

COMMITTEE ON ENERGY AND
ENVIRONMENTAL PROTECTION

04/16/2014- AMENDED AND REPORTED OUT TO THE FLOOR

04/04/14-AMENDED AND REPORTED OUT TO THE COMMITTEE ON RULES AND JUDICIARY

09/13/13-NO ACTION TAKEN

BILL NO. 30-0004

Thirtieth Legislature of the Virgin Islands

March 6, 2013

An Act amending title 12 Virgin Islands Code, chapter 23, adding Subchapter VII, establishing the “Feed-In Tariff Act” and for other purposes

PROPOSED BY: Senator Craig W Barshinger

Be it enacted by the Legislature of the Virgin Islands:

SECTION 1. Findings. The Legislature finds and declares that:

(1) At present, the Virgin Islands has a total dependence on fuel oil for electrical power generation.

(2) The cost of oil has increased drastically worldwide since July 2008, increased costs of oil result in increased costs for electrical power for the Territory’s residents and businesses.

(3) In accordance with title 12 VIC section 1152(a) the Territory must generate at least 20% of its electrical power through renewable energy technologies by January 1, 2015; 25% by January 1, 2020 and 30% by January 1, 2025, and the percentage thereafter must increase until a majority of the generating capacity of the Virgin Islands Water and Power Authority is derived from renewable or alternative energy technologies. This will require an investment in a diversified portfolio of renewable energy including but not limited to solar, wind, biomass, landfill gas,

1 hydroelectric, geothermal, or ocean, including wave, current and Ocean Thermal Energy
2 Conversion.

3 (4) The independent production of renewable energy by a qualified owner through a
4 Feed-in Tariff (“FIT”) program will allow renewable energy qualified owners to sell power directly
5 to the Utility at a rate to be approved by the Public Services Commission. The sale shall be
6 conducted through a power purchase agreement between the qualified owner and the Utility.

7 (5) A FIT program that allows renewable energy technology differentiation can promote
8 supply diversity and higher levels of renewable energy penetration into the grid.

9 (6) FIT promotes job creation and improves air quality.

10 (7) The ability of Virgin Islanders to participate in innovative energy production and
11 transmission programs depends upon accessible financing tools.

12 (8) Increases in renewable energy for electricity generation will reduce the Territory’s
13 dependence on fossil fuel; aid the Territory in reaching its diversified renewable energy goal of
14 20% by Year 2015; and protect the Territory’s environment.

15 **SECTION 2.** Title 12 Virgin Islands Code, chapter 23 is amended by adding Subchapter
16 VII to read as follow:

17 ***“SUBCHAPTER VII: FEED-IN TARIFF”***

18 **§1161.** This subchapter may be cited as “The Feed-in Tariff Act”.

19 **§1162.** The purpose of the Tariff established in section 1164 is to:

20 (1) Allow all Virgin Islanders the opportunity to participate in renewable energy
21 generation by requiring that the Utility purchase such energy at a fair and reasonable price;

22 (2) Authorize the Commission to determine and set the rates at which energy shall be
23 purchased from qualified owners under the power purchase agreements;

24 (3) Protect against rising fuel costs;

25 (4) Reduce residential and business consumers’ costs for electricity in the Territory;

26 (5) Stabilize the Territory’s marketplace for renewable energy;

1 (6) Assist the Territory in achieving its goal of 20% renewable energy portfolio by Year
2 2015 and increasing the percentage thereafter until a majority of the Utility’s generating capacity is
3 derived from renewable or alternative energy technologies, thereby reducing dependency on fossil
4 fuel;

5 (7) Positively impact job creation and economic development in the Territory by
6 allowing FIT participation from all renewable energy technologies;

7 (8) Protect the Territory’s environment and natural resources by reducing greenhouse
8 gas emissions and providing clean air benefits; and

9 (9) Place the Territory in a cadre of advanced renewable energy innovators.

10 **§1163. Definitions.**

11 As used in this subchapter:

12 (a) “Adequate renewable energy development” means a rate of development necessary
13 to accomplish the renewable energy objectives and standards in title 12 V.I.C., chapter 23.

14 (b) “Avoided costs” means the incremental costs to an electric utility of electric energy
15 which, but for the purchase from the qualified owner or qualified owners, such utility would
16 generate itself or purchase from another source.

17 (c) “Capacity” means the alternating current nameplate capacity of a renewable
18 electricity generator.

19 (d) “Commission” means the Public Services Commission, as established by title 3
20 V.I.C. section 273.

21 (e) “Feed-in Tariff Program” or “FIT Program” means an energy supply policy
22 established under section 1164 of this subchapter which offers a long-term guarantee of payment by
23 the Utility to a qualified owner for the actual amount of electricity produced and fed into the grid.

1 (f) “Qualified Owner” means the individual or entity that owns or leases the renewable
2 electricity generator located or to be located on real property within the Territory which may be
3 owned, leased or licensed by the Qualified Owner.

4 (g) “Renewable energy” has the same meaning as established in section 1101(i) of this
5 title.

6 (h) “Renewable electricity generator” means a single generator that uses only one type
7 of renewable energy.

8 (i) “Solar photovoltaic system” has the same meaning as established in section 1101(n)
9 of this title.

10 (j) “Utility” means the Virgin Islands Water and Power Authority or other regulated
11 public utility that sells electrical power to the public in the Virgin Islands.

12 (k) “Utility compliance costs” means all costs and expenses incurred or to be incurred
13 by the Utility to interconnect the renewable electricity generator to the Utility’s Grid, including but
14 not limited to system upgrades; interconnection studies; design, engineering , construction costs;
15 and the Commission’s costs for investigations pursuant to 30 V.I.C. § 25.

16 **§1164. Tariff established.**

17 A tariff is established when a qualified owner enters into a power purchase agreement with
18 the utility for renewable energy generation projects through grid interconnection. The utility
19 purchases actual electrical energy generated by qualified owners’ projects at a percentage discount
20 to the avoided cost of the Utility as set by the Commission.

21 **§1165 Tariff, Commission Action.**

22 (a) **Authority to offer tariff.** No later than sixty days after the effective date of this
23 subchapter, the Utility shall file for Commission approval a tariff and a proposed Power Purchase
24 Agreement consistent with this section. The Commission within sixty days after receipt, shall
25 initiate a review of the tariff consistent with its investigative powers established in 30 V.I.C. § 20.

1 **(b) Tariff terms.**

2 (1) The Utility shall enter into a power purchase agreement with the qualified
3 owner of a renewable electricity generator, existing or to be created, which is proposed by
4 the qualified owner to be interconnected to the grid. The agreement obligates the utility to
5 purchase an agreed upon amount of the electricity produced by the renewable electricity
6 generator.

7 (2) There may be only one qualified owner per facility.

8 (3) The term of the power purchase agreement may not be shorter than 10 years
9 and not longer than 30 years.

10 (4) The Commission shall establish the rates to be set forth in and paid under the
11 power purchase agreement in accordance with subsections (c) and (d).

12 (5) The utility shall file a copy of each power purchase agreement with the
13 Commission within thirty days of execution.

14 **(c) Tariff rates.** The tariff described in subsection (a) must have a rate schedule
15 determined as follows:

16 (1) The Commission shall set the FIT Program tariff rate for electricity generated
17 by diversified renewable energy technologies must be set by the Commission under the
18 purview of its ratemaking authority.

19 (2) The Commission shall establish procedures for tariff rates depending on the
20 renewable energy technology type; project size and the location of the project.

21 (3) An appropriate tariff structure must establish rates at percentage discount to
22 the avoided cost of the Utility in the given year that the power purchase agreement is
23 executed. If the avoided cost rates change, the amount to be paid under any existing power
24 purchase agreement may be adjusted.

25 (4) The Commission shall review periodically and publish the avoided cost rate.

1 **(d) Tariff review and adjustment.**

2 (1) Effective sixty days from the date from the effective date of this subchapter
3 and at a minimum of every five years, the Commission shall, if it determines it to be
4 necessary, and after proper review and analysis of the reports submitted, hold public
5 hearings. The Commissioner shall also review such other publicly available information as
6 it may consider appropriate, adjust tariff rates for new renewable energy systems to be
7 developed, pursuant to this section, in order to promote meaningful amounts of renewable
8 energy development projects in the Territory in order to minimize costs to ratepayers and
9 achieve compliance with the renewable energy standards set forth in section 1152 of this
10 title. Rates paid under then-existing power purchase agreements must be adjusted by the
11 new tariffs.

12 (2) The Commission may increase one or more of the tariffs established pursuant
13 to this section in accordance with paragraph (1), after notice and hearing and upon finding
14 that the objectives of achieving adequate renewable energy development as set forth in
15 section 1152 et seq. are not likely to be met without increasing the tariff for renewable
16 energy projects connected to the electrical distribution system. Similarly, if the Commission
17 finds that the renewable energy objectives have been over-achieved, then the Commission
18 may reduce one or more of the tariffs established pursuant to this section. An increase in the
19 tariff made pursuant to this section may not exceed the Utility's avoided cost.

20 (3) If after a certain period of time, little or no power purchase agreements are
21 executed, presumably due to insufficient pricing, the Commission shall act in accordance
22 with paragraph (1) of this section to adjust the pricing. An increase in the tariff made
23 pursuant to this section may not exceed the Utility's avoided cost.

24 **(e) Tariff payments tax exemption.** All payments of tariffs to customer-generators are
25 exempt from inclusion in gross receipts for purposes of gross receipts tax and the application of
26 Title 33 of the Virgin Islands Code.

1 **(f) Interconnection.**

2 (1) It is the policy of this subchapter to promote open access transmission by
3 renewable energy generators to transmission cables of the utility.

4 (2) The qualified owner shall bear all costs associated with the interconnection
5 of renewable electricity generators, including direct interconnection costs and utility
6 compliance costs, unless an alternate agreement is negotiated.

7 (3) The Commission shall enforce the interconnection contract and standard
8 interconnection schedules adopted by the utility except:

9 (A) No Commission approval or acceptance is required;

10 (B) The qualified owner shall bear all design, engineering, construction
11 and procurement costs of the interconnection.

12 **(g) Standard Power Purchase Agreement.** No later than 90 days after the effective
13 date of this subchapter, the Commission shall approve a standard contract to be used by the utility
14 as the sole form of power purchase agreement under the feed-in tariff established pursuant to this
15 section which is in effect on the date of the execution of the power purchase agreement. The form
16 of standard contract may be altered from time to time to address developing circumstances.

17 (1) The agreement must include the price paid for each kilowatt hour generated
18 and must set forth an annual adjustment, effective on January 1 of each year or part year ,to
19 be prorated on the first January 1 of the agreement's term, at a rate set by the Commission
20 and the duration of the agreement.

21 (2) The agreement must require that the utility must pay the qualified owner the
22 tariff rate, as may be adjusted pursuant to subsection (f)(1) on a monthly basis; estimated
23 payments may be made with adjustments based upon actual readings quarterly.

24 (3) The qualified owner may not assign the agreement without the express
25 written consent of the utility. The utility may not be unreasonably withhold its consent.

1 (4) An originally-executed form of the power of attorney must be submitted to
2 the Utility with the executed power purchase agreement.

3 **§1166. Limitations on Aggregate Renewable Energy**

4 (a) A utility shall enter into power purchase agreements pursuant to this subchapter with
5 owners of renewable electricity generators until such time as the aggregate amount of renewable
6 electricity generated or to be generated in that district by renewable electricity generators pursuant
7 to this subchapter, and net metering systems, pursuant to subchapter IV, total:

8 (1) On the Islands of St. Thomas, St. John and Water Island and other territorial
9 offshore keys and islands, an aggregate capacity of 10 MWs;

10 (2) On the Island of St. Croix an aggregate capacity of 5 MWs.

11 (b) A Feed-in Tariff system operating pursuant to this subchapter must be greater than
12 10kw and smaller than 500kw of installed capacity, to allow as many entities as practicable to
13 receive the benefits afforded by the FIT Program.

14 (c) Power purchase agreements must be offered on a first-come, first-served basis until
15 owner customer generators within each island have reached the aggregate capacity for that island.

16 **§1167. Meter Installation and Cost recovery**

17 (a) **Meter installation.** The utility shall supply, at no cost to the qualified owner, a
18 meter or such other properly calibrated and tested device, as is needed to monitor and record the
19 amount of power, in kilowatt hours, generated by the renewable electricity generator and delivered
20 to the utility's distribution system or grid. The utility shall remain liable for payments due to the
21 qualified owner for periods during which any meter that is supplied by the utility is not functioning
22 properly. Any discrepancy on the reading of the utility's meter must be resolved by the
23 Commission, if the discrepancy is not resolved by the utility and the qualified owner within 30 days
24 after notice of the discrepancy by the qualified owner to the utility.

1 **(b) Cost Recovery.** The Commission shall require the utility to file rate schedules
 2 containing provisions for the automatic adjustment of charges for utility service in direct relation to
 3 the cost of electricity purchased from renewable electricity generators pursuant to the tariff
 4 established less than 30 V.I.C., sections 1- through 44 and all other costs required to comply with
 5 this subchapter.

6 **§1168. Alternative Energy Systems as Chattel or Real Property.**

7 (a) Except as provided in subsection (b), no renewable electricity system, whether
 8 affixed to structures or improvements on real property or otherwise, may be deemed to be real
 9 property or a fixture of real property, and therefore may be conveyed or encumbered only as are
 10 other items of chattel.

11 (b) For purposes of hazard, windstorm, flood, liability and other insurance purposes,
 12 solar energy and other renewable energy equipment must be considered, absent express exclusions,
 13 fixtures included in any policy of insurance which provides insurance coverage for the real property
 14 or improvements to which they are affixed. All insurers that expressly exclude solar energy and
 15 other renewable energy equipment shall offer a rider to other policies of insurance offered, for
 16 coverage of solar energy equipment at reasonable rates.

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BILL SUMMARY

19 Section 1 of this amendment in the nature of a substitute amends title 12 Virgin Islands
 20 Code, chapter 23 by adding subchapter VII, known as “The Feed-In-Tariff Act”. The proposed bill
 21 would establish the Feed-in Tariff. Under the Feed-in Tariff Act and through an executed power
 22 purchase agreement pursuant to the Act, a person or entity may produce electricity from diversified
 23 energy sources which are considered renewable and sell the electricity to the Virgin Islands Water
 24 and Power Authority (Utility). Legislative findings, specifically the need to end the Territory’s
 25 total dependence on fossil fuel and the ever-increasing costs to consumers for that dependency,
 26 provide a basis for the Feed-in Tariff Act. A definition section within the Act helps with the
 27 interpretation of certain terms so as to give clarity of the intent of the Act. Where other laws in the
 28 Virgin Islands Code may have a different meaning, the meaning in the Act is controlling.

29 A tariff is established when a qualified owner enters into a power purchase agreement with
 30 the Utility for the utility to purchase electricity generated by the qualified owner at a rate set by the
 31 Public Services Commission.

1 Section 2 amends title 12 Virgin Islands Code, chapter 23, section 1144 pertaining to net
2 metering by the Utility. Once the capacity of 10 mega watts is reached on the island of St. Thomas
3 and 5 mega watts on the island of St. Croix, the Utility need not purchase excess electricity. The
4 purchase will be on a first-come, first-purchase basis.
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