

§123. Clean hydrogen pilot program

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Clean hydrogen" means hydrogen produced through a process that results in a life-cycle greenhouse gas emissions rate of not greater than 0.45 kilograms of carbon dioxide or carbon dioxide equivalents per kilogram of hydrogen generated, as determined by the commission in accordance with the applicable requirements of the federal act and IRS production tax credit regulations. [PL 2023, c. 554, §1 (NEW).]

B. "Federal act" means the Inflation Reduction Act of 2022, Public Law 117-169, 136 Stat. 1818. [PL 2023, c. 554, §1 (NEW).]

C. "IRS production tax credit regulations" means regulations of the federal Internal Revenue Service adopted pursuant to the provisions of the federal act that govern clean hydrogen production tax credits. [PL 2023, c. 554, §1 (NEW).]

D. "Pilot program" or "program" means the clean hydrogen program established pursuant to this section. [PL 2023, c. 554, §1 (NEW).]

E. "Qualifying facility" means a facility that produces clean hydrogen and:

(1) Is located in the State;

(2) Meets applicable requirements for a federal clean hydrogen production tax credit under the federal act and IRS production tax credit regulations; and

(3) Has a peak electricity demand of no more than 20 megawatts. [PL 2023, c. 554, §1 (NEW).]

[PL 2023, c. 554, §1 (NEW).]

2. Pilot program. The commission, in collaboration with the Governor's Energy Office and the Department of Environmental Protection, shall establish a pilot program in accordance with this section. The pilot program must be designed to allow the commission to select a proposal for a qualifying facility that meets the requirements of this section. The commission shall administer the program in accordance with this section and shall ensure that such administration is in the public interest and:

A. Accounts for and is designed to advance the renewable energy and climate policies and goals of the State; [PL 2023, c. 554, §1 (NEW).]

B. Minimizes potential negative environmental and community effects; [PL 2023, c. 554, §1 (NEW).]

C. Maximizes air quality, health and workforce benefits; and [PL 2023, c. 554, §1 (NEW).]

D. Encourages high standards of safety performance. [PL 2023, c. 554, §1 (NEW).]

[PL 2023, c. 554, §1 (NEW).]

3. Program requirements; qualifying facility. By December 31, 2025, the commission shall issue a request for proposals for the development and operation of a qualifying facility. The proposal selected for the program must:

A. Identify, for the clean hydrogen produced by the qualifying facility, an offtake facility that is an end user located in the State that serves the industrial or transportation sector in the State; [PL 2023, c. 554, §1 (NEW).]

B. Demonstrate that the use of the clean hydrogen by the offtake facility pursuant to paragraph A will reduce the offtake facility's greenhouse gas emissions; [PL 2023, c. 554, §1 (NEW).]

- C. Demonstrate that the owner or operator of the qualifying facility:
- (1) Has control over the site where the qualifying facility is to be located; and
 - (2) Has technical and financial capacity to develop, operate and decommission the qualifying facility; [PL 2023, c. 554, §1 (NEW).]
- D. Demonstrate construction and operations safety performance history relating to hydrogen and nonhydrogen aspects of the qualifying facility and identify an individual who will be responsible for the qualifying facility's safety program; [PL 2023, c. 554, §1 (NEW).]
- E. Describe how the qualifying facility will minimize potential negative environmental and community effects of its development and operation; [PL 2023, c. 554, §1 (NEW).]
- F. Describe how the qualifying facility will maximize workforce benefits as well as air quality and health; and [PL 2023, c. 554, §1 (NEW).]
- G. Provide a business development and management plan that describes:
- (1) The scope of the project to develop the qualifying facility, including anticipated hydrogen production volumes;
 - (2) Development timelines for the qualifying facility, including permitting milestones;
 - (3) Feedstocks to be used;
 - (4) End uses for the clean hydrogen produced by the qualifying facility;
 - (5) The impact of a special contract that may be approved in accordance with subsection 5;
 - (6) Anticipated funding from public and private sources; and
 - (7) How the qualifying facility will align with the State's renewable energy and climate policies and goals. [PL 2023, c. 554, §1 (NEW).]
- [PL 2023, c. 554, §1 (NEW).]

4. Proposal selection. If the commission, after consultation with the Governor's Energy Office and the Department of Environmental Protection, finds that a proposal for the development and operation of a qualifying facility meets the requirements of this section, the commission may select that qualifying facility for participation in the program.

If more than one proposal for the development and operation of a qualifying facility meets the requirements of this section, the commission shall give preference to the proposal that provides the greatest benefit to ratepayers and is likely to result in the greatest reduction in greenhouse gas emissions.

The commission shall, to the extent practicable, make a determination of whether to select a proposal under this subsection and provide notice of its decision to all facilities that submitted proposals to participate in the program within 120 days of the closing of the request for proposal process.

The commission may not select more than one proposal for participation in the pilot program. [PL 2023, c. 554, §1 (NEW).]

5. Special contract selection. After selecting a qualifying facility for participation in the program under subsection 4, the commission shall direct the transmission and distribution utility in whose territory the qualifying facility is located to negotiate with that qualifying facility for a special contract that the commission may approve in accordance with section 703, subsection 3-A and as provided in this subsection. The commission may approve a special contract between the selected qualifying facility and the transmission and distribution utility in whose territory the proposed facility is located if the commission determines that the contract for service is necessary to make the development of the qualifying facility viable and cost-effective. The commission may approve a special contract for no more than 20 megawatts of electricity pursuant to this subsection. [PL 2023, c. 554, §1 (NEW).]

6. Wage requirements. The owner or operator of a qualifying facility selected for the program pursuant to subsection 4 shall ensure that all persons engaged in the construction, alteration or repair of the qualifying facility, including all employees, contractors and subcontractors, are paid wages that are not less than the prevailing hourly wage for work of a similar character in the locality in which the qualifying facility is located as most recently determined by the Department of Labor, Bureau of Labor Standards in accordance with Title 26, section 1308 and in compliance with applicable requirements of the federal act and IRS production tax credit regulations.

[PL 2023, c. 554, §1 (NEW).]

7. Production requirements; special contract termination. If the commission determines that the qualifying facility selected for the program pursuant to subsection 4 is not meeting the anticipated clean hydrogen production volumes provided in its business development and management plan under subsection 3, paragraph G, the commission may order the transmission and distribution utility to terminate the special contract approved pursuant to subsection 5.

[PL 2023, c. 554, §1 (NEW).]

8. Rules. The commission may adopt rules to implement this section. Rules adopted under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2023, c. 554, §1 (NEW).]

SECTION HISTORY

PL 2023, c. 554, §1 (NEW).

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