

PROJECT NO. 28407

**RULEMAKING PROCEEDING TO § PUBLIC UTILITY COMMISSION
AMEND §25.173, GOAL FOR §
RENEWABLE ENERGY § OF TEXAS**

**PROPOSAL FOR PUBLICATION OF AMENDMENT TO §25.173,
GOAL FOR RENEWABLE ENERGY, AS APPROVED AT THE
SEPTEMBER 18, 2003 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes an amendment to §25.173, relating to Goal for Renewable Energy. The proposed amendment will change the formula for calculating final renewable energy credit (REC) purchase requirements, add a mechanism to account for corrections to retail sales data, and permit the program administrator to petition for deadline changes under certain circumstances. Project Number 28407 is assigned to this proceeding.

Rosa L. Rohr, Staff Attorney, Legal and Enforcement Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Rohr has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing this section will be to mitigate inaccuracies and compliance difficulties caused by corrections to retail sales data made after the program administrator has determined final REC requirements for individual competitive retailers. Another change will result in more equitable distribution of the compliance burden resulting from the use of REC offsets. There will be no adverse economic effect on small businesses or

micro-businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Ms. Rohr has also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

Comments on the proposed amendment (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Reply comments may be submitted within 45 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 28407.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Tuesday, November 18, 2003 at 10:00 a.m. The request for a public hearing must be received within 30 days after publication.

When commenting on specific subsections of the proposed rule, parties are encouraged to describe "best practice" examples of regulatory policies, and their rationale, that have been proposed or implemented successfully in other states already undergoing electric industry restructuring, if the parties believe that Texas would benefit from application of the same policies. The commission is only interested in receiving "leading edge" examples which are specifically related and directly applicable to the Texas statute, rather than broad citations to other state restructuring efforts.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2003) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction and specifically, PURA §39.904 which directs the commission to establish a renewable energy credits trading program and adopt rules necessary to administer and enforce the program outlined in this section.

Cross Reference to Statutes: Public Utility Regulatory Act §§11.002(a), 14.001, 14.002, 39.101(b)(3), and 39.904.

§25.173. Goal for Renewable Energy.

(a) - (g) (No change.)

(h) **Allocation of REC purchase requirement to competitive retailers.** The program administrator shall allocate REC requirements among competitive retailers. Any renewable capacity that is retired before January 1, 2009 or any capacity shortfalls that arise due to purchases of RECs from out-of-state facilities shall be replaced and incorporated into the allocation methodology set forth in this subsection. Any changes to the allocation methodology to reflect replacement capacity shall occur two compliance periods after which the facility was retired or capacity shortfall occurred. The program administrator shall use the following methodology to determine the total annual REC requirement for a given year and the final REC requirement for individual competitive retailers:

(1) The total statewide REC requirement for each compliance period shall be calculated in terms of MWh and shall be equal to the renewable capacity target multiplied by 8,760 hours per year, multiplied by the appropriate capacity conversion factor set forth in subsection (j) of this section. The renewable energy capacity targets for the compliance period beginning January 1, of the year indicated shall be:

- (A) 400 MW of new resources in 2002;
- (B) 400 MW of new resources in 2003;

- (C) 850 MW of new resources in 2004;
 - (D) 850 MW of new resources 2005;
 - (E) 1,400 MW of new resources in 2006;
 - (F) 1,400 MW of new resources in 2007;
 - (G) 2,000 MW of new resources in 2008; and
 - (H) 2,000 MW of new resources in 2009 through 2019.
- (2) The final REC requirement for an individual competitive retailer for a compliance period shall be calculated as follows:
- (A) Each competitive retailer's preliminary REC requirement is determined by dividing its total retail energy sales in Texas by the total retail sales in Texas of all competitive retailers, and multiplying that percentage by the total statewide REC requirement for that compliance period.
 - (B) The adjusted REC requirement for each competitive retailer that is entitled to an offset is determined by reducing its preliminary REC requirement by the offsets to which it qualifies, as determined under subsection (i) of this section, with the maximum reduction equal to the competitive retailer's preliminary REC requirement. The total reductions for all competitive retailers is equal to the total usable offsets for that compliance period.
 - (C) Each competitive retailer's final REC requirement for a compliance period shall be increased to recapture the total usable offsets calculated under subparagraph (B) of this paragraph. The additional REC requirement shall be calculated by dividing the competitive retailer's ~~preliminary~~adjusted

REC requirement by the total REC ~~preliminary~~^{adjusted} requirement of all competitive retailers. This fraction shall be multiplied by the total usable offsets for that compliance period and this amount shall be added to the competitive retailer's adjusted REC requirement to produce the competitive retailer's final REC requirement for the compliance period.

(3) Concurrent with determining competitive retailers' final REC requirements for the current compliance period in accordance with this subsection, the Program Administrator shall recalculate the final REC requirements for the previous compliance periods, taking into account corrections to retail sales resulting from resettlements. The difference between a competitive retailer's corrected final REC requirement and its original final REC requirement for the previous compliance periods shall be added to or subtracted from the retailer's final REC requirement for the current compliance period.

(i) - (k) (No change.)

(l) **Settlement process.** Beginning in January 2003, the first quarter following the compliance period shall be the settlement period during which the following actions shall occur:

(1) By January 31, the program administrator will notify each competitive retailer of its total REC requirement for the previous compliance period as determined pursuant to subsection (h) of this section.

(2) By March 31, each competitive retailer must submit credits to the program administrator from its account equivalent to its REC requirement for the previous compliance period. If the competitive retailer has insufficient credits in its account to satisfy its obligation, and this shortfall exceeds the applicable deficit allowance as set forth in subsection (m)(2) of this section, the competitive retailer is subject to the penalty provisions in subsection (o) of this section.

(3) The program administrator may request the commission to adjust the deadlines set forth in this section if changes to the ERCOT settlement calendar or other factors affect the availability of reliable retail sales data.~~For the 2002 compliance period, the deadlines set forth in this subsection and all related deadlines in this section shall be extended by three months.~~

(m) - (q) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 19th DAY OF SEPTEMBER 2003 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
RHONDA G. DEMPSEY**