

PROJECT NO. 31852

RULEMAKING RELATING TO RENEWABLE ENERGY AMENDMENTS	§ § §	PUBLIC UTILITY COMMISSION OF TEXAS
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COMMENTS OF THE UNION OF CONCERNED SCIENTISTS

The Union of Concerned Scientists (UCS) appreciates the opportunity to submit these comments regarding the rulemaking to implement Senate Bill 20 (79th Legislature, 1st Called Session), relating to Texas’ renewable portfolio standard (RPS). UCS is a nonprofit organization of more than 60,000 citizens and scientists working for practical environmental solutions. For more than two decades, UCS has combined rigorous analysis with committed advocacy to reduce the environmental impacts and risks of energy production and use. Our clean energy program focuses on encouraging the development of clean and renewable energy resources, and on improving energy efficiency. UCS has been a leading analyst of and advocate for RPS policies at the state and federal levels.

Regarding the specific questions on which the Commission has requested response, UCS’ comments below focus solely on Question #4.

4. With respect to new subsection (m) of PURA §39.904, how should the commission's substantive rules be amended to ensure that all renewable capacity installed in this state and all renewable energy credits awarded, produced, procured, or sold from renewable capacity in this state are counted towards the goal in PURA §39.904(a)?

The Commission’s Substantive Rule 25.173 should be amended in a manner that ensures the Texas Legislature’s intent to increase renewable energy in the state while preserving the integrity of both the voluntary and mandatory renewable energy credit (REC) markets.

When designing and implementing the rules for PURA §39.904 in 1999, the Public Utility Commission of Texas (PUCT) examined voluntary REC purchases and created a REC trading program that clearly separates mandatory and voluntary markets. The language in SB 20 does not presume to reverse this well-established precedent. Instead, the intent of SB20 and subsection (m) is to build on the achievements of the 1999 RPS law and implementation rules by, not undermine one of the foundations of its success.

UCS believes that the purpose of subsection (m) is to ensure that there is an accurate accounting of both mandatory and voluntary REC markets to assist in gauging the success of the renewable energy market in Texas under the RPS. Therefore, subsection (m) should be implemented to count all RECs produced in Texas without compromising the fundamental goal of PURA §39.904, which is to increase renewable energy through the use of the RECs system.

Voluntary RECs purchases must be additional to the RECs purchases that occur to meet the 5,880 MW requirement. Otherwise, the attributes of renewable energy, as represented by a REC, would effectively be counted and sold twice—once to the consumer who voluntarily pays the premium and once to an electricity supplier for RPS compliance. We believe that this practice would violate basic consumer protection standards. The National Association of Attorneys General established Green Marketing guidelines in 1999, arguing against the double counting of RECs. The guidelines state on page 4 that “if the same electricity or its attributes are sold more than once to consumers, the claim is deceptive.”¹ If not implemented in this manner, subsection (m) would also appear in conflict with the Texas Deceptive Trade Practices Act, by leading a voluntary customer to believe that they are getting all the attributes of their green power purchase, and then allowing the attributes to be sold again in the mandatory RECs market.

A key principle that characterizes the voluntary REC market is that of additionality. Maintaining a clear separation between the voluntary and mandatory REC markets would allow the RPS to serve as a floor for renewable energy development in Texas rather than

¹National Association of Attorneys General. “Environmental Marketing Guidelines for Electricity.” December, 1999. Available online at http://www.naag.org/issues/pdf/Green_Marketing_guidelines.pdf.

effectively becoming a ceiling. Texas would then be in a position to reap additional economic and environmental development benefits that would accrue from having voluntary green purchases add to the minimum requirements in the RPS. Therefore, any counting mechanism established under subsection (m) must ensure voluntary market RECs are additive to the RPS requirements.

Maintaining a separation of voluntary and mandatory REC markets would also protect the competitiveness and integrity of one of the healthiest voluntary renewable energy markets in the country. A robust voluntary market for renewable energy has emerged in Texas, driven by consumer demand to have new renewable energy added to the electric grid. For example, Austin Energy has been recognized by the U.S. Department of Energy's National Renewable Energy Laboratory as having one of the top voluntary green power purchase programs in the country. In addition, some of the largest green power purchasers in the United States are based in Texas, including Whole Foods Markets, Austin Independent School District, Advanced Micro Devices, and Dyess, Goodfellow, Shepard, and Laughlin Air Force bases.

These and thousands of other residential and business customers pay premiums on their electric bill to encourage renewable energy development. If the PUCT interpreted the subsection (m) in a way that combines the voluntary and mandatory REC markets, a customer's voluntary purchase would not necessarily lead to any more renewable energy generation than is already required by law, providing a strong disincentive for that voluntary purchase. It would also shift the costs of RPS compliance disproportionately to voluntary purchasers, rather than having those costs shared by all ratepayers—who receive the environmental and other public benefits of renewable energy. Furthermore, green power offerings and RECs originating in Texas would no longer be able to receive certification from Green-E, a voluntary certification program for renewable electricity products that is used throughout the United States. This would not only reduce confidence in green markets within Texas, but would reduce the ability of Texas to benefit from exporting renewable energy credits to satisfy the rapidly growing demand for voluntary RECs from other parts of the country.

Finally, in addition to the PUCT, other states with RPS programs, including Minnesota, New York, and Massachusetts have also looked at the issue and kept the voluntary and compliance markets as additive, rather than eliminating one in favor of the other. Specifically,

- The Minnesota Public Utilities Commission in August 2004 reversed its initial order that allowed utilities to count voluntary customer purchases towards the utility's renewable energy objective and now precludes the use of voluntary purchases.²
- The Massachusetts disclosure law addressed the issue of the interaction of the RPS and voluntary customers and decided on rules requiring that if a supplier sells a product claiming a percentage of renewable energy, the customer must receive that percentage renewable energy supply in excess of the RPS percentage.³
- The New York Public Service Commission (PSC) has ordered that voluntary sales must be additive and tracked separately from the RPS sales. Detailed implementation rules are still under development. The PSC order states that "It is important to note that the mandatory component and the voluntary component will essentially operate on separate, parallel tracks. Therefore, it is imperative that this Commission will need to continue to foster the development of a successful green market in addition to a successful mandatory program."⁴

² A summary of this decision from the National Renewable Energy Laboratory is at: http://www.eere.energy.gov/greenpower/news/news_template.shtml?id=969 -- and the reversal order itself is at: <http://www.puc.state.mn.us/docs/orders/04-0108.pdf>

³ See "Rules Governing the Restructuring of the Electric Industry" in Massachusetts. <http://www.mass.gov/dte/cmr/220cmr1100.pdf> - 11.06 (6) (e) (2) and (3) [page 34] for consumer protection language.

⁴ The NY PSC order can be found at [http://www3.dps.state.ny.us/pscweb/WebFileRoom.nsf/Web/85D8CCC6A42DB86F85256F1900533518/\\$File/301.03e0188.RPS.pdf?OpenElement](http://www3.dps.state.ny.us/pscweb/WebFileRoom.nsf/Web/85D8CCC6A42DB86F85256F1900533518/$File/301.03e0188.RPS.pdf?OpenElement) . The pertinent section begins on page 24 (Establishment of the Target).

UCS submits that the PUCT should amend Substantive Rule 25.173 so that the Texas Legislature's stated goal of increased renewable energy use continues to be realized. We believe that Subsection (m) was adopted by the Texas Legislature to help better track the state's progress toward achieving that goal. Therefore, the PUCT should establish accounting systems for determining the extent to which voluntary markets are contributing to increased renewable energy use in Texas. We urge the PUCT to reject any interpretation of subsection (m) that would permit voluntary RECs to be used for RPS compliance.

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Respectfully submitted,

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