by reason of the issuance thereof.

e. The SEU shall have power, out of any funds available therefor, to purchase its bonds or notes. The SEU may hold, pledge, cancel or resell such bonds or notes subject to and in accordance with agreements with bondholders or participating facilities. The SEU may elect to have bonds issued by a conduit issuer and borrow the proceeds thereof.

f. Bonds or notes issued under this section shall not be deemed to constitute a debt or liability of the State or of any political subdivisions thereof or a pledge of the faith and credit of the State or of any such political subdivision, but shall be payable solely from the funds herein provided therefor. All such bonds or notes shall

contain on the face thereof a statement to the effect that neither the State nor any political subdivision thereof shall be obligated to pay the same or the interest thereon and that neither the faith and credit nor the taxing power of the State or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such bonds. The issuance of bonds under this section shall not directly or indirectly or contingently obligate the State or any political subdivision thereof to levy or to pledge any form of taxation whatever therefor, or to make any appropriation for their payment. Nothing contained in this section shall prevent or be construed to prevent the SEU from pledging its full faith and credit or the full faith and credit of a participating facility to the payment of bonds or issue of bonds authorized pursuant to this section.

g. Interest on bonds or notes issued under this section shall be exempt from income taxation by this State or any political subdivision thereof.

(3) Revenue sources contributing to the SEU for the purpose of paying bond debt may include but not be limited to funds from shared savings agreements with SEU participants and partial proceeds from the sale of Renewable Energy Credits or Solar Renewable Energy Credits in local and regional markets. The Green Energy Fund shall provide equity leverage for the SEU.

~~(4) Staffing necessary for the DEO to fulfill its responsibilities in this section shall be funded from the Delaware Energy Answers program and by existing program funding within the Department of Natural Resources and Environmental Control.~~

~~(5)~~ (4) Incentives provided through the SEU or proceeds from the Regional Greenhouse Gas Initiative shall be exempt from taxation by the State and by the counties and municipalities of the State.

~~(k)~~ (g) Contracts with the State or agencies. -- The State or any agency may enter into contracts with the SEU or a qualified provider (as defined in § 6972(5) of this title) for the purpose of acquiring, constructing, operating, or providing a project, ~~undertaken by an implementation contractor or qualified provider,~~ including arrangements for paying the costs of such project, which costs may include debt service requirements of the SEU relating to that project. If the SEU procures ~~an implementation~~ a contract in accordance with subsection ~~(g)~~ (e) of this section, a contract between the SEU and the State or an agency that provides the benefit of the ~~implementation~~ contract to the State or agency may be entered into by the State or agency without additional competitive procurement.

No obligation of the State or an agency under an installment payment agreement, a guaranteed energy performance contract or any other agreement entered into in connection with a project under this Chapter 80 or Chapter 69 of this title shall

constitute or create a debt of the State or agency. No such obligation of the State or an agency shall constitute a tax supported obligation or a bond or a note of the State as provided in Chapter 74 of this title.

(h) Expansion of cost-effective energy efficiency programs. -- Notwithstanding progress towards the achievement of the energy savings targets in § 1502(a) of Title 26, each affected energy provider shall implement energy efficiency, energy conservation, and peak demand reduction programs that are cost-effective, reliable, and feasible as determined through regulations promulgated pursuant to §8059(h)(3) of this title and delivered in collaboration with the Sustainable Energy Utility as described herein.

(1) Development and delivery of programs. --

a. An advisory council consisting of 13 members shall be established by the Secretary and shall include two representatives of the Sustainable Energy Utility, and one representative of each of the following sectors: (i) affected energy providers, (ii) manufacturing, (iii) agriculture, (iv) environmental, (v) commercial, (vi) residential, and (vii) low-income sectors. The advisory council will assist affected energy providers in the development of energy efficiency, peak demand reduction, and emission-reducing fuel switching programs to meet the requirements of this section and in evaluation, measurement and verification of energy savings. Programs shall be designed to maximize the cost-savings benefits for ratepayers by utilizing private financing and allowance proceeds from the Regional Greenhouse Gas Initiative to the maximum extent practicable and consistent with this section, as the preferred sources of program financing prior to expenditures that would otherwise be eligible for rate recovery. The advisory council shall also recommend adoption of financing mechanisms, including, but not limited to, on-bill financing, property assessed clean energy ("PACE") models, and other innovative financing tools.

b. The advisory council, in collaboration with the Public Service Commission staff, and the Public Advocate, shall recommend candidate energy efficiency, and reduction, and emission-reducing fuel-switching program elements that are cost-effective, reliable, and feasible, including financing mechanisms. Such programs shall prioritize the use of energy audits to identify comprehensive energy efficiency measures that maximize cost-effective savings. The advisory council shall recommend three-year program portfolios and define associated savings targets for the consideration of each affected energy provider.

c. Unless otherwise provided, affected energy providers shall prepare and submit to the advisory council three-year program plans, schedules, and budgets designed to reflect the recommended program portfolios, including the defined energy savings targets. On a three-year cycle, the advisory council shall review energy

efficiency, peak demand reduction, and fuel switching program plans for each affected energy provider and recommend them for approval by the appropriate regulatory authority, if it finds them to be cost-effective through a net-cost-benefit analysis that quantifies expected cost savings when considered in their entirety pursuant to regulations required by §8059(h)(3) of this title. Such programs must reduce overall utility bills.

d. Evaluation, measurement, and verification costs incurred by the advisory council and affected energy providers shall be included as costs in the cost-effectiveness test for the program portfolios. Costs shall be reimbursed first by any direct revenues from the programs, including but not limited to revenues from wholesale capacity markets. If such revenues are greater than program costs, the additional revenues shall be applied towards reducing the costs of future energy efficiency programs. If such revenues are less than program costs, the remaining costs shall be allocated to affected energy providers on the basis of total annual sales of energy and reimbursed by affected energy providers as part of energy efficiency and peak demand response program operation costs.

e. The Commission shall review the programs and portfolios recommended by the advisory council, including evaluating the projected net-cost savings, in determining whether to approve such programs for implementation by Commission-regulated affected energy providers. Notwithstanding any provision in Title 26, the Commission shall approve the recovery of appropriate costs incurred by Commission-regulated affected energy providers for approved programs and portfolios on an annual basis, in the same manner as other supply resources, including allocated costs pursuant to §8059(h)(1) of this title. The Commission shall approve cost recovery for cost-effective energy savings resulting from cost-effective programs and portfolios of Commission-regulated affected energy providers that are verified through procedures established in regulations promulgated pursuant to §8059(h)(3) of this title and determined not to increase overall utility bills. Recovery of appropriate costs shall be through a rate-recovery mechanism that is consistent with the goals and objectives of this section and recommended by the advisory council, filed by the affected energy providers, and approved by the Commission.

i. For the portion of efficiency programs not financed through SEU-secured private financing or Regional Greenhouse Gas Initiative allowance proceeds, or other SEU resources, the Commission shall utilize a process that achieves the efficient and timely recovery on an annual basis by Commission-regulated affected energy providers of appropriate costs and associated rates of return related to implementing activities and programs recommended by the advisory council.

ii. For Commission-regulated affected energy providers, appropriate costs incurred arising out of activities and programs recommended by the advisory council that are not subject to contemporaneous recovery shall be subject to deferred accounting treatment to ensure that program costs are less than expected savings. Program costs may not be placed in the permanent rate base, nor exceed the amortization schedule of the deferred accounting treatment.

iii. Peak demand reduction programs of Commission-regulated affected energy providers that are currently under review or already have been approved by the Commission, including dynamic pricing and direct load control, shall not be subject to review and approval by the advisory council.

f. Affected energy providers that are not regulated by the Commission may elect to develop, implement and fund programs for energy efficiency and peak demand reduction recommended for approval by the Board of Directors for rural electric cooperatives or the pertinent local regulatory authorities for municipal electric companies. For purposes of any comparable plan implemented pursuant to the requirements of §363 of Title 26, energy efficiency resulting in a reduction in overall energy consumption that exceeds 10% of the electricity provider's 2007 electric consumption shall constitute an eligible energy resource under §352(6) of Title 26, provided such energy provider has first achieved the 15% energy savings goal as required by §1502(a)(1) of Title 26 and determined pursuant to §8059(h)(3) of this title. Such energy efficiency shall be measured and verified as provided in §8059(h)(3) of this title.

g. The affected energy providers and the Sustainable Energy Utility shall collaborate to promote available energy efficiency and peak demand reduction programs through a common marketing platform provided by the SEU, which shall serve as an easily accessible resource for all residents of Delaware seeking to save money through energy efficiency.

h. Nothing in this section shall reduce the authority of the Sustainable Energy Utility as defined in this title. The Sustainable Energy Utility, at its discretion, may provide private financing, allowance proceeds from the Regional Greenhouse Gas Initiative, or other financial resources to reduce implementation costs of energy efficiency programs in coordination with the affected energy providers and may collaborate with affected energy providers to provide efficiency programs.

(2) Annual Reporting. -- DNREC shall annually publish a report on statewide electricity and natural gas consumption and electricity peak energy demand and make the report available to the general public by December 31 of each calendar year. All affected energy providers shall provide actual and projected electric and natural gas consumption

and peak usage data to DNREC on an annual basis as specified in regulations promulgated pursuant to §8059(h)(3) of this title. The report shall identify progress toward the energy and peak savings targets of § 1502(a) of Title 26. In determining compliance with the applicable energy savings requirements, the Secretary shall exclude reported electricity savings or natural gas savings that are not adequately demonstrated and documented, in accordance with the regulations promulgated under §8059(h)(3) of this title.

(3) Evaluation, measurement, and verification of energy efficiency.

a. Not later than June 30, 2015, the Secretary of the Department of Natural Resources and Environmental Control, with the cooperation of affected energy providers, shall, by regulation, establish the requirements of this subsection, including, but not limited to:

i. Evaluation, measurement and verification procedures and standards, including impact evaluation, environmental outcomes, process evaluation, market effects, and cost-effectiveness evaluation;

ii. Requirements under which affected energy providers shall demonstrate, document, and report compliance with the energy savings targets established under § 1502(a) of Title 26; and

iii. Procedures and standards for defining and measuring electricity savings and natural gas savings that can be counted towards the energy savings targets established under § 1502(a) and § 1502(b) of Title 26.

b. All regulations promulgated under this chapter shall be adopted under the Administrative Procedures Act, Chapter 101 of Title 29. Regulations promulgated by the Secretary shall not differ significantly among affected natural gas distribution companies or among affected electric energy providers. Regulations promulgated pursuant to this chapter and case decisions issued under the auspices of this chapter by the Secretary shall be subject to direct appeal to the Superior Court pursuant to the provisions of the Administrative Procedures Act, Chapter 101 of Title 29. The Environmental Appeals Board shall not have jurisdiction over any such appeal.

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