

108TH CONGRESS
1ST SESSION

H. R. 1294

To amend title VI of the Public Utility Regulatory Policies Act of 1978 to establish a Federal renewable energy portfolio standard for certain retail electric utilities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 13, 2003

Mr. UDALL of New Mexico (for himself, Mr. UDALL of Colorado, Mr. WAXMAN, Mr. GEORGE MILLER of California, Mr. TIERNEY, Mr. OWENS, Mr. HINCHEY, Mr. CARDIN, Mr. BERMAN, Mr. LEACH, and Mr. PALLONE) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend title VI of the Public Utility Regulatory Policies Act of 1978 to establish a Federal renewable energy portfolio standard for certain retail electric utilities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. FEDERAL RENEWABLE PORTFOLIO STANDARD.**

2 Title VI of the Public Utility Regulatory Policies Act
3 of 1978 is amended by adding at the end the following:

4 **“SEC. 609. FEDERAL RENEWABLE PORTFOLIO STANDARD.**

5 “(a) **MINIMUM RENEWABLE GENERATION REQUIRE-**
6 **MENT.**—For each calendar year beginning in calendar
7 year 2005, each retail electric supplier shall submit to the
8 Secretary, not later than April 1 of the following calendar
9 year, renewable energy credits in an amount equal to the
10 required annual percentage specified in subsection (b).

11 “(b) **REQUIRED ANNUAL PERCENTAGE.**—For cal-
12 endar years 2005 through 2035, the required annual per-
13 centage of the retail electric supplier’s base amount that
14 shall be generated from renewable energy resources, or
15 otherwise credited towards such percentage requirement
16 pursuant to subsection (c), shall be the percentage speci-
17 fied in the following table:

“Calendar Years	Required annual percentage
2006	1
2007	2
2008	3
2009	4
2010	5
2011	6
2012	7
2013	8
2014	9
2015	10
2016	11
2017	12
2018	13
2019	14
2020	15
2021	16

“Calendar Years	Required annual percentage
2022	17
2023	18
2024	19
2025	20

1 “(c) RENEWABLE ENERGY CREDITS.—(1) A retail
2 electric supplier may satisfy the requirements of sub-
3 section (a) through the submission of renewable energy
4 credits—

5 “(A) issued to the retail electric supplier under
6 subsection (d);

7 “(B) obtained by purchase or exchange under
8 subsection (e) or (g); or

9 “(C) borrowed under subsection (f).

10 “(2) A renewable energy credit may be counted to-
11 ward compliance with subsection (a) only once.

12 “(d) ISSUANCE OF CREDITS.—(1) The Secretary
13 shall establish by rule, not later than 1 year after the date
14 of enactment of this section, a program to verify and issue
15 renewable energy credits, track their sale, exchange and
16 submission, and enforce the requirements of this section.

17 “(2) An entity that generates electric energy through
18 the use of a renewable energy resource may apply to the
19 Secretary for the issuance of renewable energy credits.
20 The applicant must demonstrate that the electric energy
21 will be transmitted onto the grid or, in the case of a gen-
22 eration offset, that the electric energy offset would have

1 otherwise been consumed on site. The application shall in-
2 dicate—

3 “(A) the type of renewable energy resource
4 used to produce the electricity;

5 “(B) the location where the electric energy
6 was produced; and

7 “(C) any other information the Secretary
8 determines appropriate.

9 “(3)(A) Except as provided in subparagraphs (B),
10 (C), and (D), the Secretary shall issue to each entity that
11 generates electric energy one renewable energy credit for
12 each kilowatt hour of electric energy the entity generates
13 from the date of enactment of this section and in each
14 subsequent calendar year through the use of a renewable
15 energy resource at an eligible facility.

16 “(B) For incremental hydropower the renewable en-
17 ergy credits shall be calculated based on the expected in-
18 crease in average annual generation resulting from the ef-
19 ficiency improvements or capacity additions. The number
20 of credits shall be calculated using the same water flow
21 information used to determine a historic average annual
22 generation baseline for the hydroelectric facility and cer-
23 tified by the Secretary or the Federal Energy Regulatory
24 Commission. The calculation of the renewable energy cred-
25 its for incremental hydropower shall not be based on any

1 operational changes at the hydroelectric facility not di-
2 rectly associated with the efficiency improvements or ca-
3 pacity additions.

4 “(C) The Secretary shall issue two renewable energy
5 credits for each kilowatt hour of electric energy generated
6 and supplied to the grid in that calendar year through the
7 use of a renewable energy resource at an eligible facility
8 located on Indian land. For purposes of this paragraph,
9 renewable energy generated by biomass cofired with other
10 fuels is eligible for two credits only if the biomass was
11 grown on such land.

12 “(D) For electric energy generated by a renewable
13 energy resource at an on-site eligible facility, used to offset
14 part or all of the customer’s requirements for electric en-
15 ergy, the Secretary shall issue three renewable energy
16 credits for each kilowatt hour generated.

17 “(E) In the case of a retail electric supplier that is
18 subject to a State renewable standard program that—

19 “(i) requires the generation of electricity from
20 renewable energy; or

21 “(ii) provides for alternative compliance pay-
22 ments in satisfaction of applicable State require-
23 ments under the program,

24 the Secretary shall issue an amount of renewable energy
25 credits equal to the amount of renewable energy credits

1 that the Secretary would have issued had a payment of
2 the same amount been made to the Secretary under sub-
3 section (g). Such renewable energy credits may be applied
4 against the retail electric supplier's own required annual
5 percentage or may be transferred for use only by an asso-
6 ciate company of the retail electric supplier.

7 “(F) To be eligible for a renewable energy credit, the
8 unit of electric energy generated through the use of a re-
9 newable energy resource may be sold or may be used by
10 the generator. If both a renewable energy resource and
11 a non-renewable energy resource are used to generate the
12 electric energy, the Secretary shall issue renewable energy
13 credits based on the proportion of the renewable energy
14 resources used. The Secretary shall identify renewable en-
15 ergy credits by type and date of generation.

16 “(4) When a generator sells electric energy generated
17 through the use of a renewable energy resource to a retail
18 electric supplier under a contract subject to section 210
19 of this Act, the retail electric supplier is treated as the
20 generator of the electric energy for the purposes of this
21 section or the duration of the contract.

22 “(5) The Secretary shall issue renewable energy cred-
23 its for existing facility offsets to be applied against a retail
24 electric supplier's required annual percentage. Such cred-

1 its are not tradeable and may be used only in the calendar
2 year generation actually occurs.

3 “(e) RENEWABLE ENERGY CREDIT TRADING.—A re-
4 newable energy credit, may be sold, transferred or ex-
5 changed by the entity to whom issued or by any other enti-
6 ty who acquires the renewable energy credit, except for
7 those renewable energy credits issued pursuant to sub-
8 section (d)(3)(E). A renewable energy credit for any year
9 that is not used to satisfy the minimum renewable genera-
10 tion requirement of subsection (a) for that year may be
11 carried forward for use within the next 4 years.

12 “(f) RENEWABLE ENERGY CREDIT BORROWING.—At
13 any time before the end of calendar year 2005, a retail
14 electric supplier that has reason to believe it will not have
15 sufficient renewable energy credits to comply with sub-
16 section (a) may—

17 “(1) submit a plan to the Secretary dem-
18 onstrating that the retail electric supplier will earn
19 sufficient credits within the next 3 calendar years
20 which, when taken into account, will enable the re-
21 tail electric supplier to meet the requirements of
22 subsection (a) for calendar year 2005 and the subse-
23 quent calendar years involved; and

24 “(2) upon the approval of the plan by the Sec-
25 retary, apply renewable energy credits that the plan

1 demonstrates will be earned within the next 3 cal-
2 endar years to meet the requirements of subsection
3 (a) for each calendar year involved.

4 The retail electric supplier must repay all of the borrowed
5 renewable energy credits by submitting an equivalent
6 number of renewable energy credits, in addition to those
7 otherwise required under subsection (a), by calendar year
8 2008 or any earlier deadlines specified in the approved
9 plan. Failure to repay the borrowed renewable energy
10 credits shall subject the retail electric supplier to civil pen-
11 alties under subsection (h) for violation of the require-
12 ments of subsection (a) for each calendar year involved.

13 “(g) CREDIT COST CAP.— The Secretary shall offer
14 renewable energy credits for sale at the lesser of 3 cents
15 per kilowatt-hour or 200 percent of the average market
16 value of renewable credits for the applicable compliance
17 period. On January 1 of each year following calendar year
18 2005, the Secretary shall adjust for inflation the price
19 charged per credit for such calendar year, based on the
20 Gross Domestic Product Implicit Price Deflator.

21 “(h) ENFORCEMENT.—A retail electric supplier that
22 does not submit renewable energy credits as required
23 under subsection (a) shall be liable for the payment of a
24 civil penalty. That penalty shall be calculated on the basis
25 of the number of renewable energy credits not submitted,

1 multiplied by the lesser of 4.5 cents or 300 percent of the
2 average market value of credits for the compliance period.
3 Any such penalty shall be due and payable without de-
4 mand to the Secretary as provided in the regulations
5 issued under subsection (d).

6 “(i) INFORMATION COLLECTION.—The Secretary
7 may collect the information necessary to verify and
8 audit—

9 “(1) the annual electric energy generation and
10 renewable energy generation of any entity applying
11 for renewable energy credits under this section;

12 “(2) the validity of renewable energy credits
13 submitted by a retail electric supplier to the Sec-
14 retary; and

15 “(3) the quantity of electricity sales of all retail
16 electric suppliers.

17 “(j) ENVIRONMENTAL SAVINGS CLAUSE.—Incre-
18 mental hydropower shall be subject to all applicable envi-
19 ronmental laws and licensing and regulatory requirements.

20 “(k) EXISTING PROGRAMS.—(1) This section does
21 not preclude a State from imposing additional renewable
22 energy requirements in that State, including specifying eli-
23 gible technologies under such State requirements.

24 “(2) In the rule establishing this program, the Sec-
25 retary shall incorporate common elements of existing re-

1 newable energy programs, including state programs, to en-
2 sure administrative ease, market transparency and effec-
3 tive enforcement. The Secretary shall work with the States
4 to minimize administrative burdens and costs and to avoid
5 duplicating compliance charges to retail electric suppliers.

6 “(l) DEFINITIONS.—For purposes of this section:

7 “(1) BIOMASS.—The term ‘biomass’ means any
8 organic material that is available on a renewable or
9 recurring basis, including dedicated energy crops,
10 trees grown for energy production, wood waste and
11 wood residues, plants (including aquatic plants,
12 grasses, and agricultural crops), residues, fibers,
13 animal wastes and other organic waste materials
14 (but not including unsegregated municipal solid
15 waste (garbage)), and fats and oils, except that with
16 respect to material removed from National Forest
17 System lands the term includes only organic mate-
18 rial from—

19 “(A) precommercial thinnings;

20 “(B) slash;

21 “(C) brush; and

22 “(D) mill residues.

23 “(2) ELIGIBLE FACILITY.—The term ‘eligible
24 facility’ means—

1 “(A) a facility for the generation of electric
2 energy from a renewable energy resource that is
3 placed in service on or after the date of enact-
4 ment of this section or the effective date of the
5 applicable State renewable portfolio standard
6 program; or

7 “(B) a repowering or cofiring increment
8 that is placed in service on or after the date of
9 enactment of this section or the effective date
10 of the applicable State renewable portfolio
11 standard program, at a facility for the genera-
12 tion of electric energy from a renewable energy
13 resource that was placed in service before that
14 date.

15 “(3) EXISTING FACILITY OFFSET.—The term
16 ‘existing facility offset’ means renewable energy gen-
17 erated from an existing facility, not classified as an
18 eligible facility, that is owned or under contract, di-
19 rectly or indirectly, to a retail electric supplier on
20 the date of enactment of this section.

21 “(4) INCREMENTAL HYDROPOWER.—The term
22 ‘incremental hydropower’ means additional genera-
23 tion that is achieved from increased efficiency or ad-
24 ditions of capacity on or after the date of enactment
25 of this section or the effective date of the applicable

1 State renewable portfolio standard program, at a hydroelectric facility that was placed in service before
2 that date.
3

4 “(5) INDIAN LAND.—The term ‘Indian land’
5 means—

6 “(A) any land within the limits of any Indian reservation, pueblo, or rancheria;
7

8 “(B) any land not within the limits of any
9 Indian reservation, pueblo, or rancheria title to
10 which was on the date of enactment of this
11 paragraph either held by the United States for
12 the benefit of any Indian tribe or individual or
13 held by any Indian tribe or individual subject to
14 restriction by the United States against alien-
15 ation;

16 “(C) any dependent Indian community;
17 and

18 “(D) any land conveyed to any Alaska Na-
19 tive corporation under the Alaska Native
20 Claims Settlement Act.

21 “(6) INDIAN TRIBE.—The term ‘Indian tribe’
22 means any Indian tribe, band, nation, or other orga-
23 nized group or community, including any Alaskan
24 Native village or regional or village corporation as
25 defined in or established pursuant to the Alaska Na-

1 tive Claims Settlement Act (43 U.S.C. 1601 et seq.),
2 which is recognized as eligible for the special pro-
3 grams and services provided by the United States to
4 Indians because of their status as Indians.

5 “(7) RENEWABLE ENERGY.—The term ‘renew-
6 able energy’ means electric energy generated by a re-
7 newable energy resource.

8 “(8) RENEWABLE ENERGY RESOURCE.—The
9 term ‘renewable energy resource’ means solar (in-
10 cluding solar water heating), wind, ocean, geo-
11 thermal energy, biomass, landfill gas, or incremental
12 hydropower.

13 “(9) REPOWERING OR COFIRING INCREMENT.—
14 The term ‘repowering or cofiring increment’
15 means—

16 “(A) the additional generation from a
17 modification that is placed in service on or after
18 the date of enactment of this section or the ef-
19 fective date of the applicable State renewable
20 portfolio standard program, to expand elec-
21 tricity production at a facility used to generate
22 electric energy from a renewable energy re-
23 source or to cofire biomass that was placed in
24 service before the date of enactment of this sec-

1 tion or the effective date of the applicable State
2 renewable portfolio standard program; or

3 “(B) the additional generation above the
4 average generation in the 3 years preceding the
5 date of enactment of this section or the effec-
6 tive date of the applicable State renewable port-
7 folio standard program, to expand electricity
8 production at a facility used to generate electric
9 energy from a renewable energy resource or to
10 cofire biomass that was placed in service before
11 the date of enactment of this section or the ef-
12 fective date of the applicable State renewable
13 portfolio standard program.

14 “(10) RETAIL ELECTRIC SUPPLIER.—The term
15 ‘retail electric supplier’ means a person that sells
16 electric energy to electric consumers and sold not
17 less than 1,000,000 megawatt-hours of electric en-
18 ergy to electric consumers for purposes other than
19 resale during the preceding calendar year; except
20 that such term does not include the United States,
21 a State or any political subdivision of a State, or any
22 agency, authority, or instrumentality of any one or
23 more of the foregoing, or a rural electric cooperative.

24 “(11) RETAIL ELECTRIC SUPPLIER’S BASE
25 AMOUNT.—The term ‘retail electric supplier’s base

1 amount' means the total amount of electric energy
2 sold by the retail electric supplier, expressed in
3 terms of kilowatt hours, to electric customers for
4 purposes other than resale during the most recent
5 calendar year for which information is available, ex-
6 cluding electric energy generated by a hydroelectric
7 facility.

8 “(m) RECOVERY OF COSTS.—An electric utility
9 whose sales of electric energy are subject to rate regula-
10 tion, including any utility whose rates are regulated by the
11 Commission and any State regulated electric utility, shall
12 not be denied the opportunity to recover the full amount
13 of the prudently incurred incremental cost of renewable
14 energy obtained to comply with the requirements of sub-
15 section (a) for sales to electric customers which are subject
16 to rate regulation, notwithstanding any other law, regula-
17 tion, rule, administrative order or any agreement between
18 the electric utility and either the Commission or a State
19 regulatory authority. For the purpose of this subsection,
20 the term ‘incremental cost of renewable energy’ means—

21 “(1) the additional cost to the electric utility for
22 the purchase or generation of renewable energy to
23 satisfy the minimum renewable generation require-
24 ment of subsection (a), as compared to the cost of
25 the electric energy the electric utility would generate

1 or purchase from another source but for the require-
2 ments of subsection (a); and

3 “(2) the cost to the electric utility for acquiring
4 by purchase or exchange renewable energy credits to
5 satisfy the minimum renewable generation require-
6 ment of subsection (a).

7 For purposes of this subsection, the definitions in section
8 3 of this Act shall apply to the terms ‘electric utility’,
9 ‘State regulated electric utility’, ‘State agency’, ‘Commis-
10 sion’, and ‘State regulatory authority’.

11 “(n) VOLUNTARY PARTICIPATION.—The Secretary
12 shall encourage federally-owned utilities, municipally-
13 owned utilities and rural electric cooperatives that sell
14 electric energy to electric consumers for purposes other
15 than resale to participate in the renewable portfolio stand-
16 ard program. A municipally-owned utility or rural electric
17 cooperative that owns or has under contract a facility for
18 the generation of electric energy from a renewable energy
19 resource may not sell or trade renewable energy credits
20 generated by such resource unless it participates in the
21 renewable portfolio standard program under the same
22 terms and conditions as retail electric suppliers.

23 “(o) PROGRAM REVIEW.—The Secretary shall con-
24 duct a comprehensive evaluation of all aspects of the Re-
25 newable Portfolio Standard program, within 10 years of

1 enactment of this section. The study shall include an eval-
2 uation of—

3 “(1) the effectiveness of the program in increas-
4 ing the market penetration and lower the cost of the
5 eligible renewable technologies;

6 “(2) the opportunities for any additional tech-
7 nologies emerging since enactment of this section;

8 “(3) the impact on the regional diversity and
9 reliability of supply sources, including the power
10 quality benefits of distributed generation;

11 “(4) the regional resource development relative
12 to renewable potential and reasons for any under in-
13 vestment in renewable resources; and

14 “(5) the net cost/benefit of the renewable port-
15 folio standard to the national and state economies,
16 including retail power costs, economic development
17 benefits of investment, avoided costs related to envi-
18 ronmental and congestion mitigation investments
19 that would otherwise have been required, impact on
20 natural gas demand and price, effectiveness of green
21 marketing programs at reducing the cost of renew-
22 able resources.

23 The Secretary shall transmit the results of the program
24 review and any recommendations for modifications and

1 improvements to the program to Congress not later than
2 January 1, 2012.

3 “(p) PROGRAM IMPROVEMENTS.—Using the results
4 of the review under subsection (o), the Secretary shall by
5 rule, within 6 months of the completion of the review,
6 make such modifications to the program as may be nec-
7 essary to improve the efficiency of the program and maxi-
8 mize the use of renewable energy under the program.

9 “(q) STATE RENEWABLE ENERGY ACCOUNT PRO-
10 GRAM.—(1) The Secretary shall establish, not later than
11 December 31, 2005, a State renewable energy account
12 program.

13 “(2) All money collected by the Secretary from the
14 sale of renewable energy credits shall be deposited into the
15 state renewable energy account established pursuant to
16 this subsection. The State renewable energy account shall
17 be held by the Secretary and shall not be transferred to
18 the Treasury Department.

19 “(3) Proceeds deposited in the state renewable energy
20 account shall be used by the Secretary for a program to
21 provide grants to the State agency responsible for devel-
22 oping State energy conservation plans under section 363
23 of the Energy Policy and Conservation Act (42 U.S.C.
24 6322) for the purposes of promoting renewable energy

1 production and providing energy assistance and weather-
2 ization services to low-income consumers.

3 “(4) The Secretary may issue guidelines and criteria
4 for grants awarded under this subsection. At least 75 per-
5 cent of the funds provided to each State shall be used for
6 promoting renewable energy production. The funds shall
7 be allocated to the states on the basis of retail electric
8 sales subject to the Renewable Portfolio Standard under
9 this section or through voluntary participation. To the ex-
10 tent Federal credits have been issued without payment due
11 to reciprocity with state programs under subsection
12 (d)(3)(E), deductions shall be made from the relevant
13 state’s allocation. State energy offices receiving grants
14 under this section shall maintain such records and evi-
15 dence of compliance as the Secretary may require.

16 “(r) SUNSET.—This section expires December 31,
17 2035.”

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