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111TH CONGRESS
1ST SESSION

H. R. 890

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

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 4, 2009

Mr. MARKEY of Massachusetts (for himself and Mr. PLATTS) introduced the following bill; which was referred to the Committee on Energy and Commerce

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A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''American Renewable Energy Act''.

SEC. 2. FEDERAL RENEWABLE ELECTRICITY STANDARD.

(a) IN GENERAL.—Title VI of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 and following) is amended by adding at the end the following:

"SEC. 610. FEDERAL RENEWABLE ELECTRICITY STANDARD.

"(a) DEFINITIONS.—For purposes of this section:

"(1) AFFILIATE.—The term 'affiliate' when used in relation to a person, means another person which owns or controls, is owned or controlled by, or is under common ownership or control with, such person, as determined under regulations promulgated by the Secretary.

"(2) BIOMASS.—

"(A) IN GENERAL.—The term 'biomass' means each of the following:

"(i) Cellulosic (plant fiber) organic materials from a plant that is planted for the purpose of being used to produce energy.

"(ii) Nonhazardous, plant or algal matter that is derived from any of the following:

"(I) An agricultural crop, crop byproduct or residue resource.

"(II) Waste such as landscape or right-of-way trimmings (but not in-

cluding municipal solid waste, recyclable postconsumer waste paper, painted, treated, or pressurized wood, or wood contaminated with plastic or metals).

"(iii) Animal waste or animal byproducts, including products of animal waste digesters.

"(B) BIOMASS FROM FEDERAL LANDS.—

"(i) COVERED MATERIALS.—With respect to organic material removed from Federal land, the term 'biomass' covers only organic material from—

"(I) ecological forest restoration;

"(II) pre-commercial thinnings;

"(III) brush;

"(IV) mill residues; and

"(V) slash.

"(ii) EXCLUSION OF CERTAIN LANDS.—Notwithstanding clause (i), material or matter that would otherwise qualify as biomass are not included in the term 'biomass' if it is located on Federal land in the following categories:

"(I) Federal land containing old growth forest or late successional forest, unless the Secretary of the Interior or the Secretary of Agriculture (whichever has administrative jurisdiction over such land) determines that the removal or organic material from such land is appropriate for the applicable forest type and maximizes the retention of late-successional and large and old growth trees, late successional and old growth forest structure, and late-successional and old growth forest composition.

"(II) Federal land on which the removal of vegetation is prohibited, including components of the National Wilderness Preservation System.

"(III) Wilderness Study Areas.

"(IV) Inventoried Roadless Areas.

"(V) Units of the National Landscape Conservation System.

"(VI) National Monuments.

"(3) DISTRIBUTED GENERATION FACILITY.—The term 'distributed generation facility' means a facility that—

"(A) generates renewable electricity other than by means of combustion;

"(B) primarily serves 1 or more electricity consumers at or near the facility site; and

"(C) is no larger than 2 megawatts in capacity.

"(4) FEDERAL ALTERNATIVE COMPLIANCE PAYMENT.—The term 'Federal alternative compliance payment' means a payment, to be submitted in lieu of 1 Federal renewable electricity credit, pursuant to subsection (c)(3).

"(5) FEDERAL LAND.—The term 'Federal land' means land owned by the United States and under the administrative jurisdiction of the Secretary of the Interior or the Secretary of Agriculture, other than land held in trust for an Indian or Indian tribe.

"(6) FEDERAL RENEWABLE ELECTRICITY CREDIT.—The term 'Federal renewable electricity credit' means a credit, representing one kilowatt hour of renewable electricity, issued pursuant to subsection (d).

"(7) FUND.—The term 'Fund' means the Renewable Electricity Deployment Fund established under subsection (f).

"(8) INVENTORIED ROADLESS AREA.—The term 'Inventoried Roadless Area' means one of the areas identified in the set of inventoried roadless areas maps contained in the Forest Service Roadless Areas Conservation, Final Environmental Impact Statement, Volume 2, dated November 2000.

"(9) QUALIFIED HYDROPOWER.—The term 'qualified hydropower' means—

"(A) electricity generated solely from increased efficiency achieved, or additions of capacity made, on or after January 1, 2001 at a hydroelectric facility that was placed in service before that date; or

"(B) electricity generated from generating capacity added on or after January 1, 2001 to a dam that did not previously have the capacity to generate electricity, provided that the Commission certifies that—

"(i) the dam was placed in service before the date of the enactment of this section and was operated for flood control, navigation, or water supply purposes and

did not produce hydroelectric power before January 1, 2001;

"(ii) the hydroelectric project installed on the dam is licensed by the Commission and meets all other applicable environmental, licensing, and regulatory requirements, including applicable fish passage requirements; and

"(iii) the hydroelectric project installed on the dam is operated so that the water surface elevation at any given location and time that would have occurred in the absence of the hydroelectric project is maintained, subject to any license requirements that require changes in water surface elevation for the purpose of improving the environmental quality of the affected waterway.

"(10) RENEWABLE ELECTRICITY.—The term 'renewable electricity' means electricity generated from a renewable energy resource.

"(11) RENEWABLE ENERGY RESOURCE.—The term 'renewable energy resource' means each of the following:

"(A) wind energy;

"(B) solar energy;

"(C) geothermal energy;

"(D) combustion of biomass or landfill gas;

"(E) qualified hydropower; or

"(F) marine and hydrokinetic renewable energy, as that term is defined in section 632 of the Energy Independence and Security Act of 2007 (42 U.S.C. 17211).

"(12) RETAIL ELECTRIC SUPPLIER.—

"(A) IN GENERAL.—The term 'retail electric supplier' means, for any given year, an electric utility that sold not less than 1,000,000 megawatt hours of electric energy to electric consumers for purposes other than resale during the preceding calendar year.

"(B) INCLUSIONS AND LIMITATIONS.—For purposes of determining whether an electric utility qualifies as a retail electric supplier under subparagraph (A)—

"(i) the sales of any affiliate of an electric utility to electric consumers for purposes other than resale shall be considered to be sales of such electric utility; and

"(ii) sales by any electric utility to a parent company or to other affiliates of

such electric utility shall not be treated as sales to electric consumers.

"(13) RETAIL ELECTRIC SUPPLIER'S BASE AMOUNT.—The term 'retail electric supplier's base amount' means the total amount of electric energy sold by the retail electric supplier, expressed in terms of kilowatt hours, to electric customers for purposes other than resale during the relevant calendar year, excluding electricity generated by—

"(A) a hydroelectric facility that is not qualified hydropower; or

"(B) combustion of municipal solid waste.

"(14) RETIRE AND RETIREMENT.—The terms 'retire' and 'retirement' with respect to a Federal renewable electricity credit, means to disqualify such credit for any subsequent use under this section, regardless of whether the use is a sale, transfer, exchange, or submission in satisfaction of a compliance obligation.

"(b) ESTABLISHMENT OF PROGRAM.—Not later than 1 year after the date of enactment of this section, the Secretary shall, by regulation, establish a program to implement and enforce the requirements of this section. In establishing such program, the Secretary shall, to the extent practicable—

"(1) preserve the integrity, and incorporate best practices, of existing State renewable electricity programs;

"(2) rely upon existing and emerging State or regional tracking systems that issue and track non-Federal renewable electricity credits; and

"(3) cooperate with the States to facilitate coordination between State and Federal renewable electricity programs and to minimize administrative burdens and costs to retail electric suppliers.

"(c) ANNUAL COMPLIANCE REQUIREMENT.—

"(1) IN GENERAL.—For each of calendar years 2012 through 2039, each retail electric supplier shall, not later than April 1 of the following calendar year, submit to the Secretary a quantity of Federal renewable electricity credits equal to the retail electric supplier's base amount for the calendar year multiplied by the required annual percentage set forth in paragraph (2).

"(2) REQUIRED ANNUAL PERCENTAGE.—For each of calendar years 2012 through 2039, the required annual percentage shall be as follows:

"Calendar year	Required annual percentage
2012	6.0
2013	6.0
2014	8.5
2015	8.5

"Calendar year	Required annual percentage
2016	11.0
2017	11.0
2018	14.0
2019	14.0
2020	17.5
2021	17.5
2022	21.0
2023	21.0
2024	23.0
2025 through 2039	25.0

"(3) ALTERNATIVE COMPLIANCE PAYMENTS.—A retail electric supplier may satisfy the requirements of paragraph (1) in whole or in part by submitting in lieu of each Federal renewable electricity credit, a payment equal to the lesser of—

"(A) 200 percent of the average market value of a Federal renewable electricity credit for the previous compliance year, as determined by the Secretary; or

"(B) 5 cents, adjusted on January 1 of each year following calendar year 2009 based on the Gross Domestic Product Implicit Price Deflator.

"(4) USE OF PAYMENTS.—Alternative compliance payments submitted pursuant to paragraph (3) shall be deposited in the Fund established under subsection (f).

"(d) ISSUANCE OF FEDERAL RENEWABLE ELECTRICITY CREDITS.—

"(1) CREDIT ISSUANCE.—The regulations promulgated under subsection (b) shall include provisions governing the issuance, tracking, and retirement of Federal renewable electricity credits. Except as provided in paragraphs (2), (3), and (4) of this subsection, the Secretary shall issue to each generator of renewable electricity, 1 Federal renewable electricity credit for each kilowatt hour of renewable electricity generated by such generator.

"(2) GENERATION FROM STATE RENEWABLE ELECTRICITY PROGRAMS USING CENTRAL PROCUREMENT AND FROM STATE ALTERNATIVE COMPLIANCE PAYMENTS.—Where renewable electricity is generated with the support of payments from a retail electric supplier pursuant to a State renewable electricity program (whether through State alternative compliance payments or through payments to a State renewable electricity procurement fund or entity), the Secretary shall issue Federal renewable electricity credits to such retail electric supplier for the proportion of the relevant renewable electricity generation that is attributable to the retail electric supplier's payments, as determined pursuant to regulations issued by the Secretary. For any remaining portion of the relevant renewable electricity genera-

tion, the Secretary shall issue Federal renewable electricity credits to the generator, as provided in paragraph (1), provided that in no event shall more than 1 Federal renewable electricity credit be issued for the same kilowatt hour of electricity. In determining how Federal renewable electricity credits will be apportioned among retail electric suppliers and generators in such circumstances, the Secretary shall consider information and guidance furnished by the relevant State or States.

"(3) CERTAIN POWER SALES CONTRACTS.—When a generator has sold renewable electricity to a retail electric supplier under a contract for power from a facility placed in service before the date of enactment of this section, and the contract does not provide for the determination of ownership of the Federal renewable electricity credits associated with such generation, the Secretary shall issue such Federal renewable electricity credits to the retail electric supplier for the duration of the contract.

"(4) CREDIT MULTIPLIER FOR DISTRIBUTED GENERATION.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary shall issue 3 Federal renewable electricity credits for each

kilowatt hour of renewable electricity generated by a distributed generation facility.

"(B) ADJUSTMENT.—Except as provided in subparagraph (C), not later than January 1, 2014, and not less frequently than every 4 years thereafter, the Secretary shall review the effect of this paragraph and shall, as necessary, reduce the number of Federal renewable electricity credits per kilowatt hour issued under this paragraph, but not below 1, to ensure that such number is no higher than the Secretary determines is necessary to make distributed generation facilities cost competitive with other sources of renewable electricity generation.

"(C) FACILITIES PLACED IN SERVICE AFTER ENACTMENT.—For any distributed generation facility placed in service after the date of enactment of this section, subparagraph (B) shall not apply for the first 10 years after date of enactment. For each year during such 10-year period, the Secretary shall issue the facility the same number of Federal renewable electricity credits per kilowatt hour as are issued to that facility in the year in which such facility is placed in service. After such 10-year period,

the Secretary shall issue Federal renewable energy credits to the facility in accordance with the current multiplier as determined pursuant to subparagraph (B).

"(5) CREDITS BASED ON INCREMENTAL HYDROPOWER.—For purposes of this subsection, the number of Federal renewable electricity credits issued for qualifying hydropower described in subsection (a)(9)(A) shall be calculated—

"(A) based solely on the increase in average annual generation directly resulting from the efficiency improvements or capacity additions described in subsection (a)(9)(A); and

"(B) using the same water flow information used to determine a historic average annual generation baseline for the hydroelectric facility, as certified by the Secretary or by the Commission.

"(6) GENERATION FROM MIXED RENEWABLE AND NON-RENEWABLE RESOURCES.—If electricity is generated using both a renewable energy resource and an energy source that is not a renewable energy resource (as, for example, in the case of co-firing of biomass and fossil fuel), the Secretary shall issue Federal renewable electricity credits based on the

proportion of the electricity that is attributable to the renewable energy resource.

"(7) PROHIBITION AGAINST DOUBLE-COUNTING.—Except as provided in paragraph (4) of this subsection, the Secretary shall ensure that no more than 1 Federal renewable electricity credit will be issued for any kilowatt hour of renewable electricity and that no Federal renewable electricity credit will be used more than once for compliance with this section.

"(e) TRADING AND BANKING OF CREDITS.—

"(1) TRADING.—The lawful holder of a Federal renewable electricity credit may sell, exchange, transfer, submit for compliance in accordance with subsection (c), or submit such credit for retirement by the Secretary.

"(2) BANKING.—A Federal renewable electricity credit may be submitted in satisfaction of the compliance obligation set forth in subsection (c) for the compliance year in which the credit was issued or for any of the 3 immediately subsequent compliance years. The Secretary shall retire any Federal renewable electricity credit that has not been submitted under subsection (c) by the deadline for the

compliance year that is 3 years after the compliance year in which the credit was issued.

"(3) DELEGATION OF MARKET ADMINISTRATION.—The Secretary may delegate to one or more appropriate market-making entities the administration of a Federal renewable electricity credit market for purposes of creating a transparent and efficient national market.

"(4) OVERSIGHT.—The Commission, in consultation with the Secretary and relevant Federal agencies, may prescribe such rules as the Commissioner determines necessary to ensure the transparency, fairness, and stability of the market in Federal renewable electricity credits and any derivative instruments based on such credits.

"(f) RENEWABLE ELECTRICITY DEPLOYMENT FUND.—

"(1) IN GENERAL.—There is established in the Treasury of the United States a Renewable Electricity Deployment Fund.

"(2) DEPOSITS.—All Federal alternative compliance payments submitted to the Secretary pursuant to subsection (c)(3) and civil penalties assessed under this section shall be deposited into the Fund.

"(3) USE.—

"(A) IN GENERAL.—Amounts deposited in the Fund shall be available exclusively for use by the Secretary, subject to appropriations, to make payments to retail electric suppliers in accordance with subparagraph (B).

"(B) ALLOCATION.—Not later than May 1 of each year from 2013 through 2040, the Secretary shall distribute amounts deposited in the Fund during the preceding 12-month period among the retail electric suppliers which have submitted Federal renewable electricity credits to the Secretary in total or partial compliance with their obligations under subsection (c) for the preceding calendar year. Each retail electric supplier shall receive a payment equal to the product of—

"(i) the total payments made to all retail electric suppliers under this subsection; and

"(ii) the quotient obtained by dividing the quantity specified in subclause (I) by the quantity specified in subclause (II):

"(I) The quantity of Federal renewable electricity credits submitted by the retail electric supplier for the

preceding calendar year pursuant to subsection (c).

"(II) The total quantity of Federal renewable electricity credits submitted by all retail electric suppliers for the preceding calendar year pursuant to subsection (c).

"(g) INFORMATION COLLECTION.—In accordance with section 13 of the Federal Energy Administration Act of 1974 (15 U.S.C. 772), the Secretary may require any retail electric supplier, renewable electricity generator, or such other entities as the Secretary deems appropriate, to provide any information the Secretary determines appropriate to carry out this section.

"(h) ENFORCEMENT AND JUDICIAL REVIEW.—

"(1) CIVIL PENALTY.—If any person fails to comply with the requirements of subsection (c), such person shall be liable to pay to the Secretary a civil penalty equal to the product of—

"(A) double the Federal alternative compliance payment calculated under subsection (c)(3), and

"(B) the aggregate quantity of Federal renewable electricity credits (or equivalent Federal alternative compliance payments) that the

person failed to submit to the Secretary in violation of the requirements of subsection (c).

"(2) ENFORCEMENT.—The Secretary shall assess a civil penalty under paragraph (1) in accordance with the procedures described in section 333(d) of the Energy Policy and Conservation Act of 1954 (42 U.S.C. 6303).

"(3) JUDICIAL REVIEW.—Any person who will be adversely affected by a final action taken by the Secretary under this section, other than the assessment of a civil penalty under this subsection, may use the procedures for review described in section 336(b) of the Energy Policy and Conservation Act (42 U.S.C. 6306). For purposes of this paragraph, references to a rule in section 336(b) of the Energy Policy and Conservation Act shall be deemed to refer also to all other final actions of the Secretary under this section other than the assessment of a civil penalty under this subsection.

"(i) SAVINGS PROVISIONS.—Nothing in this section shall—

"(1) diminish or qualify any authority of a State or political subdivision of a State to—

"(A) adopt or enforce any law or regulation respecting renewable electricity, including

programs that exceed the required amount of renewable electricity under this section, provided that no such law or regulation may relieve any person of any requirement otherwise applicable under this section; or

"(B) regulate the acquisition and disposition of Federal renewable electricity credits by retail electric suppliers located within the territory of such State or political subdivision, including the authority to require such retail electric supplier to acquire and retire Federal renewable electricity credits associated with electric energy it sells to end-use customers; or

"(2) affect the application of, or the responsibility for compliance with, any other provision of law or regulation, including environmental and licensing requirements.

"(j) COST RECOVERY.—An electric utility, the retail electricity sales of which are subject to rate regulation, shall not be denied the opportunity to recover the full amount of the prudently incurred incremental cost of renewable electricity or Federal renewable electricity credits obtained, or alternative compliance payments made, to comply with the requirements of subsection (c).

"(k) PROGRAM REVIEW.—

"(1) NATIONAL ACADEMY OF SCIENCES REVIEW.—The Secretary shall enter into a contract with the National Academy of Sciences under which the Academy shall, not later than July 1, 2017, and every 5 years thereafter through 2032, submit to the Secretary and to Congress a comprehensive evaluation of all aspects of the program established under this section, including—

"(A) an evaluation of the effectiveness of the program, including its specific design elements, in increasing the market penetration and lowering the cost of the eligible renewable electricity generation technologies;

"(B) the opportunities for any additional technologies and sources of renewable electricity generation that have emerged since enactment of this section;

"(C) the program's impact on the regional diversity and reliability of electricity supply;

"(D) the net benefits or costs of the program to the national and State economies, including effects on retail electricity costs, economic development benefits of investment, environmental benefits, impacts on natural gas demand and price, and avoided costs related to

environmental and congestion mitigation investments that otherwise would have been required;

"(E) an assessment of the benefits and costs of increasing or extending the renewable electricity requirements set forth in subsection (c) of this section; and

"(F) recommendations regarding potential changes to this section, to regulations and procedures for implementing this section, or to related public policies.

"(2) RECOMMENDATIONS TO CONGRESS.—Not later than January 1, 2018, and every 5 years thereafter through 2033, the Secretary shall transmit to the Committee on Energy and Commerce of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate a report making recommendations for modifications and improvements to the program established under this section and any related programs, including an explanation of the inconsistencies, if any, between the Secretary's recommendations and those included in the National Academy of Sciences evaluation under paragraph (1).

"(l) SUNSET.—This section expires on December 31, 2040.".

1 (b) TABLE OF CONTENTS AMENDMENT.—The table
2 of contents of the Public Utility Regulatory Policies Act
3 of 1978 (16 U.S.C. 2601 and following) is amended by
4 adding at the end of the items relating to title VI the fol-
5 lowing:

6 **"SEC. 610. Federal renewable electricity standard.".**

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