The Public Utility Commission of Texas (commission) proposes new §25.173, relating to the Goal for Renewable Energy. Proposed §25.173 will implement the legislative goal for renewable energy development in the state of Texas as set forth in the Public Utility Regulatory Act (PURA), as amended by Senate Bill 7, Act of May 21, 1999, 76th Legislature, Regular Session, Chapter 405, 1999 Texas Session Law Service 2543, 2598 (Vernon) (to be codified as Public Utility Regulatory Act, Texas Utilities Code Annotated §39.904). Project Number 20944 has been assigned to this proceeding.

In proposing this rule, the commission's objectives are to define the requirement of renewable energy purchases by competitive retailers and to establish a renewable energy credits trading program. The resulting programs will: (1) implement the statutory mandate in PURA §39.904 to promote the development of renewable energy technologies; (2) encourage the construction and operation of new renewable energy projects at those sites in this state that have the greatest potential for capture and development of environmentally beneficial renewable resources in Texas; (3) reduce air pollution in Texas that is associated with the generation of electricity using fossil fuels; (4) respond to customer preferences that place a high value on environmental quality and reflect a willingness to pay a higher price for "clean" energy acquired from renewable resources; (5) increase the amount of renewable energy available to supply electricity to consumers in Texas; and (6) ensure that all customers have access to energy from renewable energy resources pursuant to PURA §39.101(b)(3).

Texas possesses a vast amount of untapped renewable resources, perhaps more than any other state. The Legislature recognized that economic and environmental benefits would accrue to Texas citizens from the development of those resources by enacting §39.904 which mandates that an additional 2,000 megawatts (MW) of generating capacity from renewable technologies be installed in Texas by January 1, 2009.

The Integrated Resource Planning (IRP) process adopted by the Legislature in 1995 required that renewable resources and conservation resources be considered for inclusion in each Texas generating utility's resource mix. The IRP process was intended to focus on meeting the increased demands for electricity with resources that were cost-effective, reliable, and environmentally sound.

The Legislature's commitment to development of the state's abundant renewable resources is derived from the preferences expressed by Texas consumers in favor of renewable power. The IRP process required that utilities assess customer values and preferences and consider these preferences in their resource plans. In an effort to assess customer values and preferences, many of the utilities used the Deliberative Poll™ process. Customers participating in this process indicated a preference for better air quality and a willingness to purchase electricity that was generated by renewable energy resources that improve air quality in their communities. The customers' preferences, revealed in the IRP process, are reflected in PURA §39.904: cleaner sources of energy should be deployed to develop the state's economic resources and improve the quality of the air in Texas.

Texas has long been a leader in the direct use of energy produced by burning fossil fuels. Although Texas has historically been one of the largest energy consumers in the nation, it has continued to be near the bottom in the production and use of renewable energy. The continued growth of the Texas economy and population will continue to make it one of the leaders in energy consumption. Relying on energy produced by burning fossil fuels has contributed to the degradation of air quality in much of Texas and over reliance on fossil-fueled energy sources in the future will continue this trend. Texas electric customers have placed a high value on environmental quality and have shown a willingness to pay a premium for clean energy sources that benefit their communities and the state of Texas. The renewable energy mandate, coupled with the requirement that the commission establish a program for the trading of renewable energy credits (RECs), provides a mechanism for bringing new renewable resources to Texas by allowing industry participants from Texas and elsewhere to compete for that market.

When commenting on specific subsections of the proposed rule(s), parties are encouraged to describe relevant "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 that are specifically related and directly applicable to the Texas statute and the topics of this rule, rather than broad citations to other state restructuring efforts.

The commission requests that interested parties provide relevant comments on the proposed rule. Specifically, the commission requests comments on several matters:

First, the commission seeks comment on the penalty provisions set forth in this section. Are meaningful penalties necessary to ensure that competitive retailers comply with the requirements set forth in this section? When explaining your answer, please give examples of penalty provisions included in other trading programs, such as the Acid Rain Program administered by the Environmental Protection Agency (EPA). Section 25.173 states that the penalty for non-compliance shall be $50 per megawatt-hour or, upon suitable evidence of market value by a competitive retailer, shall be 200% of the market value of credits for that year. Is $50 per megawatt-hour applied to the portion of deficient credits an appropriate fee? If your answer is yes, please explain why. If your answer is no, please suggest an appropriate monetary fee that you believe is suitable and provide an explanation of why it is preferable. Moreover, is it reasonable to assess a penalty based on the average market value of credits if disclosure of the price is not required in connection with the transfer of renewable energy credits? If your answer is yes, please clarify how a competitive retailer would reasonably estimate the average price paid for credits during the previous year.

Second, the commission seeks comments on the appropriate start and end date for the renewable energy credits trading program. Please explain, using mathematical examples where possible, how the commission can ensure that 400 megawatts (MW) of new renewable generating capacity is installed in Texas by January 1, 2003 if: the credits trading program (1) begins in 2003, (2) allows 5.0% deficit

banking for the first two compliance periods, and (3) does not require a new capacity conversion factor to be used until 2006. If you believe that the trading program can not adequately facilitate and support the efficient installation of the mandated capacity targets using the above requirements, please explain, using mathematical examples where possible, what combination of requirements would ensure that the electric industry collectively achieves the state's capacity goals in the most economically efficient manner. Regarding the trading program's end date, should the rule specify a definitive date? Are there economic benefits such as the reduction in overall program costs to customers that would justify ending the program in 2019 as opposed to another date? Moreover, does ending the program in 2019 help to achieve the required renewable energy goals?

Third, the commission seeks comment on the metering and verification of renewable energy output as required by this section. Which parties should be responsible for the metering and verification of renewable energy output data? For example, should all output be metered and verified by the program administrator or the renewable energy power generators? Please explain how the metering and verification would work in the context of answering the above question.

Fourth, the commission seeks comment on the banking provisions currently proposed in this section. Will a three-year banking provision help ensure that 2,000 MW of new capacity is installed in Texas by 2009 and, if so, how? If you believe that three-year banking limitations will not contribute to meeting the goal for renewable energy, please give examples of how this section should be modified to ensure that 2,000 MW of new renewable capacity is installed in Texas by 2009. Additionally, should

renewable power generators be allowed to receive credits for energy produced before the first compliance period (early banking)? In your answer, please explain, using mathematical examples where possible, the impact of early banking on achieving the statutory goal of the installation of 2,000 MW of new generating capacity in Texas.

Fifth, the commission seeks comment on the cumulative capacity goals required by §39.904. Specifically, if any of the renewable resources in the state are retired before 2009, is it necessary to build new renewable resources to offset this reduction in capacity?

Sixth, the commission seeks comment on the obligation of municipally-owned utilities, distribution cooperatives, and retail electric providers to purchase new renewable resources in the credits trading program if they have existing renewable resources sufficient to cover their renewable energy purchase requirement. Should parties with existing resources have their obligation to purchase RECs proportionately reduced to reflect the percent of existing renewables they have under contract? If your answer is yes, please explain the allocation methodology that should be used to incorporate existing renewable resources into the trading program. Specifically, if existing resources are accounted for in a party's purchase obligation, is it necessary to allow those resources to produce credits for sale in the trading program? If your answer is no, please explain how all of the following conditions could be met: (1) a party's purchase obligation is offset by existing resources, (2) renewable credits associated with those existing resources are excluded from producing credits for sale in the trading program, and (3) the

capacity requirements set forth in PURA §39.904 are achieved in a timely, economical, and efficient manner.

Seventh, the commission seeks comment on alternative ways to restructure the credits trading program and specifically requests comments on the proposal outlined in Chairman Wood's October 8, 1999 memo filed under this project number. Specifically, should existing renewables be incorporated into the credits trading program? If existing renewables were allowed to produce RECs, what impact would this have on (1) the cost or value of RECs over time, (2) the level of financial incentive offered to new renewable resources, and (3) the overall cost of the trading program. Additionally, please explain any necessary changes in the REC allocation methodology set forth in subsection (h) of this section and the capacity factor calculation methodology set forth in subsection (i) of this section to accommodate existing and new renewables.

Gillan Taddune, Senior Economic Analyst in the Office of Policy Development, 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. Taddune 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 the section will be the economic and environmental benefits associated with capturing, conserving, and developing the vast amount of untapped renewable resources in Texas, including an improvement in the air quality of the state of Texas, that will result in an

improvement to the public health. There will be no effect on small businesses or micro-businesses as a result of enforcing this section.

It is anticipated that there will be no economic costs incurred by persons who are required to comply with the new section as proposed beyond those costs caused by the underlying statute that this section implements. The benefits accruing from implementation of the statute by this proposed section, however, are expected to outweigh the costs.

Ms. Taddune 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.

The commission staff will conduct a public hearing on this rulemaking under Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Monday, November 22, 1999, at 9:30 a.m.

Comments on the proposed new rule (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 14 days after publication. Reply comments may be submitted within 28 days after publication. 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 20944.

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (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, Senate Bill 7, Act of May 21, 1999, 76th Legislature, Regular Session, Chapter 405, 1999 Texas Session Law Service, 2543, 2558 (Vernon) (to be codified as the Public Utility Regulatory Act, Texas Utilities Code Annotated §39.904) which directs the commission to establish a renewable energy credits trading program and to adopt rules necessary to enforce and administer 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) **Purpose.** The purpose of this section is to ensure that 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, to establish a renewable energy credits trading program that would ensure that the new renewable energy capacity is built in the most efficient and economical manner, 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, to protect and enhance the quality of Texas' environment through increased use of renewable resources, to 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 chapter, and competitive retailers as defined in subsection (c) of this section (relating to definitions).

(c) **Definitions.**

(1) **Competitive retailer—**A municipally-owned utility 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 chapter.

(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 competitive retailer.

(3) **Designated representative—**A responsible natural person authorized by the owners or operators of each 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 each 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.

(5) **Existing resources—**Renewable resources installed in Texas before September 1, 1999.

(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.

(7) **New resources—**Renewable resources installed in Texas and placed in service 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) **Qualifying existing resources—**Renewable energy resources installed in Texas on or after September 1, 1995 but before September 1, 1999, and whose costs are not in any utility's base rates, in a power cost recovery factor (PCRF), or in a utility's stranded cost recovery calculation on the date the trading program begins.

(11) **Renewable energy resource (renewable resource)—** A resource that produces energy derived from renewable energy technologies.

(12) **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, or waste products from inorganic sources.

(13) **Renewable energy credit (REC or credit)—** An REC represents one megawatt hour (MWh) of renewable energy that is generated and metered in Texas and meets the requirements set forth in subsection (e) of this section.

(14) **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 by a program participant.

(15) **Renewable energy credits trading program (trading program)—**The process of awarding, trading, tracking, and submitting RECs as a means of meeting the renewable energy requirements set out in subsection (d) of this section.

(16) **Repowering—**Modernizing or upgrading an existing facility in order to increase its capacity or efficiency.

(17) **Settlement period—**The first calendar quarter following a compliance period in which the settlement process for that compliance year takes place.

(18) **Small producer—**A renewable resource that is less than 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, competitive retailers, and other market participants as set forth in this section.

(1) The program administrator shall apportion a renewable resource requirement among all competitive retailers as a percentage of retail sales of each competitive retailer as set forth in subsection (h) of this section. Each 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 purchase RECs pursuant to this section becomes

effective on the date each competitive retailer begins serving retail electric customers in Texas.

(2) A power generating company may participate in the program and may generate RECs and 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 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 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) **Resources eligible for producing RECs in the renewable energy credits trading program.** For a renewable resource to be eligible to produce RECs in the trading program it must be either a qualifying existing resource, a new resource, 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 (m) of this section.

(2) For a resource other than a new resource, the resource'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) or stranded cost recovery calculation on the date the trading program begins.

(3) For an existing resource, the credits must be issued for the incremental capacity and associated energy achieved from repowering the resource.

(4) For a renewable energy technology that requires fossil fuel, the resource'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.

(5) The output of the resource must be readily capable of metering and verification by the program administrator. A resource is not ineligible by virtue of the fact that the resource is a generation-offset, off-grid, or on-site distributed renewable resources if it otherwise meets the requirements of this section.

(f) **Resources not eligible for producing RECs in the renewable energy credits trading program.** Renewable resources are not eligible to produce RECs in the trading program if the resource is:

(1) A renewable energy capacity addition associated with an emissions reductions project described in Health and Safety Code §382.01593, that is used to satisfy the permit requirements in Health and Safety Code §382.0159;

(2) An existing resource that is not a qualifying existing resource as defined in subsection (c) of this section; or

(3) An existing fossil plant that is repowered to use a renewable fuel.

(g) **Responsibilities of program administrator.** No later than June 1, 2000, the commission shall 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 for each participant in the trading program;

(2) Award RECs to registered renewable energy resources on a monthly basis based on verified meter reads;

(3) Annually retire RECs that each competitive retailer submits to meet its renewable energy requirement;

(4) Retire RECs at the end of each REC's three-year life;

(5) Maintain public information on its website that provides trading program information to interested buyers and sellers of RECs;

(6) Allocate the renewable energy responsibility to each competitive retailer in accordance with subsection (h) of this section; and

(7) Submit an annual report to the commission. Beginning with the program's first compliance period, the program administrator shall submit a report to the commission on or before April 15 of each calendar year. The report shall contain information

pertaining to renewable energy power generators and 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 month during the previous year for all capacity participating in the trading program or that was retired from service; and

(B) a listing of all competitive retailers participating in the trading program, each competitive retailer's renewable energy credit purchase requirement and the number of credits retired by each competitive retailer, a listing of all competitive retailers that were in compliance with the REC purchase requirements for the compliance period, a listing of all competitive retailers that have failed to purchase sufficient RECs to meet the purchase requirement for that compliance period, and the deficiency of each competitive retailer that failed to purchase sufficient RECs to meet its previous year's REC requirement.

(h) **Allocation of REC purchase requirement to competitive retailers.** The program administrator shall allocate REC purchase requirements among competitive retailers. The program administrator shall use the following methodology to determine the total annual REC requirement for a given year, the statewide percentage purchase requirement for all competitive retailers, and the 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 (i) 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 plus any qualifying existing resources in 2002;

(B) 400 MW of new resources plus any qualifying existing resources in 2003;

(C) 850 MW of new resources plus any qualifying existing resources in 2004;

(D) 850 MW of new resources plus any qualifying existing resources in 2005;

(E) 1,400 MW of new resources plus any qualifying existing resources in 2006;

(F) 1,400 MW of new resources plus any qualifying existing resources in 2007;

(G) 2,000 MW of new resources plus any qualifying existing resources in 2008; and

(H) 2,000 MW of new resources plus any qualifying existing resources in 2009 through 2019.

(2) Each competitive retailer's REC purchase percentage for that compliance period equals the competitive retailer's compliance period retail energy sales in Texas divided by the total retail sales in Texas of all competitive retailers.

(3) The REC requirement for an individual competitive retailer for a compliance period shall be equal to the competitive retailer's REC purchase percentage as calculated in paragraph (2) of this subsection multiplied by the total statewide REC requirement for that compliance period as calculated in paragraph (1) of this subsection.

(i) **Calculation of capacity conversion factor.** The capacity conversion factor used by the program administrator to allocate credits to competitive retailers shall be calculated as follows:

(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 CCF shall be adjusted 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.

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

(1) A REC will be awarded to the owner of a renewable resource when a MWh is metered at that renewable resource. The program administrator shall record the amount of metered MWh and credit the REC account of the renewable resource that generated the energy on a monthly basis;

(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 receipt to parties upon provision of adequate information to carry out the transaction. At a minimum, the following information shall be provided:

(A) identification of the parties;

(B) REC serial number that shall include the REC issue date and the renewable resource that produced that REC;

(C) the number of RECs to be transferred; and

(D) the transaction date.

(4) Each competitive retailer must surrender RECs to the program administrator for retirement from the market in order to meet its REC allocation for the 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 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.

(k) **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 based on the competitive retailer's actual retail sales MWh for the previous year.

(2) By March 31, each competitive retailer must retire credits from its account equivalent to its REC requirement for the previous year. 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 paragraph (l)(2) of this section, the competitive retailer is subject to the penalty provisions in subsection (n) of this section.

(l) **Trading program compliance cycle.**

(1) The first compliance period shall begin on January 1, 2002 and there will be 18 consecutive compliance periods. No RECs will be awarded prior to the first compliance period. 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 5.0% of its REC purchase requirement in 2002 and 2003 (the first two compliance periods of the program). This 5.0% 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 the penalty process for any REC shortfall that is greater than 5.0% of its REC allocation pursuant to 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 5.0% of the second year REC allocation. All competitive retailers incurring a 5.0% 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.

(m) **Registration and certification of renewable energy resources.** The commission shall register and certify all renewable resources that will produce RECs in the trading program. To be awarded RECs, a power generator must complete the registration process described in this subsection. The program administrator shall not award credits for a power generator before it has completed the registration process.

(1) The designated representative of the generating capacity shall file an application at 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 as set forth in subsection (e) of this section.

(2) No later than 60 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 resource has met the certification requirements. At that time, the commission shall either certify the renewable resource as eligible to receive RECs or describe any insufficiencies to be remedied. If the application is contested, the time for acting is extended by 30 days.

(3) Upon receiving notice of certification, the program administrator shall create an REC account for the designated representative of the renewable resource.

(4) The commission may make periodic on-site visits to any certified unit of a renewable energy resource and may decertify any unit if it is not in compliance with the provisions of this subsection.

(n) **Penalties and enforcement.** If by April 1 of the year following a compliance year it is determined that a competitive retailer with an allocated REC purchase requirement has insufficient credits to satisfy its allocation, the competitive retailer shall be subject to 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 (l)(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 acquiring the allocated number of credits, ~~acquiring the allocated number of credits,~~ 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 include weather related damages, mechanical failure, lack of transmission or 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.

(o) **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 (c)(11) of this section.

(p) **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 authority to adopt.

ISSUED IN AUSTIN, TEXAS ON THE 8th DAY OF OCTOBER 1999 BY THE PUBLIC UTILITY COMMISSION OF TEXAS
RHONDA G. DEMPSEY