

PROJECT NO. 26848

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

**PROPOSAL FOR PUBLICATION OF AMENDMENT TO §25.173
AS APPROVED AT THE NOVEMBER 7, 2002 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes an amendment to §25.173, relating to Goal for Renewable Energy. The proposed amendment will increase the deficit banking allowance for renewable energy credits (RECs) to 10% of a competitive retailer's annual REC requirement, and extend certain deadlines related to the 2002 compliance period. Project Number 26848 is assigned to this proceeding.

Staff has proposed this amendment in response to concerns raised by various retail electric providers (REPs) about shortages and liquidity problems in the REC market that may affect a REP's ability to meet its 2002 obligations under §25.173. Staff also notes the transmission-related curtailment of wind power in West Texas, a problem that is being addressed in Project Number 25819, *PUC Proceeding to Address Transmission Constraints Affecting West Texas Wind Power Generators*.

Preamble Question Number 1. This amendment would increase the rule's deficit banking allowance from 5.0% to 10% of a competitive retailer's annual REC requirement for the 2002 and 2003 compliance periods. Subsection (m)(2) contains the deficit banking provision. The

commission invites specific comment on whether this change is necessary, how it would be beneficial, and on whether an amount other than 10% would be more appropriate.

Preamble Question Number 2. The amendment would also add a paragraph to subsection (1) that would extend the time REPs have to comply with their 2002 REC requirements. The commission invites comment on whether or not extending the deadlines for the 2002 compliance period is necessary or would be beneficial.

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

David Hurlbut, Senior Economist, Market Oversight Division, has determined that for each year of the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Hurlbut has determined that for each year of the first five years the proposed amendment is in effect the public benefit anticipated as a result of enforcing the section will be to mitigate compliance difficulties caused by transmission-related curtailment of renewable energy resources in West Texas. Allowing competitive retailers to carry over a larger portion of their REC requirement to the following year will provide them with more flexibility in meeting their requirements. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

The commission staff will conduct a public hearing on this rulemaking under 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 Monday, January 6, 2003, at 9:30 a.m. in the Commissioners' Hearing Room.

Comments on the proposed amendment (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Reply comments may be submitted on

or before Thursday, January 2, 2003. Comments should be organized in a manner consistent with the organization of the proposed amendment. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed amendment. The commission will consider the costs and benefits in deciding whether to adopt the amendment. All comments should refer to Project Number 26848.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2002) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and, specifically PURA §15.023 which authorizes the commission to impose an administrative penalty against a person regulated under PURA who violates PURA or a rule or order adopted under PURA; PURA §36.204 which authorizes the commission, when establishing rates for an electric utility, to provide additional incentives for renewable resources; PURA §39.101 which provides that customers are entitled to have access to providers of energy generated by renewable energy resources; and, PURA §39.904 which requires that the commission to promote the development of renewable energy technologies.

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

§25.173. Goal for Renewable Energy.

(a) - (k) (No change.)

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

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

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

(3) For the 2002 compliance period, the deadline set forth in paragraph (2) of this subsection and all related deadlines in this section shall be extended three months.

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

- (1) The first compliance period shall begin on January 1, 2002 and there will be 18 consecutive compliance periods. Early banking of RECs is permissible and may commence no earlier than July 1, 2001. The program's first settlement period shall take place during the first quarter of 2003.
- (2) A competitive retailer may incur a deficit allowance equal to 10% ~~5.0%~~ of its REC requirement in 2002 and 2003 (the first two compliance periods of the program). This 10% ~~5.0%~~ deficit allowance shall not apply to entities that initiate customer choice after 2003. During the first settlement period, each competitive retailer will be subject to a penalty for any REC shortfall that is greater than 10% ~~5.0%~~ of its REC requirement under subsection (h) of this section. During the second settlement period, each competitive retailer will be subject to the penalty process for any REC shortfall greater than 10% ~~5.0%~~ of the second year REC allocation. All competitive retailers incurring a 10% ~~5.0%~~ deficit pursuant to this subsection must make up the amount of RECs associated with the deficit in the next compliance period.
- (3) The issue date of RECs created by a renewable energy resource shall coincide with the beginning of the compliance year in which the credits are generated. All RECs shall have a life of three compliance periods, after which the program administrator will retire them from the trading program.
- (4) Each REC that is not used in the year of its creation may be banked and is valid for the next two compliance years.

- (5) A competitive retailer may meet its renewable energy requirements for a compliance period with RECs issued in or prior to that compliance period which have not been retired.
- (n) - (q) (No change.)

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

**ISSUED IN AUSTIN, TEXAS ON THE 8th DAY OF NOVEMBER 2002 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
RHONDA G. DEMPSEY**