

OPEN MEETING



0000155247

MEMORANDUM

RECEIVED  
AZ CORP COMMISSION  
DOCKET CONTROL

TO: Docket Control

FROM: Steve M. Olea  
Director  
Utilities Division

Arizona Corporation Commission

DOCKETED

2014 AUG 8 PM 1 37

AUG 08 2014

ORIGINAL

DATE: August 8, 2014

DOCKETED BY

RE: PROPOSED RULEMAKING TO MODIFY THE RENEWABLE ENERGY STANDARD AND TARIFF RULES (DOCKET NO. RE-00000C-14-0112)

On March 31, 2014, Arizona Corporation Commission ("Commission") Staff ("Staff") filed a request with docket control to open a generic docket for the purpose of commencing a proposed rulemaking on the Renewable Energy Standard and Tariff ("REST") rules as directed by the Commission. On February 26, 2014, the Commission issued Decision No. 74365 that ordered:

"that the REST rules shall be opened for the purpose of developing a new methodology for utilities to comply with renewable energy requirements that is not based solely on the use of RECs and that Staff shall, after consultation with utilities, interveners in this docket, and other interested stakeholders, file proposed new rules no later than April 15, 2014 with the Commission to address a Notice of Proposed Rulemaking on this matter at its May 2014 Open Meeting or as soon as is practical after that date." (page 55, lines 7-13)

The question of REST compliance in a post-incentive era was raised by Arizona Public Service Company ("APS") in its June 29, 2012 filing of its proposed 2013 REST plan, wherein APS requested approval of a Track and Record method for meeting its distributed energy ("DE") compliance requirements. Similarly, Tucson Electric Power Company ("TEP") and UNS Electric, Inc. ("UNS") requested guidance from the Commission on how to demonstrate REST compliance in a post-incentive time, in their July 2, 2012 filings of their proposed 2013 REST plans. This issue was discussed during the fall of 2012 as the APS, TEP, and UNS 2013 REST plans were considered by the Commission.

The Commission Decisions on the APS, TEP, and UNS 2013 REST plans, issued January 31, 2013, (Decision Nos. 73636, 73637, and 73638 respectively) ordered that the Track and Record proposal and alternatives thereto would be the subject of a hearing. The Commission also directed the Hearing Division to include in its Recommended Opinion and Order on this matter whether adoption of the Track and Record proposal (or alternatives thereto) would require modification of the REST rules. The hearing was held on June 3-6, 2013 and June 21, 2013. The Track and Record proceeding culminated in the issuance of Decision No. 74365.

On April 4, 2014 Staff filed its Notice of Compliance Filing per Decision No. 74365. In this filing Staff provided seven options for the Commission to consider:

1. Track and Monitor – This option would track all renewable energy production in a utility's service territory, noting whether the utility owns the Renewable Energy Credits ("RECs") or not and would reduce the REST requirement to reflect production where the utility does not own the RECs.
2. Process Where Utility Would Purchase Least Cost RECs or kilowatt hours ("kWhs") – Under this option, utilities would purchase RECs or renewable kWhs to meet REST requirements and would be required to demonstrate that such purchases were least-cost.
3. Creation of a Maximum Conventional Energy Requirement – This option would change the dynamic of the REST rules by changing the focus from a minimum required percentage of renewable energy to a maximum allowed percentage of conventional energy.
4. Mandatory Up-Front Incentives ("UFI") – Under this option mandatory UFIs would be offered requiring the customer to accept the UFI in exchange for the utility receiving the RECs. The UFI mandate and/or Distributed Generation/Distributed Energy ("DG/DE") mandate could be waived.
5. REC Transfer Associated with Net Metering – Under this option customers installing DG would be required to transfer all RECs produced by that DG if the customer wanted to participate in the utility's net metering.
6. Recovery of DG/DE Costs Through the Standard Rate Case Process – This option would not allow utilities to recover the costs of complying with the DG/DE requirement through the REST Tariff/Surcharge. Utilities would decide how best to comply with the DG/DE requirement and could seek recovery of the costs of doing so through the regular rate case process.
7. Track and Record – Under this option, utilities would track, record, and report all renewable kWh produced in their service territory and report kWh associated with RECs not owned by the utility strictly for informational purposes. The Commission could consider all available information when determining compliance with the REST rules.

A number of entities filed comments in response to the April 4, 2014 Staff filing. On May 21, 2014, Commissioner Brenda Burns filed a letter with the docket, introducing a proposal to adopt a form of the Track and Record method. The letter and an attached appendix present the following characteristics of this form of the Track and Record method:

1. A utility would track, record, and report all renewable kWhs produced within its service territory.
2. In reporting to the Commission, a utility would report all renewable kWhs produced in its service territory, differentiating between kWhs for which it owns the RECs and kWhs for which it did not own the RECs
3. The reporting of kWhs not owned by the utility would be acknowledged.

4. The Commission could consider all available information.
5. The following statement or something similar would be part of the RES rules:

“Any Renewable Energy Credit (“REC”) created by the production of renewable energy which the Affected Utility does not own shall be retained by the entity creating the REC. Such REC may not be considered used or extinguished by any Affected Utility without approval and proper documentation from the entity creating the REC, regardless of whether or not the Commission acknowledged the kWhs associated with non-utility owned RECs.”

6. The proposal is designed to (1) preserve the existing the 15 percent overall requirement and 30 percent DG carve-out (4.5 percent overall), (2) resolve the issue of double counting, and (3) not require ratepayers to pay for further subsidies.

On July 7, 2014, the Solar Energy Industries Association (“SEIA”) filed comments in response to Commissioner Brenda Burns’ letter and subsequent letters from Commissioner Gary Pierce and Commissioner Bob Burns. SEIA indicates that it is supportive of the proposed language in Commissioner Brenda Burns’ letter, subject to certain important modifications. SEIA’s letter includes an appendix with proposed modifications to Commissioner Burns’ Appendix, with one set of modifications for an energy-based Track and Record method and the other set of modifications for a capacity-based Track and Record method. SEIA’s proposed modifications remove references to the Commission acknowledging RECs that are not owned by the Affected Utility and replace it with language that states such RECs would not be counted toward REST compliance. SEIA’s modifications also remove the statement that the Commission could consider all available information. SEIA modifications also change wording regarding RECs not owned by the utility to say that such RECs “may” rather than “shall” be retained by the entity creating the REC as well as saying that such RECs “shall not be considered owned, used, or extinguished” in place of “may not be considered used or extinguished.” SEIA did not indicate whether its proposal would accomplish the same objectives sought by Commission Brenda Burns’ proposal.

On August 1, 2014, the Residential Utility Consumer Office (“RUCO”) filed comments in this docket, asking the Commission to consider possible REST rule changes in recognition of proposed new Environmental Protection Agency (“EPA”) rule 111(d). RUCO’s comments do not directly address the proposals contained in Commissioner Brenda Burns’ letter. RUCO suggests two possible methods to assist utilities in acquiring DG RECs from willing solar adopters. One method would be to create a “back-fill” policy whereby a DG customer who decides to retain RECs would incur a small charge that pays the cost of utilities going out and buying inexpensive unbundled RECs. RUCO’s second method would be to have customers who retain their DG RECs pay a different LFCR “net metering” charge than other customers. RUCO recommends that if the Commission does not adopt either of these two methods, that the Commission insert the following language (or something similar) in the REST rules:

“Affected utilities, upon approval of the Commission, may be authorized to use non-DG RECs (bundled or unbundled) to satisfy compliance of the DG carve-out. However, the amount of non-DG RECs applied to the carve-out cannot exceed the

THE COMMISSION

August 8, 2014

Page 4

number of RECs and/or kWhs produced by customers who have not exchanged their RECs to the utility in their respective service territory.”

RUCO does not indicate whether its proposal would accomplish the same objectives sought by Commissioner Brenda Burns’ proposal.

On July 22, 2014, the Commission directed Staff to move forward with preparing draft REST rules to reflect the content of Commissioner Brenda Burns’ May 21, 2014 letter. Attached is Staff’s initial draft for the Proposed Rulemaking to Modify the Renewable Energy Standard and Tariff Rules incorporating Commissioner Brenda Burns’ proposed changes.

Staff encourages all interested parties to provide written comments on the draft rules. Please reference Docket No. RE-00000C-14-0112 on all comments.

Please file an original and 13 copies of your comments with the Commission’s Docket Control Center, 1200 West Washington Street, Phoenix, Arizona 85007.

Based on consultations with the Hearing Division, Staff recommends the following procedural schedule. Staff recommends that the Commission direct Staff to file a Notice of Proposed Rulemaking with the office of the Secretary of State, no later than September 19, 2014, for publication in the Arizona Administrative Register no later than October 10, 2014. Staff further recommends that the deadline for initial written comments be set for November 10, 2014 and for responsive written comments by November 14, 2014. Staff further recommends that the Commission direct the Hearing Division to hold oral proceedings to receive public comment on the Notice of Proposed Rulemaking on November 14, 2014, in Hearing Room 1 at the Commission’s offices in Phoenix, Arizona and on November 12, 2014, in Room 222 of the Commission’s offices in Tucson, Arizona. Staff further recommends that the Hearing Division establish additional procedural deadlines and requirements as may be necessary, consistent with the Administrative Procedures Act and prior Commission rulemaking procedures.

Originator: Bob Gray

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **BOB STUMP**

Chairman

3 **GARY PIERCE**

Commissioner

4 **BRENDA BURNS**

Commissioner

5 **BOB BURNS**

Commissioner

6 **SUSAN BITTER SMITH**

Commissioner

7

8 IN THE MATTER OF THE PROPOSED  
9 RULEMAKING TO MODIFY THE  
10 RENEWABLE ENERGY STANDARD AND  
11 TARIFF RULES

DOCKET NO. RE-00000C-14-0112

DECISION NO. \_\_\_\_\_

ORDER

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Open Meeting  
September 9 and 10, 2014  
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. On March 31, 2014, Arizona Corporation Commission ("Commission") Staff ("Staff") filed a request with docket control to open a generic docket for the purpose of commencing a proposed rulemaking on the Renewable Energy Standard and Tariff ("REST") rules as directed by the Commission.

2. On February 26, 2014, the Commission issued Decision No. 74365 that ordered:

"that the REST rules shall be opened for the purpose of developing a new methodology for utilities to comply with renewable energy requirements that is not based solely on the use of RECs and that Staff shall, after consultation with utilities, interveners in this docket, and other interested stakeholders, filed proposed new rules no later than April 15, 2014 with the Commission to address a Notice of Proposed Rulemaking on this matter at its May 2014 Open Meeting or as soon as is practical after that date." (page 55, lines 7-13)

3. The question of REST compliance in a post-incentive era was raised by Arizona Public Service Company ("APS") in its June 29, 2012 filing of its proposed 2013 REST plan, wherein APS

1 requested approval of a Track and Record method for meeting its distributed energy ("DE")  
2 compliance requirements. Similarly, Tucson Electric Power Company ("TEP") and UNS Electric,  
3 Inc. ("UNS") requested guidance from the Commission on how to demonstrate REST compliance in  
4 a post-incentive time, in their July 2, 2012 filings of their proposed 2013 REST plans.

5 4. This issue was discussed during the fall of 2012 as the APS, TEP, and UNS 2013 REST  
6 plans were considered by the Commission.

7 5. The Commission Decisions on the APS, TEP, and UNS 2013 REST plans, issued January  
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12 REST rules.

13 6. The hearing was held on June 3-6, 2013 and June 21, 2013. The Track and Record  
14 proceeding culminated in the issuance of Decision No. 74365.

15 7. On April 4, 2014 Staff filed its Notice of Compliance Filing Per Decision No. 74365. In  
16 this filing Staff provided seven options for the Commission to consider:

17 A. Track and Monitor – This option would track all renewable energy production in a  
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19 not and would reduce the REST requirement to reflect production where the utility does not own the  
20 RECs.

21 B. Process Where Utility Would Purchase Least Cost RECs or kilowatt hours ("kWhs") –  
22 Under this option, utilities would purchase RECs or renewable kWhs to meet REST requirements and  
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26 renewable energy to a maximum allowed percentage of conventional energy.

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6 F. Recovery of DG/DE Costs Through the Standard Rate Case Process – This option  
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10 G. Track and Record – Under this option, utilities would track, record, and report all  
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22 did not own the RECs.

23 C. The reporting of kWhs not owned by the utility would be acknowledged.

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25 E. The following statement or something similar would be part of the REST rules:

26 ...

27 ...

28 ...

1           “Any Renewable Energy Credit (REC) created by the production of renewable  
2 energy which the Affected Utility does not own shall be retained by the entity creating  
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9 ratepayers to pay for further subsidies.

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16 capacity-based Track and Record method.

17           11. SEIA’s proposed modifications remove references to the Commission acknowledging RECs  
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22 by the entity creating the REC as well as saying that such RECs “shall not be considered owned, used,  
23 or extinguished” in place of “may not be considered used or extinguished.”

24           12. SEIA does not state whether its proposal would accomplish the same objectives sought by  
25 Commissioner Brenda Burns’ proposal.

26           13. On August 1, 2014, the Residential Utility Consumer Office (“RUCO”) filed comments in  
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10 number of RECs and/or kWhs produced by customers who have not exchanged  
11 their RECs to the utility in their respective service territory."

12 14. RUCO does not state whether its proposals would accomplish the same objectives sought by  
13 Commissioner Brenda burns' proposal.

14 15. On July 22, 2014, the Commission directed Staff to move forward with preparing draft  
15 REST rules to reflect the content of Commissioner Brenda Burns' May 21, 2014 letter.

16 16. Attached is Staff's initial draft for the Proposed Rulemaking to Modify the Renewable  
17 Energy Standard and Tariff Rules incorporating Commissioner Brenda Burns' proposed changes.

18 17. Staff encourages all interested parties to provide written comments on the draft rules. Please  
19 reference Docket No. RE-00000C-14-0112 on all comments.

20 18. Please file an original and 13 copies of your comments with the Commission's Docket  
21 Control Center, 1200 West Washington Street, Phoenix, Arizona 85007.

22 19. Based on consultations with the Hearing Division, Staff has recommended that the  
23 Commission direct Staff to file a Notice of Proposed Rulemaking with the office of the Secretary of  
24 State, no later than September 19, 2014, for publication in the Arizona Administrative Register no  
25 later than October 10, 2014.

26 20. Staff has further recommended that the deadline for initial written comments be set for  
27 November 10, 2014, and for responsive written comments by November 14, 2014.

28 21. Staff has further recommended that the Commission direct the Hearing Division to hold  
oral proceedings to receive public comment on the Notice of Proposed Rulemaking on November 14,

...

1 2014, in Hearing Room 1 at the Commission's offices in Phoenix, Arizona and on November 12,  
2 2014, in Room 222 of the Commission's offices in Tucson, Arizona.

3 22. Staff has further recommended that the Hearing Division establish additional procedural  
4 deadlines and requirements as may be necessary, consistent with the Administrative Procedures Act  
5 and prior Commission rulemakings.

6 CONCLUSIONS OF LAW

7 1. Pursuant to Article XV of the Arizona Constitution and A.R.S. Title 40 generally, the  
8 Commission has jurisdiction over the matters raised herein.

9 2. It is in the public interest to adopt Staff's recommendations.

10 ORDER

11 IT IS THEREFORE ORDERED that Staff file a Notice of Proposed Rulemaking with the  
12 office of the Secretary of State, no later than September 19, 2014, for publication in the Arizona  
13 Administrative Register no later than October 10, 2014.

14 IT IS FURTHER ORDERED that the deadline for initial written comments be set for  
15 November 10, 2014 and for responsive written comments by November 14, 2014.

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1 IT IS FURTHER ORDERED that the Hearing Division hold oral proceedings to receive  
 2 public comment on the Notice of Proposed Rulemaking on November 14, 2014 in Hearing Room 1  
 3 at the Commission's offices in Phoenix, Arizona and on November 12, 2014 in Room 222 the  
 4 Commission's offices in Tucson, Arizona.

5 IT IS FURTHER ORDERED that that the Commission establish additional procedural  
 6 deadlines and requirements as may be necessary, consistent with the Administrative Procedures Act  
 7 and prior Commission rulemakings.

8 IT IS FURTHER ORDERED that this Order be made effective immediately.

9  
 10 **BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

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 12 \_\_\_\_\_  
 13 CHAIRMAN COMMISSIONER

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 16 COMMISSIONER COMMISSIONER COMMISSIONER

17 IN WITNESS WHEREOF, I, JODI JERICH, Executive  
 18 Director of the Arizona Corporation Commission, have  
 19 hereunto, set my hand and caused the official seal of this  
 20 Commission to be affixed at the Capitol, in the City of  
 21 Phoenix, this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

22 \_\_\_\_\_  
 23 JODI JERICH  
 24 EXECUTIVE DIRECTOR

25 DISSENT: \_\_\_\_\_

26 DISSENT: \_\_\_\_\_

27 SMO:RBG:sms\MAS

28

1 SERVICE LIST FOR:  
2 DOCKET NO. RE-00000C-14-0112

3 Court Rich  
4 7144 E. Stetson Drive, Suite 300  
5 Scottsdale, Arizona 85251

6 Michael Curtis  
7 Mohave Electric Cooperative, Inc.  
8 501 East Thomas Road  
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10 Peggy Gillman  
11 P.O. Box 1045  
12 Bullhead City, Arizona 86430

13 John Wallace  
14 2210 South Priest Drive  
15 Tempe, Arizona 85282

16 Track and Record Proceeding

17 Rick Umoff  
18 Solar Energy Industries Association  
19 505 9th St NW, Ste 800  
20 Washington, District of Columbia 20004

21 Kyle Smith  
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24 Fort Belvoir, Virginia 22060

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27 Support Center  
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14 111 W. Renee Dr.  
15 Phoenix, Arizona 85027
  
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17 1110 West Washington, Suite 220  
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- 22 C. Webb Crockett  
23 Fennemore Craig, P.C  
24 2394 E. Camelback Rd, Ste 600  
25 Phoenix, Arizona 85016
  
- 26 Giancarlo Estrada  
27 Estrada-Legal, PC  
28 3030 N. 3rd Street, Suite 770  
Phoenix, AZ 85012
  
- Bradley Carroll  
88 E. Broadway Blvd. MS HQE910  
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Tucson, Arizona 85702
  
- Kevin Koch  
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Tucson, Arizona 85705

- 1 Annie Lappe  
Rick Gilliam
- 2 The Vote Solar Initiative  
1120 Pearl St. - 200
- 3 Boulder, Colorado 80302
- 4 David Berry  
Western Resource Advocates
- 5 P.O. Box 1064
- 6 Scottsdale, Arizona 85252-1064
- 7 Timothy Hogan  
202 E. McDowell Rd. - 153
- 8 Phoenix, Arizona 85004
- 9 Michael Patten  
Roshka DeWulf & Patten, PLC
- 10 One Arizona Center  
400 E. Van Buren St. - 800
- 11 Phoenix, Arizona 85004
- 12 Other Affected Utilities
- 13 AJO Improvement Company  
P.O. Drawer 9
- 14 Ajo, Arizona 85321
- 15 Duncan Valley Electric Cooperative  
P.O. Box 440
- 16 Duncan, Arizona 85534
- 17 Graham County Electric Cooperative  
P.O. Drawer B
- 18 Pima, Arizona 85543
- 19 Navopache Electric Cooperative  
1878 W. White Mountain Boulevard
- 20 Lakeside, Arizona 58929
- 21 Trico Electric Cooperative  
P.O. Box 930
- 22 Marana, Arizona 85653-0930
- 23 Morenci Water and Electric Company  
P.O. Box 68
- 24 Morenci, Arizona 85540
- 25 Sulphur Springs Valley Electric Cooperative  
350 N. Haskell Avenue
- 26 Willcox, Arizona 85643
- 27
- 28

1 Mr. Steven M. Olea  
2 Director, Utilities Division  
3 Arizona Corporation Commission  
4 1200 West Washington Street  
5 Phoenix, Arizona 85007

6 Ms. Janice M. Alward  
7 Chief Counsel, Legal Division  
8 Arizona Corporation Commission  
9 1200 West Washington Street  
10 Phoenix, Arizona 85007

11 Ms. Lyn Farmer  
12 Director, Hearing Division  
13 Arizona Corporation Commission  
14 1200 West Washington Street  
15 Phoenix, Arizona 85007

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**ARTICLE 18. RENEWABLE ENERGY  
STANDARD AND TARIFF**

**R14-2-1801. Definitions**

- A. No change
- B. No change
- C. No change
- D. No change
- E. No change
- F. No change
- G. No change
- H. No change
- I. No change
- J. No change
- K. No change
- L. No change
- M. No change
- N. No change
- O. No change
- P. No change
- Q. No change
- R. No change

- B. No change
- C. No change
- D. No change
- E. No change
- F. No change

**R14-2-1802. Eligible Renewable Energy Resources**

- A. No change
  - 1. No change
  - 2. No change
  - 3. No change
  - 4. No change
    - a. No change
    - b. No change
  - 5. No change
  - 6. No change
  - 7. No change
  - 8. No change
  - 9. No change
    - a. No change
    - b. No change
    - c. No change
  - 10. No change
  - 11. No change
- B. No change
  - 1. No change
  - 2. No change
  - 3. No change
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  - 8. No change
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  - 10. No change
  - 11. No change
  - 12. No change
- C. No change
- D. No change

**R14-2-1804. Annual Renewable Energy Requirement**

- A. No change
- B. No change
- C. No change
- D. No change
- E. No change
- F. No change
- G. No change

**R14-2-1805. Distributed Renewable Energy Requirement**

- A. No change
- B. No change
- C. No change
- D. No change
- E. No change
- F. Any Renewable Energy Credit created by production of renewable energy which the Affected Utility does not own shall be retained by the entity creating the Renewable Energy Credit. Such Renewable Energy Credit may not be considered used or extinguished by any Affected Utility without approval and proper documentation from the entity creating the Renewable Energy Credit, regardless of whether or not the Commission acknowledged the kWhs associated with non-utility owned Renewable Energy Credits.
- G. The reporting of kWhs associated with Renewable Energy Credits not owned by the utility will be acknowledged.

**R14-2-1806. Extra Credit Multipliers**

- A. No change
- B. No change
- C. No change
- D. No change
- E. No change
- F. No change
  - 1. No change
  - 2. No change
  - 3. No change
  - 4. No change
  - 5. No change
- G. No change

**Historical Note**

**R14-2-1803. Renewable Energy Credits**

- A. No change

**R14-2-1807. Manufacturing Partial Credit**

- A. No change

- B. No change
- C. No change

**R14-2-1808. Tariff**

- A. No change
- B. No change
  - 1. No change
  - 2. No change
  - 3. No change
  - 4. No change
  - 5. No change
- C. No change
- D. No change
- E. No change

**R14-2-1809. Customer Self-Directed Renewable Energy Option**

- A. No change
- B. No change
- C. No change

**R14-2-1810. Uniform Credit Purchase Program**

- A. No change
- B. No change

**R14-2-1811. Net Metering and Interconnection Standards**

- A. No change

**R14-2-1812. Compliance Reports**

- A. Beginning April 1, 2007, and every April 1st thereafter, each Affected Utility shall file with Docket Control a report that describes its compliance with the requirements of these rules for the previous calendar year and provides other relevant information. The Affected Utility shall also transmit to the Director of the Utilities Division an electronic copy of this report that is suitable for posting on the Commission's web site.
- B. The compliance report shall include the following information:
  - 1. The actual kWh of energy produced within its service territory and the actual kWh of energy or equivalent obtained from Eligible Renewable Energy Resources, differentiating between kWhs for which the Affected Utility owns the Renewable Energy Credits and kWhs produced in the Affected Utility's service territory for which the Affected Utility does not own the Renewable Energy Credits;
  - 2. No change
  - 3. No change
  - 4. No change

- 5. No change
- 6. No change
- C. The Commission may consider all available information and may hold a hearing to determine whether an Affected Utility's compliance report satisfies the requirements of these rules.

**R14-2-1813. Implementation Plans**

- A. No change
- B. No change
  - 1. No change
  - 2. No change
  - 3. No change
  - 4. No change
  - 5. No change
- C. No change

**R14-2-1814. Electric Power Cooperatives**

- A. No change
- B. No change

**R14-2-1815. Enforcement and Penalties**

- A. No change
- B. No change
  - 1. No change
  - 2. No change
  - 3. No change
- C. No change
- D. No change

**R14-2-1816. Waiver from the Provisions of this Article**

- A. No change
- B. No change
- C. No change

**Appendix A. Sample Tariff**

- No change
  - 1. No change
  - 2. No change
  - 3. No change
  - 4. No change