

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5756

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.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 14, 2002

Mr. UDALL of New Mexico 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 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       Title VI of the Public Utility Regulatory Policies Act  
5       of 1978 is amended by adding at the end the following:

6       **“SEC. 606. FEDERAL RENEWABLE PORTFOLIO STANDARD.**

7       “(a) **MINIMUM RENEWABLE GENERATION REQUIRE-**  
8       **MENT.**—For each calendar year beginning in calendar

1 year 2005, each retail electric supplier shall submit to the  
 2 Secretary, not later than April 1 of the following calendar  
 3 year, renewable energy credits in an amount equal to the  
 4 required annual percentage specified in subsection (b).

5 “(b) **REQUIRED ANNUAL PERCENTAGE.**—For cal-  
 6 endar years 2005 through 2025, the required annual per-  
 7 centage of the retail electric supplier’s base amount that  
 8 shall be generated from renewable energy resources shall  
 9 be the percentage specified in the following table:

<b>“Calendar Years</b>	<b>Required annual percentage</b>
2005 through 2006 .....	1.0
2007 through 2008 .....	2.2
2009 through 2010 .....	3.4
2011 through 2012 .....	4.6
2013 through 2014 .....	5.8
2015 through 2016 .....	7.0
2017 through 2018 .....	8.5
2019 through 2020 .....	10.0
2020 through 2021 .....	12.0
2021 through 2022 .....	14.0
2022 through 2023 .....	16.0
2023 through 2024 .....	18.0
2024 through 2025 .....	20.0.

10 “(c) **SUBMISSION OF CREDITS.**—(1) A retail electric  
 11 supplier may satisfy the requirements of subsection (a)  
 12 through the submission of renewable energy credits—

13 “(A) issued to the retail electric supplier under  
 14 subsection (d);

15 “(B) obtained by purchase or exchange under  
 16 subsection (e); or

17 “(C) borrowed under subsection (f).

1       “(2) A credit may be counted toward compliance with  
2 subsection (a) only once.

3       “(d) ISSUANCE OF CREDITS.—(1) The Secretary  
4 shall establish, not later than 1 year after the date of en-  
5 actment of this section, a program to issue, monitor the  
6 sale or exchange of, and track renewable energy credits.

7       “(2) Under the program, an entity that generates  
8 electric energy through the use of a renewable energy re-  
9 source may apply to the Secretary for the issuance of re-  
10 newable energy credits. The application shall indicate—

11               “(A) the type of renewable energy resource used  
12 to produce the electricity,

13               “(B) the location where the electric energy was  
14 produced, and

15               “(C) any other information the Secretary deter-  
16 mines appropriate.

17       “(3)(A) Except as provided in paragraphs (B), (C),  
18 and (D), the Secretary shall issue to an entity one renew-  
19 able energy credit for each kilowatt-hour of electric energy  
20 the entity generates from the date of enactment of this  
21 section and in each subsequent calendar year through the  
22 use of a renewable energy resource at an eligible facility.

23       “(B) For incremental hydropower the credits shall be  
24 calculated based on the expected increase in average an-  
25 nual generation resulting from the efficiency improve-

1 ments or capacity additions. The number of credits shall  
2 be calculated using the same water flow information used  
3 to determine a historic average annual generation baseline  
4 for the hydroelectric facility and certified by the Secretary  
5 or the Federal Energy Regulatory Commission. The cal-  
6 culation of the credits for incremental hydropower shall  
7 not be based on any operational changes at the hydro-  
8 electric facility not directly associated with the efficiency  
9 improvements or capacity additions.

10       “(C) The Secretary shall issue two renewable energy  
11 credits for each kilowatt-hour of electric energy generated  
12 and supplied to the grid in that calendar year through the  
13 use of a renewable energy resource at an eligible facility  
14 located on Indian land. For purposes of this paragraph,  
15 renewable energy generated by biomass cofired with other  
16 fuels is eligible for two credits only if the biomass was  
17 grown on the land eligible under this paragraph.

18       “(D) For renewable energy resources produced from  
19 a generation offset, the Secretary shall issue two renew-  
20 able energy credits for each kilowatt-hour generated.

21       “(E) To be eligible for a renewable energy credit, the  
22 unit of electric energy generated through the use of a re-  
23 newable energy resource may be sold or may be used by  
24 the generator. If both a renewable energy resource and  
25 a nonrenewable energy resource are used to generate the

1 electric energy, the Secretary shall issue credits based on  
2 the proportion of the renewable energy resource used. The  
3 Secretary shall identify renewable energy credits by type  
4 and date of generation.

5       “(4) When a generator sells electric energy generated  
6 through the use of a renewable energy resource to a retail  
7 electric supplier under a contract subject to section 210  
8 of this Act, the retail electric supplier is treated as the  
9 generator of the electric energy for the purposes of this  
10 section for the duration of the contract.

11       “(5) The Secretary may issue credits for existing fa-  
12 cility offsets to be applied against a retail electric sup-  
13 plier’s own required annual percentage. The credits are  
14 not tradeable and may only be used in the calendar year  
15 generation actually occurs.

16       “(e) CREDIT TRADING.—A renewable energy credit  
17 may be sold or exchanged by the entity to whom issued  
18 or by any other entity who acquires the credit. A renew-  
19 able energy credit for any year that is not used to satisfy  
20 the minimum renewable generation requirement of sub-  
21 section (a) for that year may be carried forward for use  
22 within the next 4 years.

23       “(f) CREDIT BORROWING.—At any time before the  
24 end of calendar year 2005, a retail electric supplier that

1 has reason to believe it will not have sufficient renewable  
2 energy credits to comply with subsection (a) may—

3 “(1) submit a plan to the Secretary dem-  
4 onstrating that the retail electric supplier will earn  
5 sufficient credits within the next 3 calendar years  
6 which, when taken into account, will enable the re-  
7 tail electric suppliers to meet the requirements of  
8 subsection (a) for calendar year 2005 and the subse-  
9 quent calendar years involved; and

10 “(2) upon the approval of the plan by the Sec-  
11 retary, apply credits that the plan demonstrates will  
12 be earned within the next 3 calendar years to meet  
13 the requirements of subsection (a) for each calendar  
14 year involved.

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

23 “(h) ENFORCEMENT.—The Secretary may bring an  
24 action in the appropriate United States district court to  
25 impose a civil penalty on a retail electric supplier that does

1 not comply with subsection (a), unless the retail electric  
2 supplier was unable to comply with subsection (a) for rea-  
3 sons outside of the supplier’s reasonable control (including  
4 weather-related damage, mechanical failure, lack of trans-  
5 mission capacity or availability, strikes, lockouts, actions  
6 of a governmental authority). A retail electric supplier who  
7 does not submit the required number of renewable energy  
8 credits under subsection (a) shall be subject to a civil pen-  
9 alty of not more than the greater of 3 cents or 200 percent  
10 of the average market value of credits for the compliance  
11 period for each renewable energy credit not submitted.

12 “(i) INFORMATION COLLECTION.—The Secretary  
13 may collect the information necessary to verify and  
14 audit—

15 “(1) the annual electric energy generation and  
16 renewable energy generation of any entity applying  
17 for renewable energy credits under this section,

18 “(2) the validity of renewable energy credits  
19 submitted by a retail electric supplier to the Sec-  
20 retary, and

21 “(3) the quantity of electricity sales of all retail  
22 electric suppliers.

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

1       “(k) STATE SAVINGS CLAUSE.—This section does not  
2 preclude a State from requiring additional renewable en-  
3 ergy generation in that State, or from specifying tech-  
4 nology mix.

5       “(l) 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 and fats and oils, except that with respect to mate-  
14 rial removed from National Forest System lands the  
15 term includes only organic material from—

16           “(A) thinnings from trees that are less  
17 than 12 inches in diameter;

18           “(B) slash;

19           “(C) brush; and

20           “(D) mill residues.

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

23           “(A) a facility for the generation of electric  
24 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

3 “(B) a repowering or cofiring increment  
4 that is placed in service on or after the date of  
5 enactment of this section at a facility for the  
6 generation of electric energy from a renewable  
7 energy resource that was placed in service be-  
8 fore that date.

9 “(3) ELIGIBLE RENEWABLE ENERGY RE-  
10 SOURCE.—The term ‘renewable energy resource’  
11 means solar, wind, ocean, or geothermal energy, bio-  
12 mass (excluding solid waste and paper that is com-  
13 monly recycled), landfill gas, a generation offset, or  
14 incremental hydropower.

15 “(4) GENERATION OFFSET.—The term  
16 ‘generation offset’ means reduced electricity usage  
17 metered at a site where a customer consumes energy  
18 from a renewable energy technology.

19 “(5) EXISTING FACILITY OFFSET.—The term  
20 ‘existing facility offset’ means renewable energy gen-  
21 erated from an existing facility, not classified as an  
22 eligible facility, that is owned or under contract to  
23 a retail electric supplier on the date of enactment of  
24 this section.

1           “(6) INCREMENTAL HYDROPOWER.—The term  
2           ‘incremental hydropower’ means additional genera-  
3           tion that is achieved from increased efficiency or ad-  
4           ditions of capacity after the date of enactment of  
5           this section at a hydroelectric dam that was placed  
6           in service before that date.

7           “(7) INDIAN LAND.—The term ‘Indian land’  
8           means—

9                   “(A) any land within the limits of any In-  
10                  dian reservation, pueblo, or rancheria,

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

19                   “(C) any dependent Indian community,  
20                  and

21                   “(D) any land conveyed to any Alaska Na-  
22                  tive corporation under the Alaska Native  
23                  Claims Settlement Act.

24           “(8) INDIAN TRIBE.—The term ‘Indian tribe’  
25           means any Indian tribe, band, nation, or other orga-

1 nized group or community, including any Alaskan  
2 Native village or regional or village corporation as  
3 defined in or established pursuant to the Alaska Na-  
4 tive Claims Settlement Act (43 U.S.C. 1601 et seq.),  
5 which is recognized as eligible for the special pro-  
6 grams and services provided by the United States to  
7 Indians because of their status as Indians.

8 “(9) RENEWABLE ENERGY.—The term  
9 ‘renewable energy’ means electric energy generated  
10 by a renewable energy resource.

11 “(10) RENEWABLE ENERGY RESOURCE.—The  
12 term ‘renewable energy resource’ means solar, wind,  
13 ocean, or geothermal energy, biomass (including mu-  
14 nicipal solid waste), landfill gas, a generation offset,  
15 or incremental hydropower.

16 “(11) REPOWERING OR COFIRING INCRE-  
17 MENT.—The term ‘repowering or cofiring increment’  
18 means the additional generation from a modification  
19 that is placed in service on or after the date of en-  
20 actment of this section to expand electricity produc-  
21 tion at a facility used to generate electric energy  
22 from a renewable energy resource or to cofire bio-  
23 mass that was placed in service before the date of  
24 enactment of this section, or the additional genera-  
25 tion above the average generation in the 3 years pre-

1 ceding the date of enactment of this section, to ex-  
2 pand electricity production at a facility used to gen-  
3 erate electric energy from a renewable energy re-  
4 source or to cofire biomass that was placed in serv-  
5 ice before the date of enactment of this section.

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

16 “(13) RETAIL ELECTRIC SUPPLIER’S BASE  
17 AMOUNT.—The term ‘retail electric supplier’s base  
18 amount’ means the total amount of electric energy  
19 sold by the retail electric supplier to electric cus-  
20 tomers during the most recent calendar year for  
21 which information is available, excluding electric en-  
22 ergy generated by—

23 “(A) an eligible renewable energy resource;

24 “(B) municipal solid waste; or

25 “(C) a hydroelectric facility.

1       “(m) SUNSET.—This section expires December 31,  
2 2030.”.

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