

PROJECT NO. 33492

RULEMAKING RELATING TO THE	§	PUBLIC UTILITY COMMISSION
TARGET FOR RENEWABLE ENERGY	§	
RESOURCES OTHER THAN WIND	§	OF TEXAS
POWER	§	

**PROPOSAL FOR PUBLICATION OF AMENDMENT TO §25.173
AS APPROVED AT THE JANUARY 25, 2007 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes an amendment to §25.173, relating to the Goal for Renewable Energy. The proposed amendment will increase the state's renewable portfolio standard (RPS) and will establish a target of having at least 500 megawatts (MW) of capacity from a renewable energy technology other than a source using wind energy. Both changes are required by Senate Bill 20, 79th Legislature, 1st Called Session (2005), which amended Public Utility Regulatory Act (PURA) §39.904, relating to the Goal for Renewable Energy. This amendment is a competition rule subject to judicial review as specified in PURA §39.001(e). Project Number 33492 is assigned to this proceeding.

In addition to the aforementioned changes required by SB 20, the amendment includes a number of other modifications of, and clarifications to the existing rule. The threshold for "small generators" would increase from 2 MW to 10 MW; small fossil-fueled generators in existence before 1999 could earn renewable energy credits (RECs) if repowered to use renewable fuel; and a REC offset would cease to be effective if the power purchase agreement on which it was based is no longer in effect.

Ms. Lauren Damen, Senior Retail Market Analyst, Electric Industry Oversight, has determined that for each year of the first five-year period the amendment is in effect there will be no fiscal

implications for state or local government as a result of enforcing or administering the amendment.

Ms. Damen has determined that for each year of the first five years the proposed amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be to increase the amount of electricity delivered to customers using renewable generation resources in Texas, consistent with the goals established in state law. The expected benefits also include increasing the state's use of renewable-energy sources, reducing the use of generation technologies that result in air emissions, and diversifying the state's electric generating resource portfolio. For the longer term, the amendment is expected to foster further reductions in the cost of renewable energy technologies.

There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this amendment. There may be economic costs to retail electric providers and other persons who are required to comply with the amendment, specifically with regard to the extended RPS. However, these costs are necessary to implement PURA § 39.904 as amended by SB 20. Ms. Damen has also determined that for each year of the first five years the amendment is in effect, local economies where renewable resources are developed may experience employment growth.

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, March 27, 2007, at 9:00 a.m. in the Commissioner's Hearing Room. The request for a public hearing must be received by Monday, March 12, 2007.

Comments on the amendment may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, by Monday, March 12, 2007. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted by Monday, March 26, 2007. Comments should be organized in a manner consistent with the organization of the rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the amendment. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 33492. In addition to the proposed language, the commission requests that parties submit comments on the following questions:

- 1) *Subsection (e)(2) provides that in order for a facility that requires fossil fuel to be eligible to produce RECs, the facility's use of fossil fuel must not exceed 2.0% of the total annual fuel input on a British thermal unit (BTU) or equivalent basis. Would it be appropriate to raise the percentage as high as 25%? What technologies should be able to take advantage of such an increased allowance in the use of fossil fuel? Are there negative consequences that would result from such an increase?*
- 2) *This proposal contemplates that RECs and compliance premiums will have the same life span of three years. Would the value of the compliance premiums be increased or*

decreased if the rule established a longer life-span for compliance premiums? Would a different life-span for compliance premiums be appropriate?

- 3) *Proposed subsection (l)(1) provides that eligible non-wind renewable technologies that have no air emissions will be awarded two compliance premiums rather than the one compliance premium awarded to other technologies. Is it appropriate for this rule to make this distinction among renewable technologies?*

When commenting on specific subsections of the proposed amendment, 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 implementing renewable energy programs, if the parties believe that Texas would benefit from application of the same policies. The commission is interested in receiving only "leading edge" examples which are specifically related and directly applicable to the Texas statute, rather than broad citations to other state efforts.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §§14.001, 14.002, 15.023, 39.101(b)(3) and 39.904 (Vernon 1998 & Supplement 2006). Section 14.001 provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; Section 14.002 provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; Section 15.023 provides the commission the power to impose administrative penalties against a person regulated under

PURA who violates PURA or an order adopted under PURA; Section 39.101(b)(3) provides that a customer is entitled to have access to providers of energy generated by renewable energy resources; and Section 39.904, provides the commission the power to adopt rules necessary to administer and enforce the programs to promote the development of renewable energy technologies.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 15.023, 36.204, 39.101, and 39.904.

§25.173. Goal for Renewable Energy.

- (a) **Purpose.** The ~~purposes~~purpose of this section ~~are~~is
- (1) to ensure that ~~the cumulative installed generating capacity from renewable energy technologies in this state totals 2,280 megawatts (MW) by January 1, 2007, 3,272 MW by January 1, 2009, 4,264 MW by January 1, 2011, 5,256 MW by January 1, 2013, and 5,880 MW by January 1, 2015, with at least 500 MW of the total installed renewable capacity after September 1, 2005, coming from a renewable energy technology other than a source using wind energy, and that the means exist for the state to achieve a target of 10,000 MW of installed renewable capacity by January 1, 2025;~~an additional 2,000 megawatts (MW) of generating capacity from renewable energy technologies is installed in Texas by 2009 pursuant to the Public Utility Regulatory Act (PURA) §39.904;
 - (2) to ~~provide for~~establish a renewable energy credits trading program ~~by which the renewable energy requirements established by the Public Utility Regulatory Act (PURA) § 39.904(a) may be achieved~~that would ensure that the new renewable energy capacity is built in the most efficient and economical manner;
 - (3) to encourage the development, construction, and operation of new renewable energy resources at those sites in this state that have the greatest economic potential for capture and development of this state's environmentally beneficial resources;
 - (4) to protect and enhance the quality of the environment in Texas through increased use of renewable resources; ~~and~~;
 - (5) to ~~ensure~~respond to customers' expressed preferences for renewable resources by ~~ensuring~~ that all customers have access to providers of energy generated by renewable energy resources pursuant to PURA §39.101(b)(3), ~~and to ensure that the cumulative installed renewable capacity in Texas will be at least 2,880 MW by January 1, 2009.~~
- (b) **Application.** This section applies to power generation companies as defined in §25.5 of this title (relating to definitions), and ~~retail entities~~competitive retailers as defined in

subsection (c) of this section. ~~This section shall not apply to an electric utility subject to PURA §39.102(c) until the expiration of the utility's rate freeze period.~~

(c) **Definitions.**

~~(1) **Competitive retailer** — A municipally owned utility, generation and transmission cooperative (G&T), or distribution cooperative that offers customer choice in the restructured competitive electric power market in Texas or a retail electric provider (REP) as defined in §25.5 of this title.~~

~~(1)(2) **Compliance period** — A calendar year beginning January 1 and ending December 31 of each year in which renewable energy credits are required of a retail entity~~**competitive retailer.**

~~(2) **Compliance premium** — A premium awarded by the program administrator in conjunction with a renewable energy credit that is generated by a renewable energy source that is not powered by wind and meets the criteria of subsection (1) of this section. For the purpose of the renewable energy portfolio standard requirements, one compliance premium is equal to one renewable energy credit.~~

(3) **Designated representative** — A responsible natural person authorized by the owners or operators of a renewable resource to register that resource with the program administrator. The designated representative must have the authority to represent and legally bind the owners and operators of the renewable resource in all matters pertaining to the renewable energy credits trading program.

~~(4) **Early banking** — Awarding renewable energy credits (RECs) to generators for sale in the trading program prior to the program's first compliance period.~~

~~(4)(5) **Existing facilities** — Renewable energy generators placed in service before September 1, 1999.~~

~~(5)(6) **Generation offset technology** — Any renewable technology that reduces the demand for electricity at a site where a customer consumes electricity. An example of this technology is solar water heating.~~

- (6) **Microgenerator** – A customer who owns one or more eligible renewable energy generating units with a rated capacity of 10 kW or less operating on the customer’s side of the utility meter.
- (7) **New facilities** — Renewable energy generators placed in service on or after September 1, 1999. A new facility includes the incremental capacity and associated energy from an existing renewable facility achieved through repowering activities undertaken on or after September 1, 1999.
- (8) **Off-grid generation** — The generation of renewable energy in an application that is not interconnected to a utility transmission or distribution system.
- (9) **Program administrator** — The entity approved by the commission that is responsible for carrying out the administrative responsibilities related to the renewable energy credits trading program as set forth in subsection (g) of this section.
- (10) **REC aggregator** – An entity managing the participation of two or more microgenerators in the REC trading program.
- (11)(40) **REC offset (offset)** — An REC offset represents one megawatt-hour (MWh) of renewable energy from an existing facility that is not eligible to earn renewable energy credits or compliance premiums ~~may be used in place of an REC to meet a renewable energy requirement imposed under this section.~~ ~~REC offsets may not be traded, shall be calculated as set forth in subsection (i) of this section, and shall be applied as set forth in subsection (h) of this section.~~
- (12)(41) **Renewable energy credit (REC or credit)** — ~~A~~An REC represents one MWh~~megawatt hour (MWh)~~ of renewable energy that is physically metered and verified in Texas and meets the requirements set forth in subsection (e) of this section.
- (13)(42) **Renewable energy credit account (REC account)** — An account maintained by the renewable energy credits trading program administrator for the purpose of tracking the production, sale, transfer, purchase, and retirement of RECs or compliance premiums by a program participant.

- ~~(14)~~~~(13)~~ **Renewable energy credits trading program (trading program)** —The process of awarding, trading, tracking, and submitting RECs or compliance premiums as a means of meeting the renewable energy requirements set out in subsection (d) of this section.
- ~~(15)~~~~(14)~~ **Renewable energy resource (renewable resource)** — A resource that produces energy derived from renewable energy technologies.
- ~~(16)~~~~(15)~~ **Renewable energy technology** — Any technology that exclusively relies on an energy source that is naturally regenerated over a short time and derived directly from the sun, indirectly from the sun, or from moving water or other natural movements and mechanisms of the environment. Renewable energy technologies include those that rely on energy derived directly from the sun, on wind, geothermal, hydroelectric, wave, or tidal energy, or on biomass or biomass-based waste products, including landfill gas. A renewable energy technology does not rely on energy resources derived from fossil fuels, waste products from fossil fuels, or waste products from inorganic sources.
- ~~(17)~~ **Renewable Portfolio Standard (RPS)** – The amount of capacity required to meet the requirements of PURA §39.904 pursuant to subsection (h) of this section.
- ~~(18)~~~~(16)~~ **Repowering** — Modernizing or upgrading an existing facility in order to increase its capacity or efficiency.
- ~~(19)~~ **Retail entity** – Municipally-owned utilities, generation and transmission cooperatives or distribution cooperatives that offer customer choice, retail electric providers (REPs), and investor-owned utilities that have not unbundled pursuant to PURA Chapter 39.
- ~~(20)~~~~(17)~~ **Settlement period** — The first calendar quarter following a compliance period in which the settlement process for that compliance year takes place.
- ~~(21)~~~~(18)~~ **Small producer** — A renewable resource that is less than ~~ten~~two megawatts (MW) in size.

- (d) **Renewable energy credits trading program (trading program).** Renewable energy credits may be generated, transferred, and retired by renewable energy power generators certified pursuant to subsection (n) of this section, retail entities, competitive retailers, and other market participants as set forth in this section.
- (1) The program administrator shall apportion an RPS~~a renewable resource~~ requirement among all retail entities~~competitive retailers~~ as a percentage of the retail sales of each retail entity~~competitive retailer~~ as set forth in subsection (h) of this section. Each retail entity~~competitive retailer~~ shall be responsible for retiring sufficient RECs as set forth in subsections (h) and (k) of this section to comply with this section. The requirement to retire RECs to comply with~~purchase RECs pursuant to~~ this section becomes effective on the date a retail entity~~each competitive retailer~~ begins serving retail electric customers in Texas or, for an electric utility, as specified by law.
 - (2) A power generating company may participate in the program and may generate RECs and buy or sell RECs as set forth in subsection (j) of this section.
 - (3) RECs shall be credited on an energy basis as set forth in subsection (j) of this section.
 - (4) Municipally-owned utilities and distribution cooperatives that do not offer customer choice have no RPS requirement~~are not obligated to purchase RECs.~~ However, regardless of whether the municipally-owned utility or distribution cooperative offers customer choice, a municipally-owned utility or distribution cooperative possessing renewable resources that meet the requirements of subsection (e) of this section may sell RECs generated by such a resource to retail entities~~competitive retailers~~ as set forth in subsection (j) of this section.
 - (5) Except where specifically stated, the provisions of this section shall apply uniformly to all participants in the trading program.
- (e) **Facilities eligible for producing RECs in the renewable energy credits trading program.** For a renewable facility to be eligible to produce RECs in the trading program

it must be either a new facility or a small producer as defined in subsection (c) of this section and must also meet the requirements of this subsection.;

(1) A renewable energy resource must not be ineligible under subsection (f) of this section and must register pursuant to subsection (n) of this section.;

~~(2) The facility's above market costs must not be included in the rates of any utility, municipally owned utility, or distribution cooperative through base rates, a power cost recovery factor (PCRF), stranded cost recovery mechanism, or any other fixed or variable rate element charged to end users;~~

~~(2)(3)~~ For a renewable energy technology that requires fossil fuel, the facility's use of fossil fuel must not exceed 2.0% of the total annual fuel input on a British thermal unit (BTU) or equivalent basis.;

~~(3)(4)~~ The output of the facility must be readily capable of being physically metered and verified in Texas by the program administrator. Energy from a renewable facility that is delivered into a transmission system where it is commingled with electricity from non-renewable resources before being metered can not be verified as delivered to Texas customers. A facility is not ineligible by virtue of the fact that the facility is a generation-offset, off-grid, or on-site distributed renewable facility if it otherwise meets the requirements of this section.;

~~and~~

~~(4)(5)~~ For a municipally owned utility operating a gas distribution system, any production or acquisition of landfill gas that is directly supplied to the gas distribution system is eligible to produce RECs based upon the conversion of the thermal energy in BTUs to electric energy in kWh using for the conversion factor the systemwide average heat rate of the gas-fired units of the combined utility's electric system as measured in BTUs per kWh.

~~(5)(6)~~ For industry-standard thermal technologies, the RECs can be earned only on the renewable portion of energy production. Furthermore, the contribution toward statewide renewable capacity megawatt goals from such facilities shall~~would~~ be

equal to the fraction of the facility's annual MWh energy output from renewable fuel multiplied by the facility's nameplate MW capacity.

(f) **Facilities not eligible for producing RECs in the renewable energy credits trading program.** A renewable facility is not eligible to produce RECs in the trading program if it is:

- (1) A renewable energy capacity addition associated with an emissions reductions project described in Health and Safety Code §382.05193, that is used to satisfy the permit requirements in Health and Safety Code §382.0519;
- (2) An existing facility that is not a small producer as defined in subsection (c) of this section; or
- (3) ~~AAn existing~~ fossil fueled generating plant that is repowered to use a renewable fuel, unless the plant is a small producer; or-
- (4) A facility built with the assistance of a federal grant that was given for the purpose of developing that particular facility as a renewable energy demonstration project.

(g) **Responsibilities of program administrator.** ~~TheNo later than June 1, 2000, the~~ commission shall ~~appoint~~approve an independent entity to serve as the trading program administrator. At a minimum, the program administrator shall perform the following functions:

- (1) Create accounts that track RECs or compliance premiums for each participant in the trading program;
- (2) Award RECs or compliance premiums to registered renewable energy facilities on a quarterly basis based on verified meter reads;
- (3) ~~AwardAssign~~ offsets to retail entities~~competitive-retailers~~ on an annual basis based on a nomination submitted by the retail entity~~competitive-retailer~~ pursuant to subsection ~~(i)(n)~~ of this section;

- (4) Annually record the retirement of RECs or compliance premiums~~retire RECs~~ that each retail entity submit~~competitive retailer submits to meet its renewable energy requirement~~;
- (5) Retire RECs at the end of each REC's three-year life;
- (6) Maintain public information on its website that provides trading program information to interested buyers and sellers of RECs;
- (7) Create an exchange procedure where persons may purchase and sell RECs or compliance premiums. The exchange shall ensure the anonymity of persons purchasing or selling RECs or compliance premiums. The program administrator may delegate this function to an independent third party, subject to commission approval.~~The commission shall approve any such delegation~~;
- (8) Make public each month the total energy sales of retail entities~~competitive retailers~~ in Texas for the previous month;
- (9) Perform audits of generators participating in the trading program to verify accuracy of metered production data;
- (10) Allocate the RPS requirement~~renewable energy responsibility~~ to each retail entity~~competitive retailer~~ in accordance with subsection (h) of this section; and
- (11) Submit an annual report to the commission. ~~The Beginning with the program's first compliance period, the~~ program administrator shall submit a report to the commission on or before ~~May~~April 15 of each calendar year. The report shall contain information pertaining to renewable energy power generators and retail entities~~competitive retailers~~. At a minimum, the report shall contain:
 - (A) the amount of existing and new renewable energy capacity in MW installed in the state by technology type, the owner/operator of each facility, the date each facility began to produce energy, the amount of energy generated in megawatt-hours (MWh) each quarter for all capacity participating in the trading program or that was retired from service; and
 - (B) a listing of all retail entities~~competitive retailers~~ participating in the trading program, each retail entity's RPS~~competitive retailer's renewable energy credit~~ requirement, the number of offsets used by each retail

~~entitycompetitive retailer~~, the number of ~~RECseredits~~ retired by each ~~retail entitycompetitive retailer~~, ~~the number of compliance premiums retired by each retail entity~~, a listing of all ~~retail entitiescompetitive retailers~~ that were in compliance with the ~~RPSREC~~ requirement, a listing of all ~~retail entitiescompetitive retailers~~ that failed to ~~comply with the RPS retire sufficient REC~~ requirement, and the deficiency of each ~~retail entitycompetitive retailer~~ that failed to retire sufficient RECs ~~or compliance premiums~~ to meet its ~~RPSREC~~ requirement.

(h) **Allocation of ~~RPSREC purchase~~ requirement to ~~retail entitiescompetitive retailers~~.**

The program administrator shall allocate ~~RPSREC~~ requirements among ~~retail entitiescompetitive retailers~~. Any renewable capacity that is retired before January 1, ~~20152009~~ 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 ~~the facility iswhich the facility was~~ retired or ~~the~~ capacity shortfall ~~occursoccurred~~. The program administrator shall use the following methodology to determine the total annual ~~RPS REC~~ requirement for a given year and the final ~~RPS allocationREC requirement~~ for individual ~~retail entitiescompetitive retailers~~:

(1) The total statewide ~~RPSREC~~ requirement for each compliance period shall be calculated in terms of MWh and shall be equal to the ~~applicable capacity requirement set forth in this paragraphrenewable 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 ~~requirements~~~~targets~~ for the compliance period beginning January 1, of the year indicated shall be:

(A) ~~1,400400~~ MW of new resources in ~~20062002~~;

(B) ~~1,400400~~ MW of new resources in ~~20072003~~;

- (C) ~~2,392,850~~ MW of new resources in ~~2008~~~~2004~~;
 - (D) ~~2,392,850~~ MW of new resources ~~in 2009~~~~2005~~;
 - (E) ~~3,384,400~~ MW of new resources in ~~2010~~~~2006~~;
 - (F) ~~3,384,400~~ MW of new resources in ~~2011~~~~2007~~;
 - (G) ~~4,376,000~~ MW of new resources in ~~2012~~~~2008~~; and
 - (H) ~~4,376~~ MW of new resources in 2013;
 - (I) ~~5,000~~ MW of new resources in 2014; and
 - (J)(H) ~~5,000~~~~2,000~~ MW of new resources ~~for each year after 2014~~~~in 2009 through 2019~~.
- (2) The final RPS allocation~~REC—requirement~~ for an individual retail entity~~competitive retailer~~ for a compliance period shall be calculated as follows:
- (A) Each retail entity'~~secompetitive retailer's~~ preliminary RPS allocation~~REC requirement~~ is determined by dividing its total retail energy sales in Texas by the total retail sales in Texas of all retail entities~~competitive retailers~~, and multiplying that percentage by the total statewide RPS~~REC~~ requirement for that compliance period.
 - (B) The adjusted RPS allocation~~REC—requirement~~ for each retail entity~~competitive retailer~~ that is entitled to an offset is determined by reducing its preliminary RPS allocation~~REC requirement~~ by the offsets to which it qualifies, as determined under subsection (i) of this section, with the maximum reduction equal to the retail entity'~~secompetitive retailer's~~ preliminary RPS allocation~~REC requirement~~. The total reduction for all retail entities~~competitive retailers~~ is equal to the total usable offsets for that compliance period.
 - (C) Each retail entity'~~secompetitive retailer's~~ final RPS allocation~~REC requirement~~ for a compliance period shall be increased to recapture the total usable offsets calculated under subparagraph (B) of this paragraph.

The additional ~~RPS allocation~~~~REC requirement~~ shall be calculated by dividing the ~~retail entity's~~~~competitive~~~~retailer's~~ preliminary ~~RPS allocation~~~~REC requirement~~ by the total preliminary ~~RPS allocation~~~~REC requirement~~ of all ~~retail entities~~~~competitive~~~~retailers~~. This fraction shall be multiplied by the total usable offsets for that compliance period and this amount shall be added to the ~~retail entity's~~~~competitive~~~~retailer's~~ adjusted ~~RPS allocation~~~~REC requirement~~ to produce the ~~retail entity's~~~~competitive~~~~retailer's~~ final ~~RPS allocation~~~~REC requirement~~ for the compliance period.

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

(i) **Nomination and ~~awarde~~~~calculation~~ of REC offsets.**

- (1) A REP, municipally-owned utility, G&T cooperative, distribution cooperative, or an affiliate of a REP, municipally-owned utility, or distribution cooperative, may apply offsets to meet all or a portion of its renewable energy purchase requirement, as calculated in subsection (h) of this section, only if those offsets ~~were~~~~are~~ nominated in a filing with the commission by June 1, 2001. ~~A G&T may nominate the combined offsets for itself and its member distribution cooperatives upon the presentation of a resolution by its Board authorizing it to do so.~~

- (2) The program administrator shall award offsets consistent with the commission's actions to commission shall verify ~~any~~ designations of REC offsets and with this section notify the program administrator of its determination by December 31, 2001.
- (3) REC offsets shall be equal to the average annual MWh output of an existing resource for the years 1991-2000 or the entire life of the existing resource, whichever is less.
- (4) REC offsets qualify for use in a compliance period under subsection (h) of this section only to the extent that:
- (A) The resource producing the REC offset has continuously since September 1, 1999 been owned by or its output has been committed under contract to a utility, municipally-owned utility, or cooperative nominating the resource under paragraph (1) of this subsection or, if the resource has been committed under a contract that expired after September 1, 1999 and before January 1, 2002, it is owned by or its output ~~was has been~~ committed under contract to a utility, municipally-owned utility, or cooperative on January 1, 2002; and
- (B) The facility producing the REC offsets is operated and producing energy during the compliance period in a manner consistent with historic practice.
- (5) If the production of energy from a facility that is eligible for an award of producing the REC offsets offset energy ceases for any reason, or if the power purchase agreement with the facility's owner (or successor in interest) that is referred to in paragraph (4)(A) of this subsection is no longer in effect, the retail entity shall the competitive retailer may no longer be awarded REC offsets related to the facility claim the REC offset against its REC requirement.
- (6) REC offsets shall not be traded.
- (j) **Calculation of capacity conversion factor.** The capacity conversion factor used by the program administrator to allocate credits to retail entities competitive retailers shall be

calculated during the fourth quarter of each odd numbered compliance year. The capacity conversion factor shall:as follows:

- (1) Reflect actual generator performance data associated with all renewable resources in the trading program for the previous two years;
 - (2) Be based on all renewable resources in the trading program for which at least 12 months of performance data are available;
 - (3) Represent a weighted average of generator performance; and
 - (4) Use all valid performance data that is available for each renewable resource, excluding data for testing periods prior to commercial operation.
- ~~(1) The capacity conversion factor (CCF) shall be administratively set at 35% for 2002 and 2003, the first two compliance periods of the program.~~
- ~~(2) During the fourth quarter of the second compliance year (2003), the CCF shall be readjusted to reflect actual generator performance data associated with all renewable resources in the trading program. The program administrator shall adjust the CCF every two years thereafter and shall:~~
- ~~(A) be based on all renewable energy resources in the trading program for which at least 12 months of performance data is available;~~
 - ~~(B) represent a weighted average of generator performance;~~
 - ~~(C) use all valid performance data that is available for each renewable resource; and~~
 - ~~(D) ensure that the renewable capacity goals are attained.~~

(k) **Production, ~~and transfer, and expiration~~ of RECs.** The program administrator shall administer a trading program for renewable energy credits in accordance with the requirements of this subsection.

- ~~(1) The A-REC will be awarded to the~~ owner of a renewable resource shall earn one REC when a MWh is metered at that renewable resource. ~~A generator producing 0.5 MWh or greater as its last unit generated should be awarded one REC on a quarterly basis.~~ The program administrator shall record the energy in amount of metered MWh and credit the REC account of the renewable resource that

generated the energy on a quarterly basis. Quarterly production shall be rounded to the nearest whole MWh, with fractions of 0.5 MWh or greater rounded up.

- (2) The transfer of RECs between parties shall be effective only when the transfer is recorded by the program administrator.
- (3) The program administrator shall require that RECs be adequately identified prior to recording a transfer and shall issue an acknowledgement of the transaction to parties upon provision of adequate information. At a minimum, the following information shall be provided:
 - (A) identification of the parties;
 - (B) REC serial number, REC issue date, and the renewable resource that produced the REC;
 - (C) the number of RECs to be transferred; and
 - (D) the transaction date.
- (4) A ~~retail entity~~~~competitive~~~~retailer~~ shall surrender RECs to the program administrator for retirement from the market in order to meet its RPS requirement~~REC allocation~~ for a compliance period. The program administrator will document all REC retirements annually.
- (5) On or after each April 1, the program administrator will retire RECs that have not been retired by ~~retail entities~~~~competitive~~~~retailers~~ and have reached the end of their three-year life.
- (6) The program administrator may establish a procedure to ensure that the award, transfer, and retirement of credits are accurately recorded.
- (7) The issue date of RECs created by a renewable energy resource shall coincide with the beginning of the compliance year in which the credits are generated. All RECs shall have a life of three compliance periods, after which the program administrator will retire them from the trading program. RECs that have exceeded their life shall not be used to satisfy an RPS requirement.
- (8) Each REC that is not used in the year of its creation may be banked and is valid for the next two compliance periods.

(l) **Target for renewable technologies other than wind power.** In order to meet the target of at least 500 MW of the total installed renewable capacity after September 1, 2005, coming from a renewable energy technology other than a source using wind energy as set forth in subsection (a)(1) of this section, the program administrator shall award compliance premiums to certified REC generators other than those powered by wind that were installed and certified by the commission pursuant to subsection (n) of this section after September 1, 2005. A compliance premium is created in conjunction with a REC.

(1) Compliance premiums shall be awarded as follows:

(A) For eligible non-wind renewable technologies, one compliance premium shall be awarded for each REC awarded; and

(B) For eligible non-wind renewable technologies that have no air emissions, two compliance premiums shall be awarded for each REC awarded.

(2) Except as provided in this subsection, the award, retirement, trade, and registration of compliance premiums shall follow the requirements of subsections (k) and (m) of this section.

(3) A compliance premium may be used by any entity toward its RPS requirement pursuant to subsection (h) of this section.

(4) The program administrator shall increase the statewide RPS requirement calculated for each compliance period pursuant to subsection (h)(1) of this section by the number of compliance premiums retired during the previous compliance period.

(m)(4) **Settlement process.** ~~The 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 ~~retail entity~~competitive retailer of its total RPSREC requirement for the previous compliance period as determined pursuant to subsection (h) of this section.
- (2) By March 31, each ~~retail entity shall~~competitive retailer must submit credits or compliance premiums to the program administrator from its account equivalent to its RPSREC requirement for the previous compliance period. If the ~~retail entity~~competitive retailer does not submit sufficient ~~has insufficient~~ credits or compliance premiums 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 ~~retail entity~~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.

~~(m) — Trading program compliance cycle.~~

- ~~(1) — The first compliance period shall begin on January 1, 2002 and there will be 18 consecutive compliance periods. Early banking of RECs is permissible and may commence no earlier than July 1, 2001. The program's first settlement period shall take place during the first quarter of 2003.~~
- ~~(2) — A competitive retailer may incur a deficit allowance equal to 10% of its REC requirement in 2002 and 2003 (the first two compliance periods of the program). This 10% deficit allowance shall not apply to entities that initiate customer choice after 2003. During the first settlement period, each competitive retailer will be subject to a penalty for any REC shortfall that is greater than 10% of its REC requirement under subsection (h) of this section. During the second settlement period, each competitive retailer will be subject to the penalty process for any REC shortfall greater than 10% of the second year REC allocation. All competitive retailers incurring a 10% deficit pursuant to this subsection must~~

~~make up the amount of RECs associated with the deficit in the next compliance period.~~

~~(3) The issue date of RECs created by a renewable energy resource shall coincide with the beginning of the compliance year in which the credits are generated. All RECs shall have a life of three compliance periods, after which the program administrator will retire them from the trading program.~~

~~(4) Each REC that is not used in the year of its creation may be banked and is valid for the next two compliance years.~~

~~(5) A competitive retailer may meet its renewable energy requirements for a compliance period with RECs issued in or prior to that compliance period which have not been retired.~~

(n) **Certification**~~Registration and certification~~ of renewable energy facilities. The commission shall ~~register and~~ certify all renewable facilities that will produce either REC offsets, ~~or~~ RECs, or compliance premiums for sale in the trading program. To be awarded RECs, or REC offsets, or compliance premiums, a power generator must complete the ~~certification~~registration process described in this subsection. The program administrator shall not award offsets, RECs~~or credits~~, or compliance premiums for energy produced by a power generator before it has been certified by the commission.

(1) The designated representative of the generating facility shall file an application with the commission on a form approved by the commission for each renewable energy generation facility. At a minimum, the application shall include the location, owner, technology, and rated capacity of the facility and shall demonstrate that the facility meets the resource eligibility criteria in subsection (e) of this section. Any subsequent changes to the information in the application shall be filed with the commission within 30 days of such changes.

(2) No later than 30 days after the designated representative files the certification form with the commission, the commission shall inform both the program administrator and the designated representative whether the renewable facility has met the certification requirements. At that time, the commission shall either

certify the renewable facility as eligible to receive ~~either~~ RECs, ~~or~~ offsets, or compliance premiums, or describe any insufficiencies to be remedied. If the application is contested, the time for acting is extended for such time as is necessary for commission action~~by 30 days~~.

- (3) Upon receiving notice of certification of new facilities, the program administrator shall create an REC account for the designated representative of the renewable resource.
 - (4) The commission or program administrator may make on-site visits to any certified facility, and the commission shall~~unit of a renewable energy resource and may~~ decertify any facility~~unit~~ if it is not in compliance with the provisions of this section~~subsection~~.
 - (5) A decertified renewable generator may not be awarded RECs. However, any RECs awarded by the program administrator and transferred to a retail entity~~competitive retailer~~ prior to the decertification remain valid.
- (o) **Penalties and enforcement.** If by April 1 of the year following a compliance year the program administrator determines~~it is determined~~ that a retail entity~~competitive retailer with an allocated REC purchase requirement~~ has insufficient credits to satisfy its allocation, the retail entity~~competitive retailer~~ shall be subject to an administrative penalty of \$50 per MWh pursuant to PURA §15.023~~the administrative penalty provisions of PURA §15.023 as specified in this subsection~~.
- (1) ~~Except as provided in paragraph (4) of this subsection, a penalty will be assessed for that portion of the deficient credits.~~
 - (2) ~~The penalty shall be the lesser of \$50 per MWh, or, upon presentation of suitable evidence of market value by the competitive retailer, 200% of the average market value of credits for that compliance period.~~
 - (3) ~~There will be no obligation on the competitive retailer to purchase RECs for deficits, whether or not the deficit was within or was not within the competitive retailer's reasonable control, except as set forth in subsection (m)(2) of this section.~~

- ~~(4) In the event that the commission determines that events beyond the reasonable control of a competitive retailer prevented it from meeting its REC requirement there will be no penalty assessed.~~
- ~~(5) A party is responsible for conducting sufficient advance planning to acquire its allotment of RECs. Failure of the spot or short term market to supply a party with the allocated number of RECs shall not constitute an event outside the competitive retailer's reasonable control. Events or circumstances that are outside of a party's reasonable control may include weather related damage, mechanical failure, lack of transmission capacity or availability, strikes, lockouts, actions of a governmental authority that adversely effect the generation, transmission, or distribution of renewable energy from an eligible resource under contract to a purchaser.~~

(p) **Microgenerators and REC aggregators.** A REC aggregator may manage the participation of multiple microgenerators in the REC trading program. The program administrator shall assign to the REC aggregator all RECs accrued by the microgenerators who are under a REC management contract with the REC aggregator.

(1) The microgenerator's units shall be installed by a technician who is currently certified either by the unit's manufacturer or by a recognized industry certification organization.

(2) Notwithstanding subsection (e)(4) of this section, a REC aggregator may use either of the following methods for reporting generation to the program administrator, as long as the same method is used for each microgenerator in an aggregation unit, as defined by the REC aggregator. A REC aggregator may have more than one aggregation and may choose either method for each aggregation unit.

(A) A generating unit may have a meter that transmits actual generation data to the program administrator using protocols and procedures determined by the program administrator. Such protocols and procedures shall require that actual data be collected and transmitted within a reasonable

time. REC aggregators using this method shall be awarded one REC for every MWh generated.

(B) The REC aggregator may provide the program administrator with sufficient information for the program administrator to estimate with reasonable accuracy the output of each unit, based on known or observed information that correlates closely with the generation output. REC aggregators using this method shall be awarded one REC for every 1.25 MWh generated. After installing the unit, the certified technician shall provide the microgenerator, the REC aggregator, and the program administrator the information required by the program administrator pursuant to this paragraph (2) of this subsection.

(3) REC aggregators shall register with the commission and the program administrator and also register to participate in the REC trading program.

(4) A microgenerator participating in the REC trading program individually without the assistance of a REC aggregator shall comply with the requirements of this subsection.

(5) All microgenerator units that are connected to the grid or that are installed with the capability of connecting to the grid shall comply with the applicable requirements of §25.211 and §25.212, of this title (relating to Transmission and Distribution Applicable to all Electric Utilities).

~~(p) **Renewable resources eligible for sale in the Texas wholesale and retail markets.** Any energy produced by a renewable resource may be bought and sold in the Texas wholesale market or to retail customers in Texas and marketed as renewable energy if it is generated from a resource that meets the definition in subsection (e)(14) of this section.~~

~~(q) **Periodic review.** The commission shall periodically assess the effectiveness of the energy based credits trading program in this section to maximize the energy output from the new capacity additions and ensure that the goal for renewable energy is achieved in the most economically efficient manner. If the energy~~

~~based trading program is not effective, performance standards will be designed to ensure that the cumulative installed renewable capacity in Texas meets the requirements of PURA §39.904.~~

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

**ISSUED IN AUSTIN, TEXAS ON THE 29th DAY OF JANUARY 2007 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**

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