

Draft 09/14/09
Draft: Rules of Department of Natural Resources
Division 140. Division of Energy
Chapter 8 Certification of Renewable Energy and Renewable Energy Standard Compliance Fund

The line numbers and table of contents will be removed from the final version of this draft rule but are included in the initial version to facilitate discussion of this draft

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PURPOSE: This rule enacts provisions of Proposition C initiative petition passed by the voters on November 4, 2008, collectively known as the "Renewable Energy Standard."

(1) Definitions.

- (A) Commission - ~~the Missouri~~ Public Service Commission of the State of Missouri.
- (B) Department - the Missouri Department of Natural Resources.
- (C) Renewable energy credit or "REC"- A tradable certificate as defined by Section 393.1025(~~45~~) RSMo, incorporated here by reference, that one (1) megawatt-hour of electricity has been generated from eligible renewable energy sources.
- (D) Renewable energy generation facility - the facility where electrical energy was generated by renewable energy resources.
- (E) Renewable energy resources - electrical energy as defined by Section 393.1025(~~54~~) RSMo, incorporated here by reference, and which is eligible to be issued a renewable energy credit (REC).
- (F) Electric utility - a regulated Missouri electrical corporation as defined in Section 386.020(15), RSMo, and is incorporated here by reference.

(2) Eligible Renewable Energy Resources.

(A) Eligible Resources. The electricity must be derived from one of the following types of renewable energy resources and technology, as defined in subsection 393.1025(~~54~~), RSMo, and is incorporated here by reference:

1. Wind
2. Solar thermal sources or solar photovoltaic cells and panels.
3. Biomass including dedicated crops grown for energy production, cellulosic agricultural residues, plant residues and clean and untreated wood such as pallets.
4. Methane from landfills or from wastewater treatment.
5. Hydropower, not including pumped storage, that does not require a new diversion or impoundment of water and that each generator has a nameplate rating of ten (10) megawatts or less. If an improvement to an existing hydropower facility does not require

1 a new diversion or impoundment of water and incrementally increases the nameplate
2 rating of each generator, up to ten (10) megawatts per generator of the incremental
3 capacity, the improvement may qualify as an eligible renewable energy resource.

4 6. Fuel cells using hydrogen produced by one of the above-named renewable energy
5 sources. RECs based on generating electricity in fuel cells from hydrogen derived from
6 an eligible energy resource are eligible for compliance purposes only to the extent that
7 the energy used to generate the hydrogen did not create renewable energy credits.

8 7. Other sources of energy not including nuclear that may become available after
9 November 4, 2008, and are certified as eligible renewable resources as provided in
10 Subsection (3) of this rule.

11 **(3) Additions to Eligible Renewable Energy Resources.**

12 (A) The department may certify new types of renewable energy resources to those listed
13 as eligible in Subsection (2), if the department determines the following to be true:

14 1. Either the energy source under review was not used to generate electricity in Missouri
15 prior to November 4, 2008 or the generation technology under review was not commercially
16 available in Missouri prior to November 4, 2008; and

17 2. The generation technology is not based on nuclear fission or nuclear fusion.

18 (B) The department will publish in the Missouri Register, new types of renewable
19 resources it certifies as eligible pursuant to subsection 393.1025(5), RSMo.

20 **(4) Certification of Generation Facilities and Environmental Impact.**

21 (A) The department shall publish and maintain a list of certified Missouri renewable
22 generation facilities.

23 (B) Facilities included on the list shall be required to complete an annual survey prepared by
24 the department to verify the continued validity of information gathered during the certification
25 review process. {PSC Staff Comment: Please consider the administrative burden for annual
26 certification of eligible renewable generation facilities from two perspectives: (1) small
27 homeowner or small business-type facilities for solar or wind, and (2) large utility-scale
28 facilities. The smaller systems could be developed in large numbers over time. The burden for
29 the owners and personnel aggregating data could be significant. For large, utility-scale facilities,
30 following initial certification, there should be minimal changes to the facility and annual
31 generation would be tracked or reported through transmission system operators or other entities.
32 One exception might be generating units that are co-firing qualified and non-qualified fuels.
33 Because of their unique status, the co-fired units might require more frequent certification.

34 (C) Certification review process.

35 1. Certification reviews shall be limited to generation facilities located in Missouri.

36 2. The certification review shall consider the eligibility of energy sources used by the
37 facility to generate electricity and determine if such generation has caused undue adverse
38 air, water, or land use impacts, including impacts associated with the gathering of
39 generation feedstocks.

1 3. The certification review process may be initiated by the department, a utility or a
2 generation facility. The department shall consider all such requests for a certification
3 review and shall conduct a certification review process in response to all eligible utility or
4 facility petitions. An eligible petition for certification review must include:

5 ~~(a)~~A. A description of energy sources used by the facility to generate electricity
6 and their conformity with the list of eligible renewable energy resources listed in
7 ~~Subsections (2) and 3~~ and additional renewable energy resources certified by the
8 department pursuant to ~~Subsection (3)~~.

9 ~~(b)~~B. If any amount of fossil fuel is used in the generation process, a description
10 of agreements or systems in place that assure sufficient data will be available to
11 determine ~~the portion of electrical output attributable to renewable energy.~~

12 ~~(c)~~C. An assessment of the facility's air, water, or land use impacts, including
13 impacts associated with the gathering of generation feedstocks.

14 ~~(d)~~D. A statement signed by the President or Chief Executive Officer (CEO)
15 attesting that "I have personally examined the information submitted herein by [name of
16 utility or generation facility] and attest that this information is accurate and complete."

17 ~~(e)~~E. A statement bearing the signature of an official of the utility or generation
18 facility stating that the utility or facility agrees:

19 ~~i.~~(I) to submit additional information that the department may require for
20 its review of the facility's energy sources and environmental impact;

21 ~~ii.~~(II) that contracts for the acquisition of energy resources shall provide
22 for release of sensitive information to the department with appropriate
23 requirements for confidential treatment of the information; and

24 ~~iii.~~(III) to grant the department access to generation facility sites and
25 records for the purpose of verifying statements made in the application.

26 4. On completion of its review, the department shall certify or deny certifying the facility.

27 ~~(a)~~A. The department may deny certification if the department finds:

28 ~~i.~~(I) that the energy sources and technologies used to generate electricity are not
29 eligible renewable energy resources as set forth in ~~Subsection (2) and 3~~ or additional
30 renewable energy resources certified by the department pursuant to ~~Subsection (3)~~; or

31 ~~ii.~~(II) that the facility has significant and unresolved violations of existing federal
32 or state air, water or land environmental regulations; or

33 ~~iii.~~(III) that the facility has not adhered to forestry or agricultural best
34 management practices (BMPs) consequently resulting in adverse air, water, or land use
35 impacts and that agreement cannot be reached on actions that the utility or generation
36 facility will undertake that are sufficient to offset or mitigate the adverse impacts.

37 ~~(b)~~B. Any of the following actions may result in revocation of certification as a
38 renewable generation facility:

39 ~~i.~~(I) failure to complete the annual recertification survey;

~~ii.(II)~~ falsification of or failure to disclose any required information in the certification review process statement or biannual recertification survey;

~~iii.(III)~~ failure to remain in substantial compliance with all federal and state laws, regulations, and rules for the protection of the environment;

~~iv.(IV)~~ a significant increase in adverse environmental impacts resulting from electric generation at the facility;

~~v.(V)~~ failure to disclose data on a confidential basis that is essential for verifying the facility's compliance with requirements for certification as an eligible renewable generation facility;

~~vi.(VI)~~ re-marketing or reselling a REC after it has been sold to a utility; or

~~vii.(VII)~~ failure to obtain and/or maintain all applicable environmental permits required by the department.

(5) RECs issued by any facility which is denied certification or whose certification is revoked by the department, shall not be eligible to use to meet the Renewable Energy Standard requirements in Section 393.1030, RSMo. {PSC Staff comment: The current draft of the PSC rules would allow use of RECs from solar facilities that were purchased by the utility through a Standard Offer Contract or other advanced purchase mechanism, even though the solar facility may become decertified. Reference subsection (4)(I) in Revision 15/15A of 4 CSR 240-20.XXX}

(5) Renewable Energy Standard Compliance Account.

(A) The department shall establish a Renewable Energy Standard Compliance Account (Compliance Account) whose funds shall be disposed as set forth in this subsection.

(B) Funds collected by the Public Service Commission and transferred to the department as a result of a utility's failure to comply with the Renewable Energy Standard as provided in subsection 393.1030.2.(2), RSMo, shall be deposited into the Compliance Account and shall be used to purchase a sufficient number of renewable energy credits to offset the deficit in RECs presented by the utility. Funds deposited in the compliance account in excess of the funds required for the purchase of RECs to offset the deficit in RECs presented by the utility(ies) shall be used by the department's energy center in consultation with the Commission staff, solely for administration of renewable energy and energy efficiency projects.

(C) Beginning in 2012, the department shall prepare an annual report on the transfer and disposition of funds in the compliance account. The report shall include a listing of RECs purchased and the utilities on whose behalf the RECs were purchased using compliance account funds. The report shall be completed by April 1 {PSC Staff comment: the current draft of the PSC rule requires utilities to file compliance plans and compliance reports by April 15 of each calendar year. This date could be changed to coincide with those reports.} and shall cover activities of the preceding calendar year. If any pertinent information is considered confidential, a version of the report disclosing the confidential information shall be submitted to the commission and a report without the confidential information shall be made available to the public.

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