

110TH CONGRESS
1ST SESSION

H. R. 969

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 8, 2007

Mr. UDALL of New Mexico (for himself, Mr. PLATTS, Mr. PALLONE, Mr. UDALL of Colorado, Mr. SHAYS, Ms. DEGETTE, Mr. MCNERNEY, and Mr. DOGGETT) 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. 610. FEDERAL RENEWABLE PORTFOLIO STANDARD.**

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

3 “(1) BIOMASS.—The term ‘biomass’ means—

4 “(A) cellulosic (plant fiber) organic mate-
5 rials from a plant that is planted for the pur-
6 pose of being used to produce energy;

7 “(B) nonhazardous, plant or algal matter
8 waste materials that is segregated from other
9 waste materials and is derived from—

10 “(i) an agricultural crop, crop byprod-
11 uct or residue resource;

12 “(ii) waste such as landscape or right-
13 of-way trimmings, but not including—

14 “(I) municipal solid waste;

15 “(II) recyclable postconsumer
16 waste paper;

17 “(III) painted, treated, or pres-
18 surized wood;

19 “(IV) wood contaminated with
20 plastic or metals; or

21 “(iii) gasified animal waste;

22 “(iv) landfill methane; and

23 “(C) with respect to material removed
24 from National Forest System lands the term in-
25 cludes only organic material from—

26 “(i) precommercial thinnings;

1 “(ii) slash;

2 “(iii) brush; and

3 “(iv) mill residues.

4 “(2) ELIGIBLE FACILITY.—The term ‘eligible
5 facility’ means—

6 “(A) a facility for the generation of electric
7 energy from a renewable energy resource that is
8 placed in service on or after the date of enact-
9 ment of this section or the effective date of the
10 applicable State renewable portfolio standard
11 program; or

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

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

1 “(4) INCREMENTAL HYDROPOWER.—The term
2 ‘incremental hydropower’ means additional genera-
3 tion that is achieved from increased efficiency or ad-
4 ditions of capacity on or after the date of enactment
5 of this section or the effective date of the applicable
6 State renewable portfolio standard program, at a hy-
7 droelectric facility that was placed in service before
8 that date.

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

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

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

21 “(C) any dependent Indian community;
22 and

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

1 “(6) INDIAN TRIBE.—The term ‘Indian tribe’
2 means any Indian tribe, band, nation, or other orga-
3 nized group or community, including any Alaskan
4 Native village or regional or village corporation as
5 defined in or established pursuant to the Alaska Na-
6 tive Claims Settlement Act (43 U.S.C. 1601 et seq.),
7 which is recognized as eligible for the special pro-
8 grams and services provided by the United States to
9 Indians because of their status as Indians.

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

13 “(8) RENEWABLE ENERGY RESOURCE.—The
14 term ‘renewable energy resource’ means solar (in-
15 cluding solar water heating), wind, ocean, tidal, geo-
16 thermal energy, biomass, landfill gas, or incremental
17 hydropower.

18 “(9) REPOWERING OR COFIRING INCREMENT.—
19 The term ‘repowering or cofiring increment’
20 means—

21 “(A) the additional generation from a
22 modification that is placed in service on or after
23 the date of enactment of this section or the ef-
24 fective date of the applicable State renewable
25 portfolio standard program, to expand elec-

1 tricity production at a facility used to generate
2 electric energy from a renewable energy re-
3 source or to cofire biomass that was placed in
4 service before the date of enactment of this sec-
5 tion or the effective date of the applicable State
6 renewable portfolio standard program; or

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

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

1 agency, authority, or instrumentality of any one or
 2 more of the foregoing, or a rural electric cooperative.

3 “(11) RETAIL ELECTRIC SUPPLIER’S BASE
 4 AMOUNT.—The term ‘retail electric supplier’s base
 5 amount’ means the total amount of electric energy
 6 sold by the retail electric supplier, expressed in
 7 terms of kilowatt hours, to electric customers for
 8 purposes other than resale during the most recent
 9 calendar year for which information is available, ex-
 10 cluding electric energy generated by a hydroelectric
 11 facility.

12 “(b) MINIMUM RENEWABLE GENERATION REQUIRE-
 13 MENT.—For each calendar year beginning in calendar
 14 year 2010, each retail electric supplier shall submit to the
 15 Secretary, not later than April 1 of the following calendar
 16 year, renewable energy credits in an amount equal to the
 17 required annual percentage specified in subsection (c).

18 “(c) REQUIRED ANNUAL PERCENTAGE.—For cal-
 19 endar years 2010 through 2039, the required annual per-
 20 centage of the retail electric supplier’s base amount that
 21 shall be generated from renewable energy resources, or
 22 otherwise credited towards such percentage requirement
 23 pursuant to subsection (d), shall be the percentage speci-
 24 fied in the following table:

“Calendar Years	Required annual percentage
2010	1

“Calendar Years	Required annual percentage
2011	2
2012	4
2013	6
2014	8
2015	10
2016	12
2017	14
2018	16
2019	18
2020 and thereafter	20.

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

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

7 “(B) obtained by purchase or exchange under
8 subsection (f) or (h); or

9 “(C) borrowed under subsection (j).

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

12 “(e) 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

1 will be transmitted onto the grid or, in the case of a gen-
2 eration offset, that the electric energy offset would have
3 otherwise been consumed on site. The application shall in-
4 dicate—

5 “(A) the type of renewable energy resource used
6 to produce the electricity;

7 “(B) the location where the electric energy was
8 produced; and

9 “(C) any other information the Secretary deter-
10 mines appropriate.

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

18 “(B) For incremental hydropower the renewable en-
19 ergy credits shall be calculated based on the expected in-
20 crease in average annual generation resulting from the ef-
21 ficiency improvements or capacity additions. The number
22 of credits shall be calculated using the same water flow
23 information used to determine a historic average annual
24 generation baseline for the hydroelectric facility and cer-
25 tified by the Secretary or the Federal Energy Regulatory

1 Commission. The calculation of the renewable energy cred-
2 its for incremental hydropower shall not be based on any
3 operational changes at the hydroelectric facility not di-
4 rectly associated with the efficiency improvements or ca-
5 pacity additions.

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

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

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

21 “(i) requires the generation of electricity from
22 renewable energy; or

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

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

9 “(f) ELIGIBILITY.—To be eligible for a renewable en-
10 ergy credit, the unit of electric energy generated through
11 the use of a renewable energy resource may be sold or
12 may be used by the generator. If both a renewable energy
13 resource and a non-renewable energy resource are used to
14 generate the electric energy, the Secretary shall issue re-
15 newable energy credits based on the proportion of the re-
16 newable energy resources used. The Secretary shall iden-
17 tify renewable energy credits by type and date of genera-
18 tion.

19 “(g) CONTRACTS UNDER SECTION 210.—When a
20 generator sells electric energy generated through the use
21 of a renewable energy resource to a retail electric supplier
22 under a contract subject to section 210 of this Act, the
23 retail electric supplier is treated as the generator of the
24 electric energy for the purposes of this section or the dura-
25 tion of the contract.

1 “(h) EXISTING FACILITY OFFSETS.—The Secretary
2 shall issue renewable energy credits for existing facility
3 offsets to be applied against a retail electric supplier’s re-
4 quired annual percentage. Such credits are not tradeable
5 and may be used only in the calendar year generation ac-
6 tually occurs.

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

16 “(j) RENEWABLE ENERGY CREDIT BORROWING.—At
17 any time before the end of calendar year 2012, a retail
18 electric supplier that has reason to believe it will not have
19 sufficient renewable energy credits to comply with sub-
20 section (b) may—

21 “(1) submit a plan to the Secretary dem-
22 onstrating that the retail electric supplier will earn
23 sufficient credits within the next 3 calendar years
24 which, when taken into account, will enable the re-
25 tail electric supplier to meet the requirements of

1 subsection (b) for calendar year 2012 and the subse-
2 quent calendar years involved; and

3 “(2) upon the approval of the plan by the Sec-
4 retary, apply renewable energy credits that the plan
5 demonstrates will be earned within the next 3 cal-
6 endar years to meet the requirements of subsection
7 (b) for each calendar year involved.

8 The retail electric supplier must repay all of the borrowed
9 renewable energy credits by submitting an equivalent
10 number of renewable energy credits, in addition to those
11 otherwise required under subsection (b), by calendar year
12 2020 or any earlier deadlines specified in the approved
13 plan. Failure to repay the borrowed renewable energy
14 credits shall subject the retail electric supplier to civil pen-
15 alties under subsection (k) for violation of the require-
16 ments of subsection (b) for each calendar year involved.

17 “(k) ENFORCEMENT.—A retail electric supplier that
18 does not submit renewable energy credits as required
19 under subsection (b) shall be liable for the payment of a
20 civil penalty. That penalty shall be calculated on the basis
21 of the number of renewable energy credits not submitted,
22 multiplied by the lesser of 4.5 cents or 300 percent of the
23 average market value of credits for the compliance period.
24 Any such penalty shall be due and payable without de-
25 mand to the Secretary as provided in the regulations

1 issued under subsection (e). On January 1 of each year
2 following calendar year 2006, the Secretary shall adjust
3 for inflation the penalty for such calendar year, based on
4 the Gross Domestic Product Implicit Price Deflator.

5 “(l) CREDIT COST CAP.—The Secretary shall offer
6 renewable energy credits for sale at the lesser of 3 cents
7 per kilowatt-hour or 200 percent of the average market
8 value of renewable credits for the applicable compliance
9 period. On January 1 of each year following calendar year
10 2006, the Secretary shall adjust for inflation the price
11 charged per credit for such calendar year, based on the
12 Gross Domestic Product Implicit Price Deflator.

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

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

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

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

1 “(n) ENVIRONMENTAL SAVINGS CLAUSE.—Incre-
2 mental hydropower shall be subject to all applicable envi-
3 ronmental laws and licensing and regulatory requirements.

4 “(o) EXISTING PROGRAMS.—(1) This section does
5 not preclude a State from imposing additional renewable
6 energy requirements in that State, including specifying eli-
7 gible technologies under such State requirements.

8 “(2) In the rule establishing this program, the Sec-
9 retary shall incorporate common elements of existing re-
10 newable energy programs, including State programs, to
11 ensure administrative ease, market transparency and ef-
12 fective enforcement. The Secretary shall work with the
13 States to minimize administrative burdens and costs and
14 to avoid duplicating compliance charges to retail electric
15 suppliers.

16 “(p) RECOVERY OF COSTS.—An electric utility whose
17 sales of electric energy are subject to rate regulation, in-
18 cluding any utility whose rates are regulated by the Com-
19 mission and any State regulated electric utility, shall not
20 be denied the opportunity to recover the full amount of
21 the prudently incurred incremental cost of renewable en-
22 ergy obtained to comply with the requirements of sub-
23 section (b) for sales to electric customers which are subject
24 to rate regulation, notwithstanding any other law, regula-
25 tion, rule, administrative order or any agreement between

1 the electric utility and either the Commission or a State
2 regulatory authority. For the purpose of this subsection,
3 the term ‘incremental cost of renewable energy’ means—

4 “(1) the additional cost to the electric utility for
5 the purchase or generation of renewable energy to
6 satisfy the minimum renewable generation require-
7 ment of subsection (b), as compared to the cost of
8 the electric energy the electric utility would generate
9 or purchase from another source but for the require-
10 ments of subsection (b); and

11 “(2) the cost to the electric utility for acquiring
12 by purchase or exchange renewable energy credits to
13 satisfy the minimum renewable generation require-
14 ment of subsection (b).

15 For purposes of this subsection, the definitions in section
16 3 of this Act shall apply to the terms ‘electric utility’,
17 ‘State regulated electric utility’, ‘State agency’, ‘Commis-
18 sion’, and ‘State regulatory authority’.

19 “(q) VOLUNTARY PARTICIPATION.—The Secretary
20 shall encourage federally-owned utilities, municipally-
21 owned utilities and rural electric cooperatives that sell
22 electric energy to electric consumers for purposes other
23 than resale to participate in the renewable portfolio stand-
24 ard program. A municipally-owned utility or rural electric
25 cooperative that owns or has under contract a facility for

1 the generation of electric energy from a renewable energy
2 resource may not sell or trade renewable energy credits
3 generated by such resource unless it participates in the
4 renewable portfolio standard program under the same
5 terms and conditions as retail electric suppliers.

6 “(r) PROGRAM REVIEW.—The Secretary shall enter
7 into a contract with the National Academy of Sciences to
8 conduct a comprehensive evaluation of all aspects of the
9 Renewable Portfolio Standard program, within 8 years of
10 enactment of this section. The study shall include an eval-
11 uation of—

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

15 “(2) the opportunities for any additional tech-
16 nologies and sources of renewable energy emerging
17 since enactment of this section;

18 “(3) the impact on the regional diversity and
19 reliability of supply sources, including the power
20 quality benefits of distributed generation;

21 “(4) the regional resource development relative
22 to renewable potential and reasons for any under in-
23 vestment in renewable resources; and

24 “(5) the net cost/benefit of the renewable port-
25 folio standard to the national and State economies,

1 including retail power costs, economic development
2 benefits of investment, avoided costs related to envi-
3 ronmental and congestion mitigation investments
4 that would otherwise have been required, impact on
5 natural gas demand and price, effectiveness of green
6 marketing programs at reducing the cost of renew-
7 able resources.

8 The Secretary shall transmit the results of the evaluation
9 and any recommendations for modifications and improve-
10 ments to the program to Congress not later than January
11 1, 2016.

12 “(s) PROGRAM IMPROVEMENTS.—Using the results
13 of the evaluation under subsection (p), the Secretary shall
14 by rule, within 6 months of the completion of the evalua-
15 tion, make such modifications to the program as may be
16 necessary to improve the efficiency of the program and
17 maximize the use of renewable energy under the program.

18 “(t) STATE RENEWABLE ENERGY ACCOUNT PRO-
19 GRAM.—(1) The Secretary shall establish, not later than
20 December 31, 2009, a State renewable energy account
21 program.

22 “(2) All money collected by the Secretary from the
23 sale of renewable energy credits shall be deposited into the
24 State renewable energy account established pursuant to
25 this subsection. The State renewable energy account shall

1 be held by the Secretary and shall not be transferred to
2 the Secretary of the Treasury.

3 “(3) Proceeds deposited in the State renewable en-
4 ergy account shall be used by the Secretary, subject to
5 annual appropriations, for a program to provide grants to
6 the State agency responsible for developing State energy
7 conservation plans under section 363 of the Energy Policy
8 and Conservation Act (42 U.S.C. 6322) for the purposes
9 of promoting renewable energy production and providing
10 energy assistance and weatherization services to low-in-
11 come consumers.

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

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

“Sec. 610. Federal renewable portfolio standard.”.

4 (c) SUNSET.—Section 610 of such title and the item
5 relating to such section 610 in the table of contents for
6 such title are each repealed as of December 31, 2039.

○