

109TH CONGRESS
1ST SESSION

H. R. 983

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

FEBRUARY 17, 2005

Mr. UDALL of New Mexico (for himself, Mr. UDALL of Colorado, Mr. LEACH, Mr. PALLONE, Mr. WAXMAN, Mr. SHAYS, and Mr. PLATTS) 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,*

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

4 (a) IN GENERAL.—Title VI of the Public Utility Reg-
5 ulatory Policies Act of 1978 is amended by adding at the
6 end the following:

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

2 “(a) **MINIMUM RENEWABLE GENERATION REQUIRE-**
 3 **MENT.**—For each calendar year beginning in calendar
 4 year 2008, each retail electric supplier shall submit to the
 5 Secretary, not later than April 1 of the following calendar
 6 year, renewable energy credits in an amount equal to the
 7 required annual percentage specified in subsection (b).

8 “(b) **REQUIRED ANNUAL PERCENTAGE.**—For cal-
 9 endar years 2008 through 2037, the required annual per-
 10 centage of the retail electric supplier’s base amount that
 11 shall be generated from renewable energy resources, or
 12 otherwise credited towards such percentage requirement
 13 pursuant to subsection (c), shall be the percentage speci-
 14 fied in the following table:

“Calendar Years	Required annual percentage
2008	1
2009	2
2010	3
2011	4
2012	5
2013	6
2014	7
2015	8
2016	9
2017	10
2018	11
2019	12
2020	13
2021	14
2022	15
2023	16
2024	17
2025	18
2026	19
2027 and thereafter	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
23 otherwise been consumed on site. The application shall in-
24 dicate—

1 “(A) the type of renewable energy resource used
2 to produce the electricity;

3 “(B) the location where the electric energy was
4 produced; and

5 “(C) any other information the Secretary deter-
6 mines appropriate.

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

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

1 rectly associated with the efficiency improvements or ca-
2 pacity additions.

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

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

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

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

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

23 the Secretary shall issue an amount of renewable energy
24 credits equal to the amount of renewable energy credits
25 that the Secretary would have issued had a payment of

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

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

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

21 “(5) The Secretary shall issue renewable energy cred-
22 its for existing facility offsets to be applied against a retail
23 electric supplier's required annual percentage. Such cred-
24 its are not tradeable and may be used only in the calendar
25 year generation actually occurs.

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

10 “(f) RENEWABLE ENERGY CREDIT BORROWING.—At
11 any time before the end of calendar year 2010, a retail
12 electric supplier that has reason to believe it will not have
13 sufficient renewable energy credits to comply with sub-
14 section (a) may—

15 “(1) submit a plan to the Secretary dem-
16 onstrating that the retail electric supplier will earn
17 sufficient credits within the next 3 calendar years
18 which, when taken into account, will enable the re-
19 tail electric supplier to meet the requirements of
20 subsection (a) for calendar year 2010 and the subse-
21 quent calendar years involved; and

22 “(2) upon the approval of the plan by the Sec-
23 retary, apply renewable energy credits that the plan
24 demonstrates will be earned within the next 3 cal-

1 endar years to meet the requirements of subsection
2 (a) for each calendar year involved.

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

12 “(g) CREDIT COST CAP.—The Secretary shall offer
13 renewable energy credits for sale at the lesser of 3 cents
14 per kilowatt-hour or 200 percent of the average market
15 value of renewable credits for the applicable compliance
16 period. On January 1 of each year following calendar year
17 2006, the Secretary shall adjust for inflation the price
18 charged per credit for such calendar year, based on the
19 Gross Domestic Product Implicit Price Deflator.

20 “(h) ENFORCEMENT.—A retail electric supplier that
21 does not submit renewable energy credits as required
22 under subsection (a) shall be liable for the payment of a
23 civil penalty. That penalty shall be calculated on the basis
24 of the number of renewable energy credits not submitted,
25 multiplied by the lesser of 4.5 cents or 300 percent of the

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

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

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

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

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

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

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

23 “(2) In the rule establishing this program, the Sec-
24 retary shall incorporate common elements of existing re-
25 newable energy programs, including state programs, to en-

1 sure administrative ease, market transparency and effective enforcement. The Secretary shall work with the States
2 tive enforcement. The Secretary shall work with the States
3 to minimize administrative burdens and costs and to avoid
4 duplicating compliance charges to retail electric suppliers.

5 “(1) DEFINITIONS.—For purposes of this section:

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

18 “(A) precommercial thinnings;

19 “(B) slash;

20 “(C) brush; and

21 “(D) mill residues.

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

24 “(A) a facility for the generation of electric
25 energy from a renewable energy resource that is

1 placed in service on or after the date of enact-
2 ment of this section or the effective date of the
3 applicable State renewable portfolio standard
4 program; or

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

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

19 “(4) INCREMENTAL HYDROPOWER.—The term
20 ‘incremental hydropower’ means additional genera-
21 tion that is achieved from increased efficiency or ad-
22 ditions of capacity on or after the date of enactment
23 of this section or the effective date of the applicable
24 State renewable portfolio standard program, at a hy-

1 droelectric facility that was placed in service before
2 that date.

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

5 “(A) any land within the limits of any In-
6 dian reservation, pueblo, or rancharia;

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

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

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

20 “(6) INDIAN TRIBE.—The term ‘Indian tribe’
21 means any Indian tribe, band, nation, or other orga-
22 nized group or community, including any Alaskan
23 Native village or regional or village corporation as
24 defined in or established pursuant to the Alaska Na-
25 tive Claims Settlement Act (43 U.S.C. 1601 et seq.),

1 which is recognized as eligible for the special pro-
2 grams and services provided by the United States to
3 Indians because of their status as Indians.

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

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

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

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

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

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

22 “(11) RETAIL ELECTRIC SUPPLIER’S BASE
23 AMOUNT.—The term ‘retail electric supplier’s base
24 amount’ means the total amount of electric energy
25 sold by the retail electric supplier, expressed in

1 terms of kilowatt hours, to electric customers for
2 purposes other than resale during the most recent
3 calendar year for which information is available, ex-
4 cluding electric energy generated by a hydroelectric
5 facility.

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

19 “(1) the additional cost to the electric utility for
20 the purchase or generation of renewable energy to
21 satisfy the minimum renewable generation require-
22 ment of subsection (a), as compared to the cost of
23 the electric energy the electric utility would generate
24 or purchase from another source but for the require-
25 ments of subsection (a); and

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

5 For purposes of this subsection, the definitions in section
6 3 of this Act shall apply to the terms ‘electric utility’,
7 ‘State regulated electric utility’, ‘State agency’, ‘Commis-
8 sion’, and ‘State regulatory authority’.

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

21 “(o) PROGRAM REVIEW.—The Secretary shall con-
22 duct a comprehensive evaluation of all aspects of the Re-
23 newable Portfolio Standard program, within 10 years of
24 enactment of this section. The study shall include an eval-
25 uation of—

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

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

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

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

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

21 The Secretary shall transmit the results of the program
22 review and any recommendations for modifications and
23 improvements to the program to Congress not later than
24 January 1, 2014.

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

7 “(q) STATE RENEWABLE ENERGY ACCOUNT PRO-
8 GRAM.—(1) The Secretary shall establish, not later than
9 December 31, 2007, a State renewable energy account
10 program.

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

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

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

14 “(r) SUNSET.—This section expires December 31,
15 2037.”.

16 (b) TABLE OF CONTENTS.—The table of contents for
17 such title is amended by adding the following new item
18 at the end:

“Sec. 609. Federal renewable portfolio standard.”.

○