

ARTICLE 16. Electric Utility Renewable Energy Standards

82-16-1. Definitions. As used in these regulations, the following definitions shall apply:

- (a) “Act” means the renewable energy standards act, K.S.A. 66-1256 through 66-1262 and amendments thereto.
- (b) “Auxiliary power” has the meaning assigned to “station power” in K.S.A. 66-1,170(i), and amendments thereto.
- (c) “Capacity from generation” means the net capacity of renewable generation resources owned or leased by a utility. Net capacity is the gross capacity minus auxiliary power required to operate the resource as determined in a test conducted as soon as possible after commercial operation begins. This test shall reflect operation of the resource over a four-hour period under conditions that do not limit performance due to ambient conditions, equipment, or operating or regulatory restrictions. The determination for a multiunit resource, including a wind farm, may be made through tests for a representative sample of at least 10% of the units. If the tests specified in this subsection are not practicable, the nameplate capacity of the resource minus the associated auxiliary power may be used as the net capacity unless there are factors that would prevent the resource from achieving nameplate capacity, other than ambient conditions, equipment, or operating or regulatory restrictions.
- (d) “Capacity from net metering systems” means the rated generating capacity of systems interconnected with a utility pursuant to the net metering and easy connection act, K.S.A. 66-1263 et seq. and amendments thereto.
- (e) “Capacity from purchased energy” means the capacity associated with energy purchased by a utility from renewable energy resources. If the purchase is pursuant to a long-

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term contract of 10 years or more, the capacity from purchased energy shall be the nameplate capacity of the resource minus auxiliary power, adjusted as appropriate to reflect the utility's share of the output of the resource. Otherwise, the capacity from purchased energy shall be determined in the same manner as that used to calculate the capacity from RECs.

(f) "Capacity from RECs" means the capacity associated with the purchase of renewable energy credit. This capacity shall be determined by applying to the REC purchases the actual capacity factor of a utility's own renewable generation from the prior calendar year according to the following formulas:

$$\text{Capacity (MWs)} = \frac{\text{Energy (MWhs)}}{\text{Capacity Factor} \times 8760 \text{ hours}}$$

$$\text{Capacity Factor}_i = \frac{12}{n} \sum_{t=1}^n \frac{E_{i,t}}{8760 \times C_{i,t}}$$

where

i = the individual renewable generation facility

n = the number of months the facility has been in operation over the past 24 months, with n representing at least 12 months

$E_{i,t}$ = the total energy output (MWh) by renewable generation facility i during compliance period t

$C_{i,t}$ = the average total generator capacity (MW) by renewable generation facility i during compliance period t

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The actual capacity factor shall be that of the same or similar type of resource as the source of the REC, if known. If the utility has multiple installations of the same or similar type of resource, the capacity factor shall be the average of the facilities. If the utility did not have this type of resource as the source of the REC or if the source is unknown, the overall capacity factor of its total renewable generation shall be used. In the absence of renewable resource generation, a default capacity factor of 34 % shall be used.

(g) “Electric distribution cooperative” means a cooperative as defined by K.S.A. 17-4603, and amendments thereto, that is engaged in the retail sale and distribution of electricity and does not own or operate any generation or wholesale transmission facilities within the state of Kansas.

(h) “Electric utility” and “utility” mean any “affected utility,” as defined by K.S.A. 66-1257 and amendments thereto.

(i) “Generation and transmission cooperative” means a cooperative as defined by K.S.A. 17-4603, and amendments thereto, that does not engage in the retail distribution and sale of electricity and operates generation facilities and transmission facilities solely for the wholesale distribution and sale of electricity.

(j) “Nameplate capacity” means the maximum rated output of a generator under specific conditions designated by the manufacturer, generally indicated in units of kilovolt-amperes (kVA) and in kilowatts (kW) on a nameplate attached to the generator.

(k) “REC” means “renewable energy credit,” as defined in K.S.A. 66-1257 and amendments thereto. For purposes of these regulations, this term is reflected on a certificate

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representing the attributes associated with one megawatt-hour (MWh) of energy generated by a renewable energy resource that is located in Kansas or serves ratepayers in the state.

(l) "Renewable energy resources" has the meaning specified in K.S.A. 66-1257, and amendments thereto. For the purposes of K.S.A. 66-1257(f)(9)(A) and (B) and amendments thereto, the following shall apply:

(1) "Existing hydropower" shall mean hydropower that existed on or before May 27, 2009.

(2) "New hydropower" shall mean hydropower that existed after May 27, 2009.

(m) "Renewable energy standards" means the standards established by K.S.A. 66-1256 through 66-1262, and amendments thereto, for energy and energy portfolios of each utility subject to the provisions of the act. (Authorized by and implementing K.S.A. 2009 Supp. 66-1261; effective P-_____.)

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82-16-2. Renewable energy standards and report. (a) Each utility shall meet the portfolio requirement in K.S.A. 66-1258, and amendments thereto, by maintaining a portfolio of renewable capacity from generation, purchased energy, RECs, or net metering systems.

(b) Each utility shall submit a report to the commission detailing that utility's compliance with the portfolio standards established by the act. A generation and transmission cooperative may submit a collective report on behalf of the electric distribution cooperatives it represents. If this collective report is submitted, the electric distribution cooperatives shall not be required to file their own reports as required by this subsection. The report shall specify the renewable generation that has been put into service or the portion of the utility's portfolio of renewable generation resources served from purchased energy, RECs, or net metering systems on or before July 1 of each calendar year. The first report shall be due on or before August 1, 2011 for the year 2011. An annual report shall be due on or before August 1 of each subsequent year. Each report shall contain the following information:

(1) A description of each type of renewable energy resource that has been purchased or put into service on or before July 1 of that year, along with a narrative supporting the rationale for selecting the capacity resource;

(2) a description of each renewable energy resource that was in operation the previous calendar year, including type, location, owner, operator, date of commencement of operations, and for the previous calendar year, the monthly capacity factor, monthly availability factor, and monthly amount of energy generated;

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(3) a description of the utility's plans for meeting the renewable energy standard requirements for the next calendar year, including the utility's assessment of the expected impact to revenue requirements and any limitations that the one percent revenue requirement cap could impose on the utility's ability to comply with these regulations;

(4) the Kansas retail one-hour peak demand for each of the previous three calendar years and the average for these years, with supporting data and calculations if the demand differs from the information reported on the federal energy regulatory commission's FERC form 1. Each electric distribution cooperative that does not file FERC form 1 with the commission shall file a Kansas electric cooperative utility annual report with the commission;

(5) the amount of renewable energy capacity that will qualify as a portion of the year's peak demand as calculated pursuant to paragraph (b)(4), broken down by capacity from generation, purchased energy, RECs, and net metering systems;

(6) the renewable energy capacity identified in paragraph (b)(5) from a facility constructed in Kansas after January 1, 2000;

(7) if capacity from RECs is identified and necessary to meet the act's portfolio requirements in years other than 2011, 2016, and 2020, information on why the utility was unable to or did not acquire other renewable energy resources to meet the requirements;

(8) the calculated percentage increase in the utility's revenue requirements and retail utility rates that would be caused by compliance with the act's portfolio requirement

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for the year, as determined pursuant to K.A.R. 82-16-4. Supporting documentation for the determination shall be included with the report; and

(9) if the utility does not meet the act's portfolio requirement of renewable energy resources for 2011 or 2012, evidence of good faith efforts to comply with the portfolio requirements for 2011 or 2012, evidence of mitigating circumstances, and information regarding the factors specified in subsection (b) of K.A.R. 82-16-3.

(Authorized by K.S.A. 2009 Supp. 66-1261; implementing K.S.A. 2009 Supp. 66-1258 and 66-1261; effective P-_____.)

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82-16-3. Administrative penalties. Administrative penalties for noncompliance with the portfolio requirements of the act shall be imposed at levels that promote compliance after the commission's consideration of good faith efforts to comply, mitigating circumstances, and any other factors, in accordance with the following provisions:

(a) The standard minimum penalty shall be equal to two times the market value during the calendar year of sufficient RECs to have met the portfolio requirement.

(b) The penalty may be set by the commission above or below the standard minimum based on consideration of the relevant facts including the following, in addition to evidence of good faith efforts to comply or mitigating circumstances:

- (1) The reasons for noncompliance;
- (2) the degree of noncompliance;
- (3) plans to achieve compliance;
- (4) the impact of noncompliance on utility costs and revenues; and
- (5) the impact of noncompliance on the environment.

(c) Pursuant to K.S.A. 66-1261 and amendments thereto, a noncomplying utility shall be exempted from administrative penalties by the commission if the utility demonstrates that compliance causes a retail rate impact of one percent or more as calculated pursuant to K.A.R. 82-16-4. (Authorized by and implementing K.S.A. 2009 Supp. 66-1261; effective P-_____.)

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82-16-4. Retail revenue requirement. The retail revenue requirement attributable to compliance with the renewable energy standards requirement shall be calculated as follows for each utility:

(a) In conjunction with the reports required by K.A.R. 82-16-2, each utility shall file a separate retail revenue requirement calculation for each new capacity resource, whether renewable or nonrenewable, added during the year and also for renewable resources that were not added but were required to meet the portfolio requirement of the act. A capacity resource may result from new generation resources, purchased energy, RECs, or net metering systems. For purposes of complying with the act, “retail rate impact” shall mean the retail revenue requirement resulting from the determination of the retail revenue requirement specified in this regulation.

(b) Each determination of the retail revenue requirement shall reflect the total revenues required to allow the utility the opportunity to do the following:

- (1) Earn a return on rate base items;
- (2) earn a return on plant investments through depreciation;
- (3) recover taxes other than income taxes;
- (4) recover fuel and purchased power costs, including incremental fuel

expense resulting from the inefficient dispatch of power generation if this expense is known;

- (5) recover operating and maintenance costs;
- (6) recover administrative and general expenses; and

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(7) recover income taxes, including current deferred income taxes.

(c) In order to calculate a return on rate base items, each utility shall use the overall rate of return authorized by the commission from its last litigated rate case or specified in a stipulation and agreement authorized by the commission. If an overall rate of return was not specified in a utility's last rate case, then the average of the utility's proposed rate of return and the rate of return proposed by commission staff shall be used.

(d) The determination of the percentage increase to a utility's total retail revenue requirement shall consist of two separate calculations.

(1) The first calculation shall include the results from the addition of renewable capacity resources and shall be calculated as follows:

(A) The cumulative retail revenue requirement for all renewable capacity resources added during the year shall be the numerator.

(B) The cumulative retail revenue requirement for all nonrenewable capacity resources added during the year shall be added to the total retail revenues authorized by the commission in the utility's last rate case. The total retail revenues resulting from a utility's last rate case shall consist of all commission-authorized revenues used to determine base rates as well as all retail revenues recovered through any riders, surcharges, and other mechanisms. The cumulative amount of the retail revenues associated with nonrenewable capacity resources added during the year and the total retail revenues authorized by the commission in the utility's last rate case shall be the denominator.

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(C) The numerator divided by the denominator shall result in the percentage increase to a utility's total retail revenue requirement resulting from the addition of renewable capacity resources.

(2) The second calculation shall include the results from the addition of renewable capacity resources added during the year and renewable energy resources that were not added but were required to meet the portfolio requirement of the act. The basis for the costs of resources not added shall be specified, including whether the costs come from responses to a request for proposal, negotiations, or any other process. The calculation shall be made as follows:

(A) The cumulative retail revenue requirement for all renewable capacity resources added during the year and renewable resources that were not added but were required to meet the portfolio requirement shall be the numerator.

(B) The cumulative retail revenue requirement for all nonrenewable capacity resources added during the year shall be added to the total retail revenues authorized by the commission in the utility's last rate case. The total retail revenues resulting from a utility's last rate case shall consist of all commission-authorized revenues used to determine base rates as well as all retail revenues recovered through any riders, surcharges, and other mechanisms. The cumulative amount of the retail revenues associated with nonrenewable capacity resources added during the year and the total retail revenues authorized by the commission in the utility's last rate case shall be the denominator.

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(C) The numerator divided by the denominator shall result in the percentage increase to a utility's total retail revenue requirement resulting from the addition of renewable capacity resources. (Authorized by K.S.A. 2009 Supp. 66-1261; implementing K.S.A. 2009 Supp. 66-1259 and 66-1260; effective P-_____.)

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82-16-5. Certification of renewable energy resources. (a) If a utility seeks to classify as renewable any generation capacity from a source not listed in the act's definition of "renewable energy resources," the utility shall file an application with the commission for certification of a renewable energy resource on or before January 1 of the calendar year in which the resource is proposed to be included in the portfolio required by the act. The application shall contain the following information:

- (1) A detailed technical description of the resource, including fuel type, technology, and expected operating specifications;
- (2) a detailed description of the environmental impact of the resource, including impact on air, water, and land use;
- (3) information concerning any applications for approvals or permits or any reviews or investigations by governmental entities with regard to environmental impact; and
- (4) documentation or other evidence of certification or verification that the resource is considered a renewable energy resource by an entity that is widely recognized as having an established program and standards for certification of renewable energy resources.

(b) A determination shall be made by the commission regarding each application for classification of generation capacity filed pursuant to subsection (a), within 120 days after filing. (Authorized by K.S.A. 2009 Supp. 66-1261; implementing K.S.A. 2009 Supp. 66-1257 and 66-1262; effective P-_____.)

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82-16-6. Renewable energy credit program. (a) Renewable energy credits intended to be used to meet the portfolio requirements in K.S.A. 66-1258, and amendments thereto, shall be issued and used as part of a REC program either established or approved by the commission. Each application for approval of any program not approved by the commission in any prior year shall be submitted on or before January 1 of the calendar year in which the RECs are proposed to be included in the portfolio.

(b) Any utility may purchase or sell RECs without commission approval. However, each renewable energy credit shall be counted only once. A REC sold by a utility shall not be included in the portfolio of the utility that sold the renewable energy credit. No utility shall include any REC in its portfolio that is included in the portfolio of any other utility, whether or not the utility is subject to the provisions of the act.

Therefore, utilities and customer-generators shall not create, register, or sell RECs from energy produced from generation, purchased energy, or net metering system capacity if the energy is used by a utility to comply with the portfolio requirements of the act. For capacity that is only partially used for compliance, RECs may be created, registered, and sold for the pro rata portion of the energy produced by the unused portion of the resource.

(c) For purposes of complying with the act, any REC may be used only once. Unused RECs shall remain valid for up to two years from the date that the associated electricity is generated and shall be permanently retired at the end of two years or when used for compliance, whichever is earlier. A utility shall not sell RECs or the attributes associated with renewable energy generation or purchased energy used to comply with the

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requirements of the act to the utility's customers under a voluntary program established to let certain customers pay different rates to cover the cost of renewable energy, which is sometimes referred to as a "green pricing" program. To the extent that RECs from renewable energy resources are sold to customers, the utilities shall reduce the capacity used to comply with the act according to the formula specified in this subsection. Each utility shall retire any RECs sold under such a program.

$$\text{Total Renewable Capacity for Compliance} = \text{TRC} - C_{\text{GP}}$$

where

$$C_{\text{GP}} = \frac{E_{\text{GP}}}{\text{CF} \times 8760}$$

TRC = total renewable capacity

C_{GP} = capacity used for green pricing

E_{GP} = energy sold for green pricing

CF = capacity factor for source of the energy sold as green energy

(d) Each REC sold or purchased by any Kansas utility shall be reported in an approved registry that documents and verifies attributes and other compliance conditions as well as tracks the creation, sale, retirement, and other transactions regarding the REC to prevent double counting and misuse, in accordance with these regulations and commission direction. (Authorized by and implementing K.S.A. 2009 Supp. 66-1258; effective P-_____.)

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