

**PROJECT NO. 35628**

<b>RULEMAKING RELATING TO</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>INDUSTRIAL CUSTOMER</b>	<b>§</b>	
<b>OPT-OUT OF RENEWABLE</b>	<b>§</b>	<b>OF TEXAS</b>
<b>PORTFOLIO STANDARD</b>	<b>§</b>	

**PROPOSAL FOR PUBLICATION OF AMENDMENT TO §25.173  
AS APPROVED AT THE AUGUST 28, 2008 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes an amendment to §25.173, relating to Goal for Renewable Energy. The rule will implement Public Utility Regulatory Act (PURA) §39.904(m-1) and (m-2), which allow customers taking transmission level electric service to opt-out from the renewable energy portfolio standard program and direct the commission to establish the reporting requirements and a schedule associated with opting out from this program. This rule is a competition rule subject to judicial review as specified in PURA §39.001(e). Project Number 35628 is assigned to this proceeding.

Ms. Christine Wright, Market Analyst, Competitive Markets Division, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Wright has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be compliance with PURA §39.904 and the ability of large users to opt-out of purchasing renewable energy credits. There may be some adverse economic effect on small businesses or micro-businesses as a result of enforcing this section but these costs cannot be quantified at this time. There may be economic costs to persons

who are required to comply with the rule that cannot be quantified at this time. However, these costs are necessary to implement PURA §39.904(m-1) and (m-2).

Ms. Wright has also determined that for each year of the first five years the rule is in effect there should be no effect on local economy and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

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 Friday, September 26, 2008, at 10:00 a.m. The request for a public hearing must be received within 31 days after publication.

The commission will also take comment on the following questions pertaining to the proposed rule:

*Does PURA permit or require the commission to allow customers receiving electric service at transmission-level voltage who provided the commission with notice in calendar year 2007 to opt-out in compliance year 2008 (a) despite the rule not being in effect at the time that notice was provided or (b) if the rule is not in effect by the end of compliance year 2008? If the commission is permitted but not required to allow such opt-outs, should the commission do so?*

Initial comments on the rule may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 21

days after publication. Sixteen copies of comments are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 31 days after publication. 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 rule. The commission will consider the costs and benefits in deciding whether to adopt the rule. All comments should refer to Project Number 35628.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2008), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically §39.904(m-1), which allows customers taking electric service at transmission-level voltage to opt-out from the renewable energy portfolio standard program and §39.904(m-2), which directs the commission to establish the reporting requirements and schedule associated with opting-out from this program.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §39.904(m-1) and (m-2).

**§25.173. Goal for Renewable Energy.**

(a) - (b) (No change.)

(c) **Definitions.**

(1) (No change.)

(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 ~~(m)(4)~~ of this section. For the purpose of the renewable energy portfolio standard requirements, one compliance premium is equal to one renewable energy credit.

(3) - (8) (No change.)

(9) **Opt-Out Notice** -- Written notice submitted to the commission by a transmission-level voltage customer pursuant to PURA §39.904(m-1).

(10) **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.

~~(11)(40)~~ **REC aggregator** -- An entity managing the participation of two or more microgenerators in the REC trading program.

~~(12)(44)~~ **REC offset (offset)** -- A 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.

~~(13)(12)~~ **Renewable energy credit (REC or credit)** -- A REC represents one MWh of renewable energy that is physically metered and verified in Texas and meets the requirements set forth in subsection (e) of this section.

~~(14)(13)~~ **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.

~~(15)(14)~~ **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.

~~(16)(15)~~ **Renewable energy resource (renewable resource)** -- A resource that produces energy derived from renewable energy technologies.

~~(17)(16)~~ **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.

~~(18)(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.

~~(19)(18)~~ **Repowered Facility** -- An existing facility that has been modernized or upgraded to use renewable energy technology to produce electricity consistent with this rule.

~~(20)(19)~~ **Retail entity** -- Municipally-owned utilities, generation and transmission cooperatives and distribution cooperatives that offer customer choice; retail electric providers (REPs); and investor-owned utilities that have not unbundled pursuant to PURA Chapter 39.

~~(21)(20)~~ **Settlement period** -- The first calendar quarter following a compliance period in which the settlement process for that compliance period takes place.

~~(22)(21)~~ **Small producer** -- A renewable resource that is less than ten 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 ~~(o)(n)~~ of this section, retail entities, and other market participants as set forth in this section.

(1) The program administrator shall apportion an RPS requirement among all retail entities as a percentage of the retail sales of each retail entity as set forth in subsection (h) of this section. Each retail entity shall be responsible for retiring sufficient RECs as set forth in subsections (h) and ~~(l)(k)~~ of this section to comply

with this section. The requirement to retire RECs to comply with this section becomes effective on the date a retail entity 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 ~~(1)(4)~~ of this section.
- (3) RECs shall be credited on an energy basis as set forth in subsection ~~(1)(4)~~ of this section.
- (4) Municipally-owned utilities and distribution cooperatives that do not offer customer choice have no RPS requirement. 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 as set forth in subsection ~~(1)(4)~~ of this section.
- (5) (No change.)

(e) **Facilities eligible for producing RECs and compliance premiums in the renewable energy credits trading program.** For a renewable facility to be eligible to produce RECs and compliance premiums in the trading program it must be either a new facility, a small producer, or a repowered facility 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 ~~(o)(4)~~ of this section.

(2) - (7) (No change.)

(f) - (g) (No change.)

(h) **Allocation of RPS requirement to retail entities.** The program administrator shall allocate RPS requirements among retail entities. Any renewable capacity that is retired before January 1, 2015 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 is retired or the capacity shortfall occurs. The program administrator shall use the following methodology to determine the total annual RPS requirement for a given year and the final RPS allocation for individual retail entities:

(1) The total statewide RPS 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 paragraph multiplied by 8,760 hours per year, multiplied by the appropriate capacity conversion factor set forth in subsection ~~(k)~~<sup>(j)</sup> of this section. The renewable energy capacity requirements for the compliance period beginning January 1, of the year indicated shall be:

(A) - (J) (No change.)

(2) The final RPS allocation for an individual retail entity for a compliance period shall be calculated as follows:



(A) Beginning with the 2009 compliance period, prior to the preliminary RPS allocation each retail entity's total retail energy sales are reduced to exclude the consumption of customers that opt-out in accordance with subsection (j) of this section. Each retail entity's preliminary RPS allocation is determined by dividing its total retail energy sales in Texas by the total retail sales in Texas of all retail entities, and multiplying that percentage by the total statewide RPS requirement for that compliance period.

(B)-(C) (No change.)

(3) (No change.)

(i) (No change.)

(j) **Opt-out notice.**

(1) A customer receiving electrical service at transmission-level voltage who submits an opt-out notice to the commission for the applicable compliance period shall be excluded from the RPS requirement. Each opt-out notice must specify the term for which it is effective, which may be a period up to two years.

(2) A customer who submits an opt-out notice for the applicable compliance period will not be required to pay for RECs purchased by a retail entity that is subject to a renewable energy requirement and from whom they purchase electric service. A retail entity that is subject to a renewable energy requirement under this section shall not collect costs attributable to the REC program from an eligible customer who has submitted an opt-out notice. An investor-owned utility whose rates

include the cost of RECs shall file a tariff to implement this subsection, not later than 30 days after the effective date of this section.

(3) A customer opt-out notice must be filed in the commission-designated project number before the beginning of a compliance period for the notice to be effective for that period. A customer may revoke a notice under this subsection at any time prior to the end of a compliance period by filing a letter in the designated project number.

(k) **Calculation of capacity conversion factor.** The capacity conversion factor used by the program administrator to allocate credits to retail entities shall be calculated during the fourth quarter of each odd-numbered compliance year. The capacity conversion factor shall:

- (1) Be based on actual generator performance data for the previous two years for all renewable resources in the trading program during that period for which at least 12 months of performance data are available.
- (2) Represent a weighted average of generator performance; and
- (3) Use all actual generator performance data that is available for each renewable resource, excluding data for testing periods.

(l)(4) **Production, 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 owner of a renewable resource shall earn one REC when a MWh is metered at that renewable resource. The program administrator shall record the energy in 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 shall surrender RECs to the program administrator for retirement from the market in order to meet its RPS requirement 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 and have reached the end of their compliance 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 period (calendar year) in which the credits are generated. All RECs shall have a compliance life of three compliance periods, after which the program administrator will retire them from the trading program.
- (8) Each REC that is not used in the compliance period in which it was created may be banked and is valid for the next two compliance periods.

**(m)(4) 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 (o)(4) of this section after September 1, 2005. A compliance premium is created in conjunction with a REC.

- (1) For eligible non-wind renewable technologies, one compliance premium shall be awarded for each REC awarded for energy generated after December 31, 2007.
- (2) Except as provided in this subsection, the award, retirement, trade, and registration of compliance premiums shall follow the requirements of subsections (d), (l)(4) and (n)(4) 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.

(n)(m) **Settlement process.** 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 of its total RPS requirement for the previous compliance period as determined pursuant to subsection (h) of this section.
- (2) By March 31, each retail entity shall submit credits or compliance premiums to the program administrator from its account equivalent to its RPS requirement for the previous compliance period. If the retail entity does not submit sufficient credits or compliance premiums to satisfy its obligation, the retail entity is subject to the penalty provisions in subsection (p)(e) 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.

(o)(n) **Certification of renewable energy facilities.** The commission shall certify all renewable facilities that will produce either REC offsets, 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 process described in this subsection. The program administrator shall not award offsets, RECs, 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 RECs, 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.
- (3) Upon receiving notice of certification of new facilities, the program administrator shall create a 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 decertify any facility if it is not in compliance with the provisions of this section.
- (5) A decertified renewable generator may not be awarded RECs. However, any RECs awarded by the program administrator and transferred to a retail entity prior to the decertification remain valid.

**(p)(e) Penalties and enforcement.** If by April 1 of the year following a compliance period the program administrator determines that a retail entity has not retired sufficient credits or compliance premiums to satisfy its allocation, the retail entity shall be subject to an administrative penalty pursuant to PURA §15.023, of \$50 per MWh that is deficient.

**(q)(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 and connected to the grid in compliance with P.U.C. Substantive Rules, applicable interconnection standards adopted pursuant to the P.U.C. Substantive Rules, and federal rules.
- (2) Notwithstanding subsection (e)(3) of this section, a REC aggregator may use any 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 any of the methods listed below for each aggregation unit.

- (A) The REC aggregator may provide the program administrator with production data that is measured and verified by an electronic meter that meets ANSI C12 standards and that will be separate from the aggregator's billing meter for the service address and for which the billing data and the renewable energy data are separate and verifiable data. Such actual data shall be collected and transmitted within a reasonable time and shall be subject to verification by the program administrator. 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.
- (C) A generating unit may have a meter that transmits actual generation data to the program administrator using applicable protocols and procedures. 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.

- (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.

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 28<sup>th</sup> DAY OF AUGUST 2008 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
ADRIANA A. GONZALES**

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