PROJECT NO. 55323

REVIEW OF RENEWABLE PORTFOLIO STANDARD	**§**	**PUBLIC UTILITY COMMISSION**
	§	
	§	**OF TEXAS**

ORDER REPEALING 16 TAC §25.173 AND ADOPTING NEW 16 TAC §25.173

The Public Utility Commission of Texas (commission) repeals 16 Texas Administrative Code (TAC) §25.173, relating to Goal for Renewable Energy, and adopts new 16 TAC §25.173, relating to Goal for Renewable Energy. The commission adopts this rule with changes to the proposed text as published in the October 27, 2023, issue of the *Texas Register* (48 TexReg 6294).

The adopted rule implements Section 53 of House Bill (HB) 1500 enacted by the 88th Texas Legislature (R.S.) by establishing a renewable energy credit (REC) trading program and temporary solar renewable portfolio standard. Additionally, the adopted rule directs the Electric Reliability Council of Texas (ERCOT) to continue to maintain an accreditation and banking system to award and track RECs generated by eligible facilities on a voluntary basis, as required by Public Utility Regulatory Act (PURA) §39.9113.

The commission received comments on the proposed rule from the 3Degrees Group, Inc. (3Degrees), ERCOT, Office of Public Utility Counsel (OPUC), Solar Energy Industries Association (SEIA), Texas Energy Buyers Alliance (TEBA), Texas Solar Power Association (TSPA), and Vistra Corp. (Vistra). Additionally, the Alliance for Retail Markets and Texas Energy Association of Marketers filed joint comments as the REP Coalition.

General Comments

OPUC recommended that the commission undertake a separate rulemaking to adopt a new rule for the voluntary REC program.

Commission Response

The commission declines to address the mandatory solar goal and the voluntary REC program in separate rulemakings, as recommended by OPUC, because it is unnecessary. The REC program depends upon the accreditation, banking, and trading aspects of the voluntary program to function, so the two topics are appropriately addressed together. Moreover, a separate rulemaking would delay the start of the 2024 compliance year for the solar goal beyond the beginning of the 2024 calendar year.

Registration of energy storage resources for the voluntary REC program

TEBA recommended that ADERs, batteries, and other types of energy storage resources be allowed to register for the voluntary REC program.

Commission Response

The commission disagrees with TEBA that it is appropriate in this rulemaking proceeding to expand RPS beyond what is explicitly authorized in statute and declines to implement the proposed change. PURA §39.9113 explicitly directs ERCOT to "maintain…[a] system to award and track voluntary *renewable energy credits* generated by eligible facilities *(emphasis added)."* Creating new types of credits, or authorizing ERCOT to do so, is beyond the scope of this proceeding.

Definition of "accreditation and banking system"

OPUC stated that the commission should "consider adding definition and scope to the term 'accreditation and banking system' under PURA §39.9113."

Commission Response

The commission declines to add a definition for "accreditation and banking system" as requested by OPUC because it is unnecessary. The required system already exists, and ERCOT will maintain its current system with minor modifications.

Updates to additional rules

SEIA noted that with the adoption of this new rule, the commission will also need to update 16 TAC §25.476, relating to Renewable and Green Energy Verification.

Commission Response

SEIA's recommendation is beyond the scope of this rulemaking proceeding. The commission may consider this recommendation in a future proceeding.

Proposed §25.173(a) – Purpose

Proposed §25.173(a) details the purpose of this section as establishing a solar renewable portfolio standard program and directing ERCOT to administer a voluntary REC accreditation program.

SEIA recommended that the commission modify paragraph (2) of subsection (a) to insert the words "continue to" before "administer a voluntary," to clarify that ERCOT is not to initiate a new program following the adoption of this rule.

The REP Coalition suggested clarifying in paragraph (2) that ERCOT does have different administrative duties for both voluntary and mandatory aspects, but two separate programs are not required. Further, the REP Coalition recommended that subsection (a), and the rule in its entirety, refer to both programs as the "trading program" instead of separating them into respective "trading" and "accreditation" programs.

Commission Response

The commission agrees with SEIA and the REP Coalition that PURA §39.9113 only contemplates a single REC program for ERCOT to administer and modifies §25.173(a) accordingly.

Adopted §25.173(b) – Application

Adopted §25.173(b) specifies that this section applies to power generation companies and retail entities.

The REP Coalition stated that, given the HB 1500, Section 53 directive to adopt rules to implement RPS as it existed immediately before the repeal of PURA §39.904, the commission should add an

"Application" provision to specify that the rule applies to power generation companies and retail entities.

Commission Response

The commission agrees with the REP Coalition and adds an application provision as adopted subsection (b). Subsequent subsections are renumbered accordingly.

Proposed §25.173(b) – Definitions

ERCOT and TSPA both noted an "error in [paragraph] (18), which cross-references subsection (h) instead of subsection (e)." TSPA also noted that it is "appropriate to continue referencing PURA §39.904 in the proposed [Renewable Portfolio Standard] definition" because HB 1500 directed the commission to apply the section "as it existed immediately before the effective date of this Act."

OPUC requested the deletion or modification of multiple definitions. First, OPUC requested that the definitions for opt-out notice and REC offset, in paragraphs (9) and (12) respectively, be deleted because they are "irrelevant and unnecessary" under PURA §39.9113. Second, OPUC requested that the commission "clarify whether REC accounts ([as defined in paragraph (14)]) and solar REC accounts are distinguished, and how different account holders will be identified." Third, OPUC requested the deletion of references to subsection (h) and PURA §39.904 from the Renewable Portfolio Standard (RPS) definition in paragraph (18), as it is "unnecessary" following the repeal of PURA §39.904.

Commission Response

The commission agrees with ERCOT and TSPA and amends the proposed rule accordingly. The commission disagrees with OPUC's recommendations to alter or delete the cited provisions. Section 53 of HB 1500 effectively requires the commission to continue the REC trading program and RPS obligation until September 1, 2025.

To address multiple commenters' concerns regarding paragraph (18) and the definition of "renewable portfolio standard," the commission modifies the proposed rule by deleting paragraph (18) and replacing it with a "solar renewable portfolio standard" definition in paragraph (23), as discussed in further detail below.

Proposed subsection (b)(1); "Compliance period"

Proposed subsection (b)(1) defines "compliance period" to be January 1, 2024 to December 31, 2024 (2024 compliance period), and January 1, 2025 to August 31, 2025 (2025 compliance period).

The REP Coalition recommended simplifying the compliance period definition in paragraph (1) by defining a compliance period as a calendar year and provided recommended language.

Commission Response

The commission agrees with the REP Coalition's recommendation and modifies the proposed rule accordingly.

Proposed subsection (b)(2); "Compliance premium"

Proposed subsection (b)(2) defines "compliance premium" as "[a] premium awarded…in conjunction with a solar renewable energy credit that is generated by a renewable energy source that meets the criteria of subsection (d) of this section."

The REP Coalition recommended revising the compliance premium definition in paragraph (2) by clarifying that "a compliance premium is awarded for a MWh of renewable energy that meets the eligibility for the mandatory solar RPS program in subsection (e)(2)(A)."

Commission Response

The commission agrees with the REP Coalition and modifies the proposed rule accordingly. This modification clarifies and aligns with the applicability timelines established by Section 53 of HB 1500 for the solar RPS.

Proposed subsection (b)(9); "Opt-out notice"

Proposed subsection (b)(9) defines "opt-out notice" as a "written notice submitted…by a transmission-level voltage customer under PURA §39.904(m-1)."

The REP Coalition recommended removing the reference to PURA §39.904 in paragraph (9). Additionally, the REP Coalition recommended removing all references to PURA §39.904 in the proposed rule to be consistent with the intent of HB 1500 in repealing the statutory provision.

Commission Response

The commission agrees with the REP Coalition that references to PURA §39.904 should be removed and modifies the proposed rule accordingly.

Proposed subsection (b)(10); "Program administrator"

The proposed rule's definition of "program administrator" included references to the statutory responsibility of the independent organization for the ERCOT region to maintain the accreditation and banking program and also the commission's authority to appoint a "program administrator" for the retired RPS program under repealed PURA §39.904. The proposed language further designated the independent organization certified under PURA §39.151 for the ERCOT region as the program administrator under both statutes.

The REP Coalition recommended that the "program administrator" simplify the definition of program administrator to clarify that ERCOT will be responsible for both the RPS obligation that is applicable to retail entities and the REC trading program.

Commission Response

The commission agrees with the REP Coalition that the program administrator definition should clarify that the program administrator is responsible for both the solar RPS obligation and the REC trading program and modifies the proposed rule accordingly.

Proposed subsection (b)(18); "Renewable portfolio standard (RPS)"

Proposed subsection (b)(18) defines the "renewable portfolio standard" as "the amount of capacity required to meet the requirements of PURA §39.904 under subsection (h) of this section."

The REP Coalition recommended replacing the "RPS" definition in paragraph (18) with a "solar renewable portfolio standard (solar RPS)" definition that equates the RPS requirement to "the amount of solar capacity required in subsection (e)(2) to implement Section 53 of House Bill 1500."

Commission Response

The commission agrees with the REP Coalition and replaces the definition of RPS with a definition of solar renewable portfolio standard. This modification will clearly delineate between the retired and new portfolio standards and also help clarify the distinction between the mandatory and voluntary aspects of this rule. The commission makes other conforming changes throughout the rule.

Proposed §25.173(c) – Certification of Renewable Energy Facilities

Proposed §25.173(c) establishes the requirements and process for the commission to certify all renewable facilities that will produce REC offsets, RECs, solar RECs, or compliance premiums for sale in the trading and accreditation programs.

Clarification on REC program requirements for re-registration of generators

Multiple commenters requested clarifications to the rule as proposed on whether previously registered generators will have to re-register to participate in REC trading.

TSPA stated that it isn't clear whether generators will be required to re-register for the program in the rule as proposed and that requiring current participants to re-register would be "inefficient and disruptive." TSPA proposed language clarifying that re-registration is not required for generators already participating in the program.

SEIA stated there "[was] no indication that the legislature intended that the [c]ommission should require solar facilities that were already registered and certified…to re-register and be re-certified to continue in the generation, trading, and accreditation of solar RECs." SEIA provided a new suggested paragraph to subsection (c) to make this clarification.

TEBA recommended that the commission modify subsection (c) to be clear that "generators with existing Renewable Energy Credit Certification [will] be grandfathered into the new rule" and do not have to reregister for participation in the voluntary REC market. TEBA provided a new suggested paragraph to make this clarification.

The REP Coalition provided language that clarifies in subsection (c) that generators already certified by the commission to participate in the REC trading program are not required to obtain a new certification as a result of the repeal and replacement of this section.

Commission Response

The commission agrees with comments from TSPA, SEIA, TEBA, and the REP Coalition. Renewable energy facilities will not have to re-register or re-certify for the REC trading program. The commission amends the rule accordingly.

Recommended revision to allow energy storage devices to register for REC program

TEBA recommended that the commission add another paragraph to subsection (c) that will permit ERCOT to expand registration for the REC program to other resource types, such as batteries, ADERs, and other types of energy storage devices, but did not recommend specific language. Additionally, TEBA recommended the creation of "energy storage certificates" and additional attributes for use by energy storage devices.

Commission Response

The commission declines to expand the registration requirements to permit additional resource types to register for the program because it is beyond the scope of this rulemaking. HB 1500 directed ERCOT to maintain an accreditation and banking system for renewable energy technologies. Whether additional technologies should be permitted to participate, or whether ERCOT should create additional types of credits or attributes for these technologies, would require further investigation.

Proposed §25.173(d) – Renewable energy credits, solar renewable energy credits, and compliance premiums

Proposed §25.173(d) establishes the eligibility criteria for renewable facilities to produce RECs,

solar RECs, and compliance premiums.

Statutory authorization for a REC "trading" program

OPUC requested that any language regarding a REC "trading" program be removed from the proposed rule. OPUC argued that the commission does not have statutory authority to continue a trading program for RECs following the repeal of PURA §39.904 and passage of HB 1500 as the legislature "intentionally and purposefully" omitted the word "trading" from the new authorizing statute, PURA §39.9113. Further, OPUC argued that the trading program for RECs becomes "unnecessary" without the need to meet an RPS obligation through the purchase and retirement of RECs.

Commission Response

The commission disagrees with OPUC. A trading program is necessary to comply with HB 1500, Section 53, which requires the commission to, by rule, "adopt a program to apply that section as it existed immediately before the effective date of this Act, and to apply other statutes that referred to that section immediately before the effective date of this Act, as if that section had not been repealed by this Act and the other statutes that referred to that section had not been repealed or amended by this Act." A trading program existed as a part of the repealed PURA §39.904, so it is implicitly authorized by HB 1500. Further, under §311.021(4) of the Texas Code Construction Act, statutes must be construed such that the result is "feasible of execution." If ERCOT does not maintain a trading program, it would be impossible for a retail entity that does not also own solar generation facilities to meet its

obligations under the new solar renewable portfolio standard, making the statute infeasible to execute.

Additionally, the trading program must apply to all renewable energy credits and persist after the expiration of the solar-only program. Under §311.021(3) of the Texas Code Construction Act, statutes must be construed such that "a just and reasonable result is intended." HB 1500 directs ERCOT to maintain a REC accreditation and banking system to award and track voluntary energy credits. In practical terms, the maintenance of the accreditation and banking system is required for activities such as the validation of green energy retail electric products. Without a trading mechanism, only the entity that generated the renewable energy credit would be capable of retiring these credits and validating green energy products. This would result in the inability of any entity that does not own generation to offer green energy products, which is neither a just nor reasonable outcome in a competitive retail market.

Subsection (d)(1)(A) – Facilities eligible for producing RECs for the accreditation program

Clauses (ii), (iii), (v), and (vi) of subparagraph (A) pertain to renewable technologies that use fossil fuels in the production of electricity. These clauses limit the eligibility of a dual-source facility and specify that a dual-source facility may only generate RECs based on the production of electricity from a renewable source. Clause (vi) of subparagraph (A) addresses statewide renewable capacity MW goals. Clause (vii) of subparagraph (A) limits RECs that can be generated from repowered resources up to 150 MWs.

OPUC requested the deletion of clauses (ii), (iii), (v), and (vi) from subparagraph (A) because they are "not relevant to the new [REC] program." OPUC argued that these clauses conflict with HB 1500's solar-only intent by permitting gas-powered technologies to register for the REC accreditation program. Further, OPUC argued that because clause (vi) addresses statewide renewable capacity megawatt goals, which are no longer applicable after the repeal of PURA §39.904, it should be deleted.

The REP Coalition recommended the deletion of the statewide renewable capacity megawatt goals provision from clause (vi) and the entirety of clause (vii) from subparagraph (A) because they are inapplicable to the REC accreditation program.

Commission Response

The commission declines to remove clauses (ii), (iii), and (v) under subparagraph (A) from the proposed rule. Subsection (d)(1) outlines the eligibility of all renewable facilities participating in the voluntary element of the REC program to produce RECs, and clauses (ii), (iii), and (v) are needed to apply the section as it was before its repeal. A renewable facility that uses both fossil fuels and renewable resources may still generate RECs in accordance with these requirements.

The commission agrees with OPUC and the REP Coalition that the renewable capacity language of clause (vi) from subparagraph (A) is not relevant to the voluntary element of the REC program. The commission also agrees with the REP Coalition's recommendation to

delete clause (vii) from subparagraph (A) because this clause is no longer relevant to the REC program. The rule is modified accordingly.

Subsection (d)(3) – Compliance premiums

Subsection (d)(3) describes how compliance premiums are created and awarded. Paragraph (A) of this subsection states that one compliance premium will be awarded in conjunction with each solar REC generated between January 1, 2024 and December 31, 2024. The proposed rule does not allow for the creation or award of any compliance premiums after December 31, 2024, nor does it allow for the use of compliance premiums after the 2024 compliance period.

3Degrees requested that compliance premiums continue to be earned through the remainder of the RPS to September 1, 2025. 3Degrees reasoned that maintaining compliance premiums would reduce the additional compliance burdens on REPs and help to sustain the level of demand for solar RECs until the RPS is phased out.

OPUC stated that subsection (d)(3) is "wholly inapplicable to the new program under PURA §39.9113."

The REP Coalition stated that compliance premiums awarded before January 1, 2024 should be eligible for use through the settlement period for the 2024 compliance period, and that compliance premiums should be awarded for each solar REC generated through December 31, 2024.

Commission Response

The commission disagrees with 3Degrees that compliance premiums should be earned after December 31, 2024, and declines to modify the proposed rule. Compliance premiums were originally intended to incentivize non-wind renewable generation to meet the non-wind target in repealed PURA §39.904. Following the repeal of PURA §39.904, it is no longer necessary to provide the additional incentive of compliance premiums for non-wind renewable generation. Further, compliance premiums are intended to be used by entities for compliance with the solar RPS. However, when an entity uses compliance premiums to meet its solar RPS obligation, the total solar RPS obligation for the next compliance year increases proportionally. Therefore, it is not appropriate for compliance premiums to be created or used for the 2025 compliance year's RPS obligation because no subsequent compliance year exists to shift the obligation forward to. This would serve to undermine the eventual retirement of sufficient solar RECs to achieve the mandatory solar RPS goal.

The commission agrees with OPUC that compliance premiums should not be created or awarded following the end of the mandatory solar RPS. However, Section 53 of HB 1500 directed the commission to "phase out the program." As detailed above, limiting the creation and award of compliance premiums to December 31, 2024, allows the solar RPS to be phased out as well as permits compliance premiums to expire naturally at the end of their three-year compliance life.

The commission agrees with the REP Coalition that compliance premiums awarded for solar RECs generated before December 31, 2023, and through December 31, 2024, should be

available for use in the solar RPS through the settlement period for the 2024 compliance period and modifies the proposed rule accordingly.

Subsection (d)(4) – Production, transfer, and expiration of RECs and solar RECs

Subsection (d)(4) contains the regulations and process for the production, transfer and expiration of RECs and solar RECs

Vistra opposed voluntary RECs having a compliance life of three years and provided redlines removing "RECs or" from subparagraphs (E), (G), and (H). Vistra argued that the initial rationale for RECs having a defined compliance life does not apply to non-solar or voluntary RECs and that instituting compliance lives onto RECs will "impair the property rights of REC owners."

OPUC restated that the use of "trading program" language is neither authorized by statute nor necessary in a voluntary program setting.

OPUC stated that it is unclear if solar RECs and RECs are interchangeable, how RECs will be retired when there is no longer an RPS requirement, or if RECs and solar RECs will have the same value.

Commission Response

The commission declines to modify the proposed rule to remove REC compliance lives as requested by Vistra. Section 53 of HB 1500 directs the commission to "adopt a program to apply [PURA §39.904] as it existed immediately before the effective date of [HB 1500], as if

that section had not been repealed." Accordingly, the commission maintains the established practice of assigning RECs a three-year compliance life.

The commission also declines to remove the compliance lives of non-solar RECs or of all RECs after the expiration of the solar RPS mandate as this time. Currently, retail electric providers (REPs) are able to certify their energy products as 'green' by voluntarily retiring RECs with ERCOT. These voluntary retirements and 'green' product certifications benefit both REPs and consumers by allowing REPs to provide transparent renewable energy options to consumers and allowing consumers to make informed choices when choosing energy plans. Based on the current program structure, consumers have an expectation that the green energy product they are purchasing is supporting renewable energy that was generated within the last three years.

Without compliance lives, REPs would still be able to voluntarily retire RECs for product certifications, but there would not be any certainty for consumers surrounding when that REC was generated. The commission declines to remove the compliance lives of RECs without a more focused investigation of the effects such a change would have on the market and consumers.

Further, the commission disagrees with Vistra that retaining compliance lives on RECs constitutes a property rights violation. The compliance life of a REC exists when a REC is created, and it is known by all parties during any transactions involving the REC that the REC will eventually expire. On the other hand, without compliance lives, all RECs could

exist on the voluntary market in perpetuity. This would eventually over-inflate the voluntary market, decrease the market value of each REC and disincentivize participation in the market for generators or retail entities looking to sell these RECs.

The commission disagrees with OPUC that a REC "trading" program is not authorized by statute. Section 53 of HB 1500 directs the commission to "adopt a program to apply [PURA §39.904] as it existed immediately before the effective date of [HB 1500], as if that section had not been repealed." This statutory directive implicitly directs the commission to implement a REC trading program in the amended §25.173.

Further, the commission disagrees with OPUC's argument that a REC trading program is unnecessary in a voluntary capacity. The REC trading program is the vehicle for renewable energy facilities and retail entities to purchase and sell RECs, including solar RECs. This trading program is necessary not only for the mandatory solar RPS, but for retail entities to trade and retire RECs voluntarily to meet green product requirements under §25.476.

Proposed §25.173(e) – Solar Renewable Energy Credits Trading Program

Proposed §25.173(e) establishes the requirements and process for administering and participating in the solar renewable energy credits program.

TSPA stated that "the proposed solar capacity requirements of 1,310 MW and 655 MW of new resources for the 2024 and 2025 compliance periods, respectively, are reasonable." Additionally,

TSPA expressed support for the creation of the solar REC trading program and the solar RPS calculation.

OPUC argued that PURA §39.9113 "does not authorize a trading program." Further, OPUC commented that "[commission] staff should consider a rulemaking option that doesn't create a new market based on authority that no longer exists."

The REP Coalition recommended revisions to paragraphs (1) and (2) of this subsection to clarify that the solar-only RPS obligation for retail entities will end on September 1, 2025, and further revisions to paragraph (2) to delete language that is "obsolete." The REP Coalition also provided language that revises subparagraph (A)(i) and (A)(ii) of paragraph (2) "consistent with the definition of 'New facilities' in subsection (c)."

Commission Response

The commission disagrees with OPUC's argument that a trading program is not authorized. The trading program is the mechanism by which ERCOT maintains both the mandatory and voluntary elements of this section. A new market is not being created; the rule is being modified to encapsulate the mandatory and voluntary requirements from HB 1500 while using ERCOT's existing framework.

The commission agrees with the REP Coalition's recommendations to remove language from paragraph (2) and to change subparagraphs (A)(i) and (A)(ii) to use the definition of "new facilities" and modifies the proposed rule accordingly.

Subsection (e)(3); Calculation of capacity conversion factor (CCF)

The capacity conversion factor is used by the program administrator to allocate the solar RPS obligation to retail entities.

3Degrees requested that the commission revise the calculation of the capacity conversion factor (CCF) through the remainder of the RPS to September 1, 2025, to reflect historic generator performance data for solar facilities only. 3Degrees stated that if the CCF included all renewable resources, then the CCF would be overinflated and result in an inaccurate RPS obligation. 3Degrees provided language on how to specify this change in paragraph (3) of this subsection. Additionally, 3Degrees requested that the PUC direct ERCOT to update Section 14 of the nodal protocols, *State of Texas Renewable Energy Credit Trading Program*, to apply a solar-based CCF to the RPS requirement calculation.

The REP Coalition suggested revising the timing of the CCF calculation from the third quarter of each odd numbered year to the first quarter of the 2024 compliance year. The REP Coalition also recommended adding language to clarify this CCF will be used through the end of solar RPS and provided language consistent with its recommendations.

Commission Response

The commission agrees with 3Degrees that CCF language should be updated to specify its applicability only to solar resources and modifies the rule language accordingly.

The commission agrees with the REP Coalition's suggestion to adjust the timing of the CCF calculation and modifies the rule accordingly.

Subsection (e)(5); Nomination and award of REC offsets

Subsection (e)(5) establishes how an entity can use REC offsets to meet its obligations under the mandatory RPS.

OPUC argued that "offsets in [paragraph] (5) are unnecessary in the new, voluntary REC program."

Commission Response

The commission agrees with OPUC that offsets are not relevant to the voluntary portion of the REC trading program. However, the commission declines to modify the proposed rule due to statutory requirements and relevance to the mandatory solar RPS.

Proposed §25.173(f) – Renewable Energy Credits Accreditation Program

Proposed §25.173(f) establishes the requirements and process for administering and participating in the renewable energy credits accreditation program.

TSPA and 3Degrees supported the REC accreditation program as proposed. Further, 3Degrees commented on the importance of Texas RECs in national voluntary REC markets.

SEIA suggested, for consistency with other provisions of this rule, that the commission replace "ERCOT" with "program administrator."

The REP Coalition proposed revisions to subsection (f) to clarify that the program administrator will continue to maintain the records, accounts, RECs, and CPs from the REC trading program "as it existed prior to August 31, 2023, and December 31, 2023," and as under repealed PURA §39.904.

Commission Response

The commission agrees with SEIA and modifies the rule to reference "program administrator" instead of "ERCOT" to maintain consistency with the rest of this section.

The commission agrees with the REP Coalition that ERCOT must continue to maintain the records of the trading program as it previously existed, and the rule has been modified accordingly.

Subsection (f)(2)

Under subsection (f)(2), "ERCOT may assign additional attributes to RECs, such as more precise REC-generation timestamps, to allow buyers to distinguish between RECs."

TEBA and SEIA commented in support of paragraph (2). 3Degrees recommended modifying the rule to explicitly allow ERCOT to implement time stamps on RECs to allow for more granular REC tracking capabilities.

Commission Response

The commission declines to modify the proposed rule as requested by 3Degrees, because REC characteristics and attributes should be determined by the program administrator after considering the value provided by and potential consequences of adding each new attribute.

Proposed §25.173(g) – Responsibilities of the Program Administrator

Proposed §25.173(g) establishes the requirements and responsibilities the program administrator must follow in administering both the REC trading and accreditation programs.

OPUC argued that the responsibilities of the program administrator should be limited to managing an accreditation and banking system to award and track voluntary RECs "as envisioned in PURA §39.9113."

The REP Coalition did not comment on this section but provided various non-substantive redline revisions to subsection (g) consistent with its comments on other provisions of the rule.

Commission Response

The commission declines to limit the program administrator's responsibilities to managing voluntary RECs as requested by OPUC, because the program administrator is also responsible for managing the mandatory solar RPS requirements.

The commission agrees with the REP Coalition's non-substantive revisions and modifies the rule accordingly.

Subsection (g)(5)

Subsection (g)(5) requires the program administrator to "[r]etire RECs, solar RECs, and compliance premiums at the end of each REC, solar REC, or compliance premiums' compliance life".

Vistra proposed removing the requirement that the program administrator retire RECs, consistent with its prior recommendation that the commission eliminate REC expiration dates.

Commission Response

While the creation and retirement of RECs is voluntary under the adopted rule, the commission declines to modify the rule to remove compliance lives from RECs as requested by Vistra for reasons previously discussed.

Proposed §25.173(h) – Penalties and Enforcement

Proposed §25.173(h) allows the program administrator to determine whether a retail entity has retired sufficient solar RECs or compliance premiums to satisfy its RPS allocation. If the program administrator determines that a retail entity has not satisfied its RPS obligation, the retail entity may be subject to an administrative penalty, under PURA §15.023, of $50 per MWh that is deficient.

OPUC argued that subsection (h) is "not applicable to the REC program under PURA §39.9113" and should be removed entirely. Further, OPUC argued that the REC program is meant to function as "a voluntary program…focused on accrediting generation and banking credits to enable voluntary contractual obligations," and that it is unnecessary to penalize the failure to retire RECs or compliance premiums.

The REP Coalition suggested moving subsection (h) to immediately after the settlement process provision in subsection (i). The REP Coalition argued that the settlement process must be completed before the program administrator can determine whether a retail entity is out of compliance with its RPS obligation and is subject to an administrative penalty.

Commission Response

The commission declines to remove the enforcement provisions of this rule as recommended by OPUC, because they are pertinent to the mandatory solar RPS program. The commission may remove these provisions in a future rulemaking proceeding following the expiration of the solar RPS program requirements.

The commission agrees with the REP Coalition's recommendation to relocate this provision within the rule for clarity and modifies the rule accordingly.

Proposed §25.173(i) – Settlement Process

Proposed §25.173(i) establishes the settlement process for a retail entity to comply with its RPS obligation for the previous compliance period.

OPUC argued that it may not be necessary to define a settlement process because "there is no longer a RPS requirement." Further, OPUC suggested allowing the program administrator to dictate the settlement period or "leave [it] to market forces to determine in voluntary contractual transactions."

Commission Response

The commission declines to remove the settlement process from the rule as requested by OPUC, because it is necessary for the mandatory solar RPS requirements.

The REP Coalition suggested removing the following language from this subsection: "The compliance period is the settlement period in which the following must occur." The REP Coalition stated that the quoted language is inconsistent with the description of settlement period and the concept of a compliance period. The REP Coalition offered replacement language to note that the settlement period is the 90 days following the compliance period.

Commission Response

The commission agrees with the REP Coalition's suggested language and modifies the rule accordingly.

Proposed §25.173(j) – Microgenerators and REC Aggregators

Proposed §25.173(j) allows for a REC aggregator to manage the participation of multiple microgenerators in the REC trading and accreditation programs and establishes how ERCOT

assigns RECs within this arrangement.

OPUC stated that it is unclear if subsection (j) is necessary for the REC program under PURA §39.9113. OPUC suggested the commission remove this language or update it for microgenerators and REC aggregators and address other technologies like demand response.

The REP Coalition suggested edits to subsection (j), provided in redlines, consistent with its general comments.

TEBA suggested that an additional paragraph be added to subsection (j) to clarify that an existing REC aggregator does not need to re-register.

Commission Response

The commission disagrees with OPUC and declines to remove subsection (j) from the rule. This language must remain in the rule to maintain RPS as it was prior to the repeal of PURA §39.904 by HB 1500. Additionally, it is beyond the scope of this rulemaking to consider demand response at this time.

The commission agrees with TEBA that microgenerators and REC aggregators do not have to re-register, and modifies the rule accordingly.

Adopted §25.173(l) – Effective date

3Degrees and the REP Coalition requested that the commission provide additional clarification on the RPS requirements for the compliance period gap from August 24, 2023, to January 1, 2024, and on the settlement of the 2023 compliance year. The REP Coalition requested a new subsection addressing how the 2023 compliance year should be addressed by ERCOT.

Commission Response

The commission directed ERCOT to discontinue the current program at the August 24, 2023, open meeting. The solar-only program is a new program with a solar-only RPS obligation. There are no compliance requirements from September 1, 2023, through January 1, 2024; however, any solar RECs generated during this period may be used to fulfill retail entity solar RPS obligations for the 2024 and 2025 compliance periods. The commission adds new subsection (l) to memorialize these previously issued directives.

The repeal and new rule are adopted under the following provisions of PURA: §14.001, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; §39.151, which gives the commission complete authority to oversee the independent organization's operations; and §39.9113, which requires the independent organization certified under §39.151 for the ERCOT power region to maintain an accreditation and banking system to award and track voluntary renewable energy credits generated by eligible facilities.

The repeal and new rule are also adopted under the provisions of HB 1500 §53 from the 88th Texas Legislature (R. S.) which directs the commission to adopt a program, effective until September 1,

2025, to apply repealed PURA §39.904 as it existed immediately before the section's effective repeal date only to renewable energy technologies that exclusively rely on an energy source that is naturally regenerated over a short time and are derived directly from the sun.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 39.151, and 39.9113; and HB 1500 from the 88th Texas Legislature (R. S.).

§25.173. Goal for Renewable Energy.
[REPEALED]

§25.173. Renewable Energy Credit Program.

(a) **Purpose.** The purposes of this section are to:

(1) Establish a solar renewable portfolio standard pursuant to Section 53 of House Bill 1500, enacted by the 88th Texas Legislature, Regular Session, to be phased out by September 1, 2025; and

(2) Direct the independent organization certified under PURA §39.151 for the ERCOT region to continue to administer a renewable energy credit (REC) trading program on a voluntary basis.

(b) **Application**. This section applies to power generation companies as defined in §25.5 of this title (relating to Definitions), and retail entities as defined in subsection (c) of this section.

(c) **Definitions.**

(1) **Compliance period --** A calendar year beginning January 1 and ending December 31 in which renewable energy credits are generated.

(2) **Compliance premium --** A premium awarded by the program administrator in conjunction with a solar renewable energy credit that is generated by a renewable energy source that meets the criteria of subsection (e)(2)(A) of this section. For the purpose of the solar renewable energy portfolio standard requirements, one compliance premium is equal to one solar renewable energy credit.

(3) **Designated representative --** A 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 credit trading program.

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

(5) **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 less than one megawatt (1 MW) operating on the customer's side of the utility meter.

(7) **New facilities –** Solar 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) **Opt-out notice --** Written notice submitted to the commission by a transmission-level voltage customer.

(10) **Program administrator --** The entity responsible for carrying out the administrative responsibilities related to the REC trading program and the solar

renewable portfolio standard as set forth in this section. In accordance with PURA §39.9113, the program administrator is the independent organization certified under PURA §39.151 for the ERCOT region.

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

(12) **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) **Renewable energy credit (REC) --** 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)(1)(A) of this section.

(14) **Renewable energy credit account (REC account) --** An account maintained by the program administrator for the purpose of tracking the production, sale, transfer, purchase, and retirement of RECs, solar RECs, or compliance premiums by a program participant.

(15) **Renewable energy credit 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 (g) of this section.

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

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

(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 under PURA Chapter 39.

(20) **Settlement period --** The period following a compliance period in which the settlement process for that compliance period takes place as set forth in subsection (i) of this subsection.

(21) **Small producer --** A renewable resource that is less than ten megawatts (10 MW) in size.

(22) **Solar renewable energy credit (solar REC)** -- A REC representing one MWh of renewable energy that is physically metered and verified in Texas and meets the requirements set forth in subsection (e)()(2) of this section.

(23) **Solar renewable portfolio standard (solar RPS)** - The amount of solar capacity required in subsection (e)(2) of this section to implement Section 53 of House Bill 1500 enacted by the 88th Texas Legislature, Regular Session.

(24) **Transmission-level voltage customer --** A customer that receives electric service at 60 kilovolts (kV) or higher or that receives electric service directly through a utility-owned substation that is connected to the transmission network at 60 kV or higher.

(d) **Certification of renewable energy facilities.** The commission will certify all renewable facilities that will produce either REC offsets, RECs, solar RECs, or compliance premiums for sale in the trading program. To be awarded REC offsets, RECs, solar RECs, or compliance premiums, a power generator must complete the certification process described in this subsection. The program administrator must not award REC offsets, RECs, solar 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 must file an application with the commission on a form approved by the commission for each renewable energy generation facility. At a minimum, the application must include the location, owner, technology, and rated capacity of the facility, and must demonstrate that the facility meets the resource eligibility criteria in subsection (e) of this section. Any subsequent changes to the information in the application must 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 will inform both the program administrator and the designated representative whether the renewable facility has met the certification requirements. At that time, the commission will either certify the

renewable facility as eligible to receive REC offsets, RECs, solar RECs, 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 will 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 will decertify any facility if it is not in compliance with the provisions of this subsection.

(5) A decertified renewable generator may not be awarded RECs, solar RECs, or compliance premiums. However, any RECs, solar RECs, REC offsets, or compliance premiums awarded by the program administrator and transferred to a retail entity prior to the decertification remain valid.

(6) Participants that were registered and certified to participate in the trading program prior to the effective date of this rule continue to be registered and certified under this subsection and are not required to re-register or be recertified to participate in the trading program.

(e) **Renewable energy credits, solar renewable energy credits, and compliance premiums.**

(1) **Renewable energy credits (RECs).**

(A) **Facilities eligible for producing RECs in the trading program.** For a renewable facility to be eligible to produce RECs for 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.

(i) A renewable energy resource must not be ineligible under subparagraph (B) of this paragraph and must be certified under subsection (d) of this section.

(ii) For a renewable energy technology that requires fossil fuel, the facility's use of fossil fuel must not exceed 25.0% of the total annual fuel input on a British thermal unit (BTU) or equivalent basis.

(iii) For a renewable energy technology that requires the use of fossil fuel that exceeds 2.0% of the total annual fuel input on a BTU or equivalent basis, RECs can only be earned on the renewable portion of the production. A renewable energy resource using a technology described by this clause must comply with the following requirements:

(I) A meter must be installed and periodic tests of the heat content of the fuel must be conducted to measure the amount of fossil fuel input on a British thermal unit (BTU) or equivalent basis that is used at the facility;

(II) The renewable energy resource must calculate the electricity generated by the unit in MWh, based on the BTUs (or equivalent) produced by the fossil fuel and the efficiency of the renewable energy resource, subtract the MWh generated

with fossil fuel input from the total MWh of generation and report the renewable energy generated to the program administrator;

(III) The renewable energy resource must report the generation to the program administrator in the measurements, format, and frequency prescribed by the program administrator, which may include a description of the methodology for calculating the non-renewable energy produced by the resource; and

(IV) The renewable energy resource is subject to audit to verify the accuracy of the data submitted to the program administrator and compliance with this section, to be conducted by the program administrator or an independent third party as requested by the program administrator. If the program administrator requires a third party audit, the audit must be performed at the expense of the renewable energy resource.

(iv) 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 cannot be verified as delivered to Texas customers. A facility is not ineligible if the facility is a

generation-offset, off-grid, or on-site distributed renewable facility and it otherwise meets the requirements of this subparagraph.

(v) 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.

(vi) For industry-standard thermal technologies, the RECs can be earned only on the renewable portion of energy production.

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

(i) 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; or

(ii) An existing facility that is not a small producer as defined in subsection (c) of this section or has not been repowered as permitted under subparagraph (A) of this paragraph.

(2) **Solar renewable energy credits (solar RECs) for solar RPS.**

(A) **Facilities eligible for producing solar RECs and compliance premiums for the solar RPS.** For a renewable facility to be eligible to produce solar

RECs and compliance premiums for the solar RPS, 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 paragraph:

(i) A renewable energy resource must not be ineligible under subparagraph (B) of this paragraph and must register under subsection (d) of this section.

(ii) A facility must only use renewable energy technologies that exclusively rely on an energy source that is naturally regenerated, over a short time and derived directly from the sun.

(iii) The output of the facility must be readily capable of being physically metered and verified in Texas by the program administrator. Energy from a solar renewable facility that is delivered into a transmission system where it is commingled with electricity from non-solar renewable resources before being metered cannot 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 solar renewable facility if it otherwise meets the requirements of this subparagraph.

(iv) For repowered facilities, a facility is eligible to earn solar RECs on all renewable energy produced up to a capacity of 150 MW. A repowered facility with a capacity greater than 150 MW may earn solar RECs for the energy produced in proportion to 150 divided by nameplate capacity.

(B) **Facilities not eligible for producing solar RECs and compliance premiums for use in the solar RPS.** A renewable facility is not eligible to produce solar RECs and compliance premiums for use in the solar RPS if it is:

(i) 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; or

(ii) An existing facility that is not a small producer as defined in subsection (c) of this section or has not been repowered as permitted under this subsection.

(3) **Compliance premiums.** The program administrator will award compliance premiums to solar REC generators certified by the commission under subsection (d) of this section.

(A) For eligible solar technologies as set forth in paragraph (2)(A)(ii) of this subsection, one compliance premium will be created and awarded in conjunction with each solar REC generated January 1, 2008 through December 31, 2024. Compliance premiums will not be created or awarded after December 31, 2024.

(B) Except as provided in this paragraph, the award, retirement, trade, and registration of compliance premiums must follow the requirements of paragraph (4) of this subsection and subsections (f) and (i) of this section.

(C) A compliance premium may be used by any retail entity toward its solar RPS requirement under subsection (f)(2) of this section.

(D) A compliance premium may not be used by any retail entity toward the RPS requirement after the settlement period for 2024 compliance period.

(E) The program administrator must increase the statewide RPS requirement calculated under subsection (f)(2)(A) of this section by the number of compliance premiums retired during the previous compliance period.

(4) **Production, transfer, and expiration of RECs and solar RECs.** The production, transfer, and expiration of RECs and solar RECs must follow the requirements of this paragraph. RECs and solar RECs issued through December 31, 2023, continue to exist and retire consistent with their issuance.

(A) The owner of a renewable resource will earn one REC or solar REC when a MWh is metered at that renewable resource. The program administrator will 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 must be rounded to the nearest whole MWh, with fractions of 0.5 MWh or greater rounded up.

(B) The transfer of RECs or solar RECs between parties is effective only when the transfer is recorded by the program administrator.

(C) The program administrator will require that RECs or solar RECs be adequately identified prior to recording a transfer and must issue an acknowledgement of the transaction to parties upon provision of adequate information. At a minimum, the following information must be provided:

(i) identification of the parties;

(ii) REC or solar REC serial number, REC or solar REC issue date, and the renewable resource that produced the REC or solar REC;

(iii) the number of RECs or solar RECs to be transferred; and

(iv) the transaction date.

(D) A retail entity must surrender RECs or solar RECs to the program administrator for retirement from the market for a compliance period. The program administrator will document all REC and solar REC retirements annually.

(E) On or after each April 1, the program administrator will retire RECs and solar RECs that have not been retired by retail entities and have reached the end of their compliance life.

(F) The program administrator may establish a procedure to ensure that the award, transfer, and retirement of RECs and solar RECs are accurately recorded.

(G) The issue date of RECs or solar RECs generated by renewable energy resources will coincide with the compliance period in which the credits are created. All RECs and solar RECs will have a compliance life of three compliance periods, after which the program administrator will retire them from the trading program.

(H) Each REC or solar 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. For purposes of this subparagraph, calendar year 2023 counts as a single compliance period.

(f) **Solar renewable portfolio standard (solar RPS).**

(1) Solar RECs may be generated, transferred, and retired by renewable energy power generators certified under subsection (d) of this section, retail entities, and other market participants as set forth in subsection (e)(4) of this section. Solar RECs generated by renewable energy resources in the calendar year 2025 may be used by any retail entity toward the solar RPS requirement for the compliance period beginning January 1, 2025, or on a voluntary basis in the subsequent years.

(A) The program administrator will allocate a solar RPS requirement among all retail entities as a percentage of the retail sales of each retail entity as set forth in paragraph (2) of this subsection. Each retail entity is responsible for retiring sufficient solar RECs as set forth in paragraph (2) of this subsection and subsection (e)(4) of this section for the 2024 and 2025 compliance periods. The requirement to retire solar 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.

(B) Solar RECs will be credited on an energy basis as set forth in subsection (e)(4) of this section.

(C) A municipally-owned utility or distribution cooperative possessing renewable resources that meet the requirements of subsection (e)(2)(A) of

this section may sell solar RECs generated by such a resource to retail entities as set forth in subsection (e)(4) of this section.

(D) Except where specifically stated, the provisions of this section apply uniformly to all participants in the trading program.

(E) The solar RPS end on September 1, 2025.

(2) **Allocation of solar RPS requirement to retail entities.** The program administrator must allocate solar RPS requirements among retail entities. The solar RPS terminates September 1, 2025, but is subject to the settlement period following that termination date. The program administrator must use the following methodology to determine the total annual solar RPS requirement for a given year and the final solar RPS allocation for individual retail entities:

(A) The total statewide solar RPS requirement for each applicable compliance period must be calculated in terms of MWh and must be equal to the applicable capacity requirement set forth in this paragraph multiplied by 8,760 hours for the 2024 compliance period and 5,840 hours for the 2025 compliance period, multiplied by the appropriate capacity conversion factor set forth in paragraph (3) of this subsection. The solar renewable energy capacity requirements for the compliance periods beginning January 1, 2024, and January 1, 2025, respectively are:

(i) 1,310 MW of resources from New Facilities in the 2024 compliance period; and

(ii) 655 MW of resources from New Facilities in the 2025 compliance period.

(B) The final solar RPS allocation for an individual retail entity for a compliance period must be calculated as follows:

(i) Prior to the preliminary solar RPS allocation, each retail entity's total retail energy sales are reduced to exclude the consumption of customers that opt out in accordance with paragraph (4) of this subsection. Each retail entity's preliminary solar 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 solar RPS requirement for that compliance period.

(ii) The adjusted solar RPS allocation for each retail entity that is entitled to an offset is determined by reducing its preliminary solar RPS allocation by the offsets to which it qualifies, as determined under paragraph (5) of this subsection, with the maximum reduction equal to the retail entity's preliminary solar RPS allocation. The total reduction for all retail entities is equal to the total usable offsets for that compliance period.

(iii) Each retail entity's final solar RPS allocation for a compliance period must be increased to recapture the total usable offsets calculated under clause (ii) of this subparagraph. The additional solar RPS allocation must be calculated by dividing the retail entity's preliminary RPS allocation by the total preliminary solar RPS allocation of all retail entities. This fraction must be multiplied

by the total usable offsets for that compliance period and this amount must be added to the retail entity's adjusted solar RPS allocation to produce the retail entity's final solar RPS allocation for the compliance period.

(C) Concurrent with determining final individual solar RPS allocations for the current compliance period in accordance with this subsection, the program administrator must recalculate the final solar RPS allocations for the previous compliance periods, taking into account corrections to retail sales resulting from resettlements. The difference between a retail entity's corrected final solar RPS allocation and its original final solar RPS allocation for the previous compliance periods must be added to or subtracted from the retail entity's final solar RPS allocation for the current compliance period.

(3) **Calculation of capacity conversion factor.** The capacity conversion factor used by the program administrator to allocate solar RECs to retail entities must be calculated during the first quarter of the 2024 compliance period and will be utilized through the end of the solar RPS. The capacity conversion factor must:

(A) Be based on actual generator performance data for the previous two years for solar renewable resources in the trading program during that period for which at least 12 months of performance data are available;

(B) Represent a weighted average of generator performance; and

(C) Use all actual generator performance data that is available for each solar renewable resource, excluding data for testing periods.

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

(A) A customer receiving electrical service at transmission-level voltage who submits an opt-out notice to the commission for the applicable compliance period must have its load excluded from the solar RPS calculation. Any opt-out notice submitted under the RPS as it existed prior to the effective date of this section continues to apply to the solar RPS for the compliance period as specified in this subsection.

(B) An investor-owned utility that is subject to the solar RPS requirement under this section must not collect costs attributable to the solar RPS from an eligible customer who has submitted an opt-out notice. An investor-owned utility whose rates include the cost of solar RECs must file a tariff to implement this paragraph, not later than 30 days after the effective date of this section.

(C) 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. Each opt-out notice must include the name of the individual customer opting out, the customer's ESI IDs, the retail entities serving those ESI IDs, and the term for which the notice is effective, which may not exceed two years. The customer opting out must also provide the information included in the opt-out notice directly to ERCOT and may request that ERCOT protect the customer's ESI ID and consumption as confidential information. A customer may revoke a notice under this paragraph at any time prior to the end of a compliance period by

filing a letter in the designated project number and providing notice to ERCOT.

(5) **Nomination and award of REC offsets.**

(A) 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 solar RPS requirement, as calculated in paragraph (2) of this subsection, only if those offsets were nominated in a filing with the commission by June 1, 2001.

(B) The program administrator must award offsets consistent with the commission's actions to verify designations of REC offsets and with this section.

(C) REC offsets must 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.

(D) REC offsets qualify for use in a compliance period under paragraph (2) of this subsection only to the extent that:

(i) 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 (or successor in interest) nominating the resource under subparagraph (A) of this paragraph or, if the resource has been committed under a contract that expired after September 1, 1999,

and before January 1, 2002, it was owned by or its output was committed under contract to a utility, municipally-owned utility, or cooperative on January 1, 2002; and

(ii) The facility producing the REC offsets is operated and producing energy during the compliance period in a manner consistent with historic practice.

(E) If the production of energy from a facility that is eligible for an award of REC offsets ceases for any reason, or if the power purchase agreement with the facility's owner (or successor in interest) that is referred to in subparagraph (D)(i) of this paragraph has lapsed or is no longer in effect, the retail entity must no longer be awarded REC offsets related to the facility.

(F) REC offsets must not be traded.

(g) **Renewable energy credits trading program.** The program administrator must maintain a voluntary banking and accreditation system to facilitate a voluntary renewable energy credit trading program. The program administrator must maintain the records, accounts, RECs, and compliance premiums from the trading program as it existed prior to August 31, 2023, and prior to the effective date of this section, as applicable.

(1) RECs may be generated, transferred, and retired by renewable energy power generators certified under subsection (d) of this section, retail entities, and other market participants as set forth in this section. For purposes of this subsection, there is no distinction between RECs and solar RECs.

(A) A power generating company may participate in the trading program and may generate RECs and buy or sell RECs as set forth in subsection (e)(4) of this section.

(B) RECs must be credited on an energy basis as set forth in subsection (e)(4) of this section.

(C) A municipally-owned utility or distribution cooperative possessing renewable resources that meet the requirements of subsection (e)(1)(A) and (e)(2)(A) of this section may sell RECs generated by such a resource to retail entities as set forth in subsection (e)(4) of this section.

(2) The program administrator may assign additional attributes to RECs, such as more precise REC generation timestamps, to allow buyers to distinguish between RECs.

(h) **Responsibilities of the program administrator.** At a minimum, the program administrator must perform the following functions:

(1) Create and maintain accounts that track RECs, solar RECs, and compliance premiums for each participant in the trading program;

(2) Award RECs, solar RECs, or compliance premiums to certified renewable energy facilities on a quarterly basis based on verified meter reads;

(3) Award offsets to retail entities on an annual basis based on a nomination submitted by the retail entity under subsection (f)(5) of this section;

(4) Annually record the retirement of RECs, solar RECs, and compliance premiums that each retail entity submits;

(5) Retire RECs, solar RECs, and compliance premiums at the end of each REC, solar REC, or compliance premium's compliance life;

(6) Maintain public information on its website that provides trading program information to interested buyers and sellers of RECs, solar RECs, or compliance premiums;

(7) Create an exchange procedure where persons may purchase and sell RECs, solar RECs, or compliance premiums. The exchange must ensure the anonymity of persons purchasing or selling RECs, solar RECs, or compliance premiums. The program administrator may delegate this function to an independent third party, subject to commission approval;

(8) Make public each month the total energy sales of retail entities 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 to each retail entity in accordance with subsection (f)(2) of this section; and

(11) Submit an annual report to the commission. The program administrator must submit a report to the commission on or before May 15 of each calendar year. The report must contain information pertaining to renewable energy power generators and retail entities. At a minimum, the report must 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 participating in the trading program, each retail entity's solar RPS requirement, the number of offsets used by each retail entity, the number of solar RECs retired by each retail entity, the number of compliance premiums retired by each retail entity, a listing of all retail entities that were in compliance with the solar RPS requirement, a listing of all retail entities that failed to comply with the solar RPS requirement, and the deficiency of each retail entity that failed to retire sufficient solar RECs or compliance premiums to meet its solar RPS requirement.

(i) **Settlement process.** The 90 days following the compliance period is the settlement period during which the following actions will occur:

(1) 30 days after the end of the compliance period, the program administrator will notify each retail entity of its total solar RPS requirement for the previous compliance period as determined under subsection (f)(2) of this section.

(2) 90 days after the end of the compliance period, each retail entity must submit solar RECs or compliance premiums to the program administrator from its account equivalent to its solar RPS requirement for the previous compliance period. If the retail entity does not submit sufficient solar RECs or compliance premiums to satisfy its obligation, the retail entity is subject to the penalty provisions in subsection (j) 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.

(j) **Penalties and enforcement.** If by April 1 of the year following a compliance period in which the solar RPS was in effect the program administrator determines that a retail entity has not retired sufficient solar RECs or compliance premiums to satisfy its allocation of the solar RPS, the retail entity is subject to an administrative penalty, under PURA §15.023, of $50 per MWh that is deficient.

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

(1) The microgenerator's units must be installed and connected to the grid in compliance with commission Substantive Rules, applicable interconnection standards adopted under the commission Substantive Rules, and federal rules.

(2) Notwithstanding subsection (e)(1)(A)(iii) 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 must be collected and transmitted within a reasonable time and is subject to verification by the program administrator. REC aggregators using this method will 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 will be awarded one REC for every 1.25 MWh generated. After installing the unit, the certified technician must provide the microgenerator, the REC aggregator, and the program administrator the information required by the program administrator under this paragraph.

(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 must require that actual data be collected and transmitted within a reasonable time. REC aggregators using this method will be awarded one REC for every MWh generated.

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

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

(5) REC aggregators and microgenerators that were registered and certified to participate in the trading program prior to the effective date of this section continue to be registered and certified under this subsection and are not required to re-register or be recertified to participate in the trading program.

(l) **Effective date**. This section is effective January 1, 2024. The version of this rule that existed prior to January 1, 2024 applies through December 31, 2023, including the settlement of the 2023 compliance period, except that the 2023 compliance period ended on August 31, 2023, and RPS calculation must use 5,832 hours rather than 8,760 hours.

This agency certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that §25.173, relating to Goal for Renewable Energy, is hereby adopted with changes to the text as proposed.

Signed at Austin, Texas the 30th day of NOVEMBER 2023.

PUBLIC UTILITY COMMISSION OF TEXAS

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KATHLEEN JACKSON, INTERIM CHAIR

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WILL MCADAMS, COMMISSIONER

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LORI COBOS, COMMISSIONER

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JIMMY GLOTFELTY, COMMISSIONER