

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

Form #2

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SECRETARY OF STATE  
STATE OF WEST VIRGINIA

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: Public Service Commission of West Virginia TITLE NUMBER: 150 C.S.R. 34

RULE TYPE: Exempt Legislative CITE AUTHORITY: W.Va. Code §24-2F-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 34

TITLE OF RULE BEING PROPOSED: Rules Governing Alternative and Renewable Energy Portfolio Standard

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON September 15, 2010 AT 4:00 p. m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Sandra Squire, Executive Secretary

Public Service Commission of West Virginia

P.O. Box 812

Charleston, WV 25323

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

  
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

## Summary of the Rule

The Public Service Commission of West Virginia has proposed Rules Governing Alternative and Renewable Energy Portfolio Standard, 150 C.S.R. 34. The West Virginia Legislature required this rulemaking in the Alternative and Renewable Energy Portfolio Act (Act), codified in Article 2F of Chapter 24 of the West Virginia Code, effective July 1, 2009.

Pursuant to W.Va. Code §24-2F-5, the Act establishes an alternative and renewable energy portfolio standard, requiring the state's electric utilities to own an amount of alternative and renewable energy credits equal to a certain percentage of electricity sold by the utility in the preceding calendar year to retail customers in West Virginia. On and after the date of January 1, 2025, an electric utility is required to own credits equal to at least twenty-five percent (25%) of the electricity sold by the utility in the preceding calendar year. The Act establishes interim portfolio standards: (i) for the period beginning January 1, 2015 and ending December 31, 2019, an electric utility is required to own credits equal to at least ten percent (10%) of the electricity sold by the utility in the preceding calendar year, and (ii) for the period beginning January 1, 2020 and ending December 31, 2024, an electric utility is required to own credits equal to at least fifteen percent (15%) of the electricity sold by the utility in the preceding calendar year. Pursuant to W.Va. Code § 24-2F-6, the Act requires electric utilities to (i) prepare an annual portfolio standard compliance plan and to file such plan with the Commission for approval, beginning January 1, 2011, and, (ii) submit to the Commission an annual progress report within a year of the Commission's approval of the compliance plan and every year thereafter while the portfolio standard is in effect. The Act authorizes the Commission to impose compliance assessments on the electric utilities for failure to comply with portfolio standard requirements, to modify the portfolio standard requirements of an electric utility in a given year; to approve or disapprove of the portfolio standard compliance plan; and to charge assessments on electric utilities required to file a compliance plan pursuant to W.Va. Code §§24-2F-5, 24-2F-6.

The Act requires the Public Service Commission to establish a system of tradeable credits to establish, verify and monitor the generation and sale of electricity generated from alternative and renewable energy resource facilities under W.Va. Code §24-2F-4. The Act provides that the credits may be traded, sold or used to meet the requirements of the alternative and renewable energy portfolio standard established under W.Va. Code §24-2F-5.

The proposed Rules Governing Alternative and Renewable Energy Portfolio Standard, 150 C.S.R. 34 govern the alternative and renewable energy portfolio standard applicable to electric utilities and establish a system of tradeable credits that may be traded, sold or used to meet the requirements of the portfolio standard. The proposed rules also include provisions related to the Alternative and Renewable Energy Resource Research Fund established by the Act, cost recovery and rate incentives for electric utility investment in alternative and renewable energy resources, and public reporting requirements.

## Statement of Circumstances

In the 2009 First Extraordinary Session of the West Virginia Legislature, the West Virginia Legislature enacted House Bill 103, the Alternative and Renewable Energy Portfolio Act (Act), codified in Article 2F, Chapter 24 of the West Virginia Code. The Act was later amended by House Bill 408, enacted during the 2009 Fourth Extraordinary Session of the Legislature, and Senate Bill 350, enacted during the 2010 Regular Session of the Legislature.

According to the legislative findings set forth at W.Va. Code §24-2F-2, the Legislature enacted the Act, *inter alia*, in order to encourage the development of more efficient, lower-emitting, and reasonably priced alternative and renewable energy resources, the development of a robust and diverse portfolio of electric-generating capacity, and the construction of alternative and renewable energy resource facilities within the state. The Act authorizes the West Virginia Public Service Commission to promulgate rules to effectuate the purposes of the Act under W.Va. Code §24-2-12. This rulemaking is responsive to the legislation enacted under W.Va. Code §24-2F-1 *et seq.*

Included within the Act is the requirement that the Public Service Commission establish a system of tradeable credits to establish, verify and monitor the generation and sale of electricity generated from alternative and renewable energy resource facilities under W.Va. Code §24-2F-4. The Act provides that the credits may be traded, sold or used to meet the requirements of the alternative and renewable energy portfolio standard established under W.Va. Code §24-2F-5.

By Order issued July 28, 2009, the Commission (i) instituted a General Order proceeding, (ii) ordered public notice, and (iii), established a preliminary comment period, prior to the issuance of the proposed rules, to address the content, extent, and nature of the proposed rules to establish a credit trading program. The Order required all interested parties and entities to file preliminary comments on or before 4:00 p.m. October 1, 2009. The July 29, 2009 Order stated that the Commission intended to issue final rules prior to the January 1, 2011 deadline established by the Legislature for the electric utilities to file portfolio compliance plans under the Act.

After considering the preliminary comments filed and the mandates of the Act, the Commission has issued proposed legislative rules, Rules Governing Alternative and Renewable Energy Portfolio Standard, 150 C.S.R. 34.

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rules Governing Alternative and Renewable Energy Portfolio, 150 C.S.R. 34

Rule Title: \_\_\_\_\_

Type of Rule:  Legislative  Interpretive  Procedural

Agency: Public Service Commission of West Virginia

Address: PO Box 812  
Charleston, WV 25323

Phone Number: 304-340-0435 Email: ahaden@psc.state.wv.us

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The Commission may collect an administrative transaction fee for credit transactions described in W.Va. Code 24-2F-4(c). The Commission shall collect, from electric utilities required to file portfolio compliance plans, a special assessment, prorated among the utilities on the basis of kW hours of retail sales, due Sept. 1 of each year; provided that, the amount shall not exceed \$200,000 in the first year the compliance plan requirement is in effect after July 1, 2009 (which has already been assessed), and shall not exceed \$100,000 in successive years pursuant to W.Va. Code §24-2F-6(k). The assessments and fees collected by the Commission shall be used by the Commission to offset direct and indirect costs associated with this rulemaking. The Commission hired a consultant to prepare the proposed rules. Aside from costs associated with hiring the consultant, which will be approximately \$250,000 for FY 2011, the fiscal impact on the agency associated with the implementation of the rulemaking is not fully known.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

<b>FISCAL YEAR</b>			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	0.00	0.00	0.00
Personal Services	0.00	299,610.00	100,000.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
<b>2. Estimated Total Revenues</b>	200,000.00	100,000.00	100,000.00

Rule Title: \_\_\_\_\_

Rule Title: Rules Governing Alternative and Renewable Energy Portfolio, 150 C.S.R. 34

3. **Explanation of above estimates (including long-range effect):**  
Please include any increase or decrease in fees in your estimated total revenues.

See the new assessments and fees described above.

### MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

The fiscal impact of the rulemaking on the agency is not yet known. However, the Commission anticipates that the fiscal impact on the agency will be offset by the assessments and fees collected by the Commission. The Commission plans to utilize existing staff to implement the rulemaking. In addition, in 2009, the Commission received a federal government grant pursuant to the American Recovery and Reinvestment Act to hire additional staff to work on cases and projects related to this rulemaking.

The rulemaking could have a beneficial economic impact on the state through the development and construction of alternative and renewable energy facilities.

Date: July 30, 2010

Signature of Agency Head or Authorized Representative

Michael A. Albert

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 30<sup>th</sup> day of July 2010.

GENERAL ORDER NO. 184.25

In the matter of a proceeding to seek preliminary comments from interested parties regarding the scope of a proposed rulemaking to establish a credit trading program pursuant to West Virginia House Bill 103, effective July 1, 2009: Alternative and Renewable Energy Portfolio Act, codified as W. Va. Code §24-2F-1 et seq.

**COMMISSION ORDER**  
**PROMULGATING PROPOSED RULES**

In the 2009 First Extraordinary Session of the Legislature, the West Virginia Legislature enacted House Bill 103, the Alternative and Renewable Energy Portfolio Act (Portfolio Act or Act), codified in Article 2F, Chapter 24 of the West Virginia Code. The Act was later amended by House Bill 408, enacted during the 2009 Fourth Extraordinary Session of the Legislature, and Senate Bill 350, enacted during the 2010 Regular Session of the Legislature.

The Act includes legislative findings at W.Va. Code §24-2F-2, stating:

- (1) West Virginia has served the nation for many years as a reliable source of electrical power;
- (2) The nation is on a rapid course of action to produce electrical power with an ever decreasing amount of emissions;
- (3) To continue lowering the emissions associated with electrical production, and to expand the state's economic base, West Virginia should encourage the development of more efficient, lower-emitting and reasonably priced alternative and renewable energy resources;
- (4) The development of a robust and diverse portfolio of electric-generating capacity is needed for West Virginia to continue its success in attracting new businesses and jobs. This portfolio must include the use of alternative and renewable energy resources at new and existing facilities;

(5) West Virginia has considerable natural resources that could support the development of alternative and renewable energy resource facilities at a reasonable price;

(6) Alternative and renewable energy resources can be utilized now to meet state and federal environmental standards, including those reasonably anticipated to be mandated in the future; and

(7) It is in the public interest for the state to encourage the construction of alternative and renewable energy resource facilities that increase the capacity to provide for current and anticipated electric energy demand at a reasonable price.

Included in the Act is the requirement that the Public Service Commission promulgate rules to establish a system of tradeable credits to establish, verify and monitor the generation and sale of electricity generated from alternative and renewable energy resource facilities under W.Va. Code §24-2F-4. The Act provides that the credits may be traded, sold or used to meet the requirements of the alternative and renewable energy portfolio standard established under W.Va. Code §24-2F-5.

In view of the legislative mandate under the provisions of W.Va. Code §24-2F-1 et seq., the Commission instituted this General Order proceeding for the purpose of developing applicable rules to establish a credit trading program. In promulgating these rules, the Commission has been guided by the findings of the statute.

By Commission Order issued July 28, 2009, the Commission (i) instituted this General Order proceeding, (ii) ordered public notice, and (iii) established a preliminary comment period, prior to the issuance of the proposed rules, to address the content, extent and nature of the proposed rules. The Order required all interested parties and entities to file preliminary comments on or before 4:00 p.m. October 1, 2009.

The Order dated July 28, 2009, specifically stated that the preliminary comments should address: (i) whether the Commission should adopt by rule portfolio requirements for rural electric cooperatives, municipally-owned electric facilities or utilities serving less than thirty thousand residential electric customers in the state (reference W.Va. Code §24-2F-10(a)); (ii) whether the Commission should extend by rule the award of alternative and renewable energy resource credits to electric distribution companies or electric generators other than electric utilities (reference W.Va. Code §24-2F-10(b)); and (iii) the Commission's process to impose assessments for failure to comply with the alternative and renewable energy portfolio standards of the Act (reference W.Va. Code §24-2F-5(g)). The Order stated that the Commission intended to promulgate the final rules prior to the January 1, 2011 deadline established by the Legislature for the utilities to file compliance plans under the Act.

In response to the Commission Order dated July 28, 2009, many interested parties filed preliminary comments. After considering the preliminary comments filed by the interested parties and the legislative mandates of the Act, the Commission has drafted proposed rules that, among

other things:

- (1) Adopt the PJM Generation Attribute Tracking System (GATS) owned and operated by PJM-Environmental Information Services, Inc. (PJM-EIS), as the designated system to track the credits awarded under the credit trading program under the Act. GATS is an independent, industry-recognized system that is utilized by the other states located within the PJM regional transmission organization to monitor compliance with their portfolio standards;
- (2) Provide that the certificate created and tracked by GATS will be used by the Commission as the basis of determining compliance with the Portfolio Act with a multiplier effect of 1x, 2x or 3x, depending on the energy resource facility type or the type of project as required by the Act (reference W.Va. Code §§ 24-2F-4(b), 24-2F-4(d), and 24-2F-4(e));
- (3) Include the definition of a baseline technology as the most efficient coal-fired energy generating facility owned by a West Virginia utility in operation on July 1, 2009, the effective date of the Act, as the standard from which to determine reductions in airborne carbon dioxide emissions under the definition of “advanced coal technology” in proposed Rule 2.2;
- (4) Include the definition of a “Behind-the-meter Generator or BTM Generator” in proposed Rule 2.7 as distinguished from the definition of a “Customer-generator” as included within the proposed rules and the Commission Rules Governing Electric Utility Net Metering Arrangements and Interconnections, 150 C.S.R. 33. The distinguishing factor under the proposed rules is that a “Customer-generator” is a customer-sited generation project that is interconnected to utility-owned facilities, while a “Behind-the-meter Generator or BTM Generator” is a customer-sited generation project that is not interconnected to utility-owned facilities. Under proposed Rules 5.7 and 5.8, a Customer-generator and BTM generator own the alternative and renewable energy resource credits awarded for their generation;
- (5) Provide for the award of alternative and renewable energy resource credits to electric distribution companies or electric generators other than electric utilities, provided that the entities meet the requirements of proposed Rules 4 and 5;
- (6) Provide that an electric generator or project seeking entitlement to credits must be certified by the Commission as a “qualified energy resource” under proposed Rule 4;
- (7) Provide for decertification by the Commission as a qualified energy resource for failure to timely notify the Commission of substantive changes in the operating characteristics of a qualified energy resource under proposed Rule 4.6.; and

(8) Provide that an electric utility, based on sales for the prior calendar year, must own credits needed to comply with the Portfolio Standard of a given year by December 31, 2015, for the first year and by December 31 of each following year with a Portfolio Standard under proposed Rule 9.1.a. In adopting GATS as the designated system to track credits, however, the Commission recognizes that the GATS system creates a credit for December by the last business day in January. The Commission recognizes that although credits must be owned by December 31 in order to be used for compliance purposes, the credits may not be reflected in the GATS system until after that date. The proposed rules recognize this one month delay in recording credits in the GATS system by providing that credits used for compliance must be shown as retired no later than the filing date for the annual progress report required by the Rules.

The Commission proposes to apply the rules to all electric utilities within the state, including rural electric cooperatives, municipally-owned electric facilities and utilities serving less than thirty thousand residential electric customers in the state. In addition, the Commission intends to adopt the greenhouse gas offset registries of the Climate Action Reserve, American Carbon Registry, Voluntary Carbon Standard and the Gold Standard as the list of approved offset registries to verify and certify a greenhouse emission reduction or offset project as defined within the Act, in its future order adopting final rules. The Commission finds that these offset registries currently provide the best methods of verification. However, the Commission reserves the right to update its list of approved greenhouse gas emission reduction or offset project protocols under the proposed rules.

With respect to the verification and certification of energy efficiency and demand-side energy initiative projects, the proposed rules contemplate that the Commission will determine if a project is verifiable in accordance with industry-accepted evaluation, measurement, and verification (EMV) protocols on a case-by-case basis for each project and EMV plan submitted by the electric utilities for approval under proposed Rule 4.2.d.6. Thus, the Commission does not presently intend to issue an approved list of EMV protocols.

By this order, the Commission issues these rules as proposed legislative rules, attached hereto as Attachment B, for public comment. The Order provides for a forty-five day comment period.

### **ORDER**

IT IS THEREFORE ORDERED that the attached Rules Governing Alternative and Renewable Energy Portfolio Standard, 150 C.S.R. 34, attached hereto as Attachment B, are hereby promulgated as Commission proposed legislative rules.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission publish a copy of the notice attached as Attachment A as a Class I legal advertisement in the newspapers of statewide circulation and published in Charleston, West Virginia.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission shall cause a copy of Attachment A to be served by electronic mail or by First Class United States Mail, on all electric utilities operating in West Virginia, Mr. Kerry Stroup at PJM Interconnection LLC, 995 Jefferson Avenue, Eagleville, Pennsylvania 19403-2410, and the Commission Consumer Advocate Division and on Commission Staff by hand delivery.

IT IS FURTHER ORDERED that the Executive Secretary shall file a copy of these rules, together with requisite filing forms, with the Office of the Secretary of State.

IT IS FURTHER ORDERED that a comment period is established with respect to the proposed rules, and comments may be filed with the Commission Executive Secretary by August 30, 2010, by 4:00 p.m. Any interested party who files comments shall set forth specific comments concerning the proposed rules. Replies to the comments may be filed no later than September 15, 2010, by 4:00 p.m.

A True Copy, Teste:

  
Sandra Squire  
Executive Secretary

ASH/rmt  
go18425ca.wpd

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

GENERAL ORDER NO. 184.25

In the matter of a proceeding to seek preliminary comments from interested parties regarding the scope of a proposed rulemaking to establish a credit trading program pursuant to West Virginia House Bill 103, effective July 1, 2009: Alternative and Renewable Energy Portfolio Act, codified as W.Va. Code §24-2F-1 et seq.

**NOTICE OF RULEMAKING**

In 2009, the West Virginia Legislature enacted the Alternative and Renewable Energy Portfolio Act (Act), codified in Article 2F of Chapter 24 of the West Virginia Code, effective July 1, 2009. The Act requires the Public Service Commission to promulgate rules to establish a system of tradeable credits to establish, verify and monitor the generation and sale of electricity generated from alternative and renewable energy resource facilities under W.Va. Code §24-2F-4. The Act provides that the credits may be traded, sold or used to meet the requirements of the alternative and renewable energy portfolio standard established under W.Va. Code §24-2F-5.

By Order issued July 28, 2009, the Public Service Commission (i) instituted this General Order proceeding, (ii) ordered public notice, and (iii) established a preliminary comment period, prior to the issuance of the proposed rules, to address the content, extent and nature of the proposed rules to establish a credit trading program. The Order required all interested parties and entities to file preliminary comments on or before October 1, 2009. The Commission has considered the preliminary comments filed by interested parties and has drafted proposed rules to implement the requirements of the Act.

By Commission order issued July 30, 2010, the Commission issues the proposed rules, Rules Governing Alternative and Renewable Energy Portfolio Standard, 150 C.S.R. 34. Pursuant to W.Va. Code §24-2F-5, the alternative and renewable energy portfolio standard requires the state's electric utilities to own an amount of alternative and renewable energy credits equal to a certain percentage of electricity sold by the utility in the preceding calendar year to retail customers in West Virginia. On and after the date of January 1, 2025, an electric utility is required to own credits equal to at least twenty-five percent (25%) of the electricity sold by the utility in the preceding calendar year. The Act establishes interim portfolio standards: (i) for the period beginning January 1, 2015 and ending December 31,

2019, an electric utility is required to own credits equal to at least ten percent (10%) of the electricity sold by the utility in the preceding calendar year, and (ii) for the period beginning January 1, 2020 and ending December 31, 2024, an electric utility is required to own credits equal to at least fifteen percent (15%) of the electricity sold by the utility in the preceding calendar year. The proposed rules set forth the requirements for the electric utilities' compliance with the portfolio standard and establish a system of tradeable credits that may be traded, sold or used to meet the requirements of the portfolio standard. The proposed rules also include provisions related to the the Alternative and Renewable Energy Resource Research Fund established by the Act, cost recovery and rate incentives for electric utility investment in alternative and renewable energy resources, and public reporting requirements.

Any interested person may obtain a copy of the proposed Rules Governing Alternative and Renewable Energy Portfolio Standard by addressing a request to Sandra Squire, Executive Secretary, Public Service Commission of West Virginia, Post Office Box 812, Charleston, West Virginia 25323, or on the Commission's internet website ([www.psc.state.wv.us](http://www.psc.state.wv.us)). Any interested person or corporation may file specific comments on the proposed amended rules by August 30, 2010 by 4:00 p.m., with the Executive Secretary. Replies to comments must be filed no later than September 15, 2010 by 4:00 p.m.

**TITLE 150  
LEGISLATIVE RULES  
PUBLIC SERVICE COMMISSION**

**SERIES 34**

**RULES GOVERNING ALTERNATIVE AND  
RENEWABLE ENERGY PORTFOLIO STANDARD**

Attachment B

2010 JUL 30 PM 3:47

SECRETARY OF STATE  
STATE OF WEST VIRGINIA

**§150-34-1. General.**

1.1. Scope. -- These rules govern the alternative and renewable energy Portfolio Standard applicable to electric utilities.

1.2. Authority. -- W. Va. Code §24-2F-1 et seq.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Application of Rules

1.5.a. If hardship results from the application of any rule contained herein or if unusual difficulty is involved in immediately complying with any rule, or upon other good cause shown, application may be made to the Commission for a temporary or permanent exemption or waiver from its provisions. No application for modification or exemption will be considered by the Commission unless the application includes a full and complete justification for such action. Furthermore, to the extent the rule is based on a specific statutory requirement, the Commission is unable to waive such a rule based upon specific statutory requirement.

**§150-34-2. Definitions.**

2.1. The Act. -- The Alternative and Renewable Energy Portfolio Act codified in Article 2F of Chapter 24 of the West Virginia Code, as it may be amended in the future.

2.2. Advanced Coal Technology. -- A technology that is used in a new or existing energy generating facility to reduce airborne carbon dioxide emissions associated with the combustion or use of coal and includes, but is not limited to, carbon dioxide capture and sequestration technology, supercritical technology, advanced supercritical technology as that technology is determined by the Public Service Commission, ultrasupercritical

technology and pressurized fluidized bed technology and any other resource, method, project or technology certified by the Commission as advanced coal technology. For new energy generating facilities the baseline for determining reductions in airborne carbon dioxide emissions shall be the most efficient coal-fired energy generating facility owned by a West Virginia utility in operation on July 1, 2009.

2.3. Alternative and Renewable Energy Portfolio Standard or Portfolio Standard. – A requirement in any given year that requires an electric utility to own credits in an amount equal to a certain percentage of electric energy sold in the preceding calendar year by the electric utility to retail customers in this state.

2.4. Alternative Energy Resources. – Any of the following resources, methods or technologies for the production or generation of electricity:

2.4.a. Advanced coal technology;

2.4.b. Coal bed methane;

2.4.c. Natural gas;

2.4.d. Fuel produced by a coal gasification or liquefaction facility;

2.4.e. Synthetic gas;

2.4.f. Integrated gasification combined cycle technologies;

2.4.g. Waste coal;

2.4.h. Tire-derived fuel;

2.4.i. Pumped storage hydroelectric projects;

2.4.j. Any other resource, method, project or technology certified as an alternative energy resource by the Public Service Commission.

2.5. Alternative and Renewable Energy Resource Credit or Credit. – A tradable instrument that is used to establish, verify and monitor the generation of electricity from alternative and renewable energy resource facilities, energy efficiency or demand-side energy initiative projects, or greenhouse gas emission reduction or offset projects.

2.6. Alternative Energy Resource Facility. – A facility or equipment that generates electricity from alternative energy resources.

2.7. Behind-the-meter Generator or BTM Generator. – A renewable on-site generator within this state that is located behind a retail customer meter such that no utility-owned transmission or distribution facilities are used to deliver the energy from the generating unit to the on-site generator's load.

2.8. Certified Alternative and Renewable Energy Resource Credit or Certified Credit. – A credit that the Public Service Commission certifies has met the definition of an alternative and renewable energy resource credit or credit.

2.9. Certified Alternative or Renewable Energy Resource Facility. – A generation facility or units that the Public Service Commission certifies as an alternative or renewable energy resource facility.

2.10. Commission. – The Public Service Commission of West Virginia.

2.11. Compliance Year. – The calendar year.

2.12. Customer-generator. – An electric retail customer who owns or leases, and operates an alternative or renewable energy resource facility ("generation project") within this state that meets the following criteria: the generation project is located on the same tract of land as its metering point(s) or if the generation facility is located on contiguous tract(s), the generation project is located within two miles of the customer's metering point(s); the tract or contiguous tracts are owned, leased, or operated by the customer as a private residence or used by a commercial or industrial customer in the normal course of business; the generation project has a nameplate capacity of not greater than 25 kilowatts if installed at a residential service location, not greater than 500 kilowatts if installed at a commercial service location, or not greater than 2 megawatts if installed at an industrial service location; provided that the maximum nameplate capacity for a Customer-generator served by rural electric cooperatives, municipally-owned electric utilities or utilities serving less than thirty-thousand residential customers shall be 50 kilowatts and the generation project is designed and installed to operate in parallel with the electric utility distribution system without adversely affecting the operation of equipment and service of the electric utility and its customers and without presenting safety hazards to the electric utility and customers.

2.13. Electric Utility. – Any electric distribution company or electric generation supplier that sells electricity to retail customers in this state.

2.14. Energy Efficiency or Demand-side Energy Initiative Project. – A project in this state that promotes customer energy efficiency or the management of customer consumption of electricity through the implementation of one or more of the following:

2.14.a. Energy efficiency technologies, equipment, management practices or other strategies utilized by residential, commercial, industrial, institutional or government customers that reduce electricity consumption by those customers;

2.14.b. Load management or demand response technologies, equipment, management practices, interruptible or curtailable tariffs, energy storage devices or other strategies in residential, commercial, industrial, institutional and government customers that shift electric load from periods of higher demand to periods of lower demand;

2.14.c. Industrial by-product technologies consisting of the use of a by-product from an industrial process, including, but not limited to, the reuse of energy from exhaust gases or other manufacturing by-products that can be used in the direct production of electricity at the customer's facility;

2.14.d. Customer-sited generation, demand-response, energy efficiency or peak demand reduction capabilities, whether new or existing, that the customer commits for integration into the electric utility's demand-response, energy efficiency or peak demand reduction programs; or

2.14.e. Infrastructure and modernization projects that help promote energy efficiency, reduce energy losses or shift load from periods of higher demand to periods of lower demand, including the modernization of metering and communications (also known as "smart grid"), distribution automation, energy storage, excluding pumped storage hydroelectric projects as defined in 2.4.1., distributed energy resources and investments to promote the electrification of transportation.

2.15. Greenhouse Gas Emission Reduction or Offset Project. – A project to reduce or offset greenhouse gas emissions from sources in this state other than the electric utility's own generating and energy delivery operations. Greenhouse gas emission reduction or offset projects include, but are not limited to:

2.15.a. Methane capture and destruction from landfills, coal mines or farms, except that when the methane is also used to produce electricity the project cannot also qualify as an alternative energy resource under Rule 2.4, or a renewable energy resource under Rule 2.22;

2.15.b. Forestation, afforestation or reforestation;

2.15.c. Nitrous oxide or carbon dioxide sequestration through reduced fertilizer use or no-till farming.

2.16. Generation Attribute Tracking System or GATS. – The environmental and emissions attributes tracking system for electric generation that is owned and operated by PJM-Environmental Information Services, Inc. (PJM-EIS).

2.17. Net Metering. – The means of measuring the difference between electricity supplied by an electric utility and electricity generated from an alternative or renewable energy resource facility owned or operated by an electric retail customer when any portion of the electricity generated from the alternative or renewable energy resource facility is used to offset part or all of the electric retail customer's requirements for electricity.

2.18. Net Generation. – The amount of gross generation less the electrical energy consumed at the generating facility for facility service or auxiliaries or transformation to transmission levels at the facility busbar.

2.19. PJM or PJM Interconnection. – The regional transmission organization (RTO) that coordinates the movement of wholesale electricity in the PJM region, or its successors at law, and manages the transmission systems in this state.

2.20. PJM Region. – The area within which the movement of wholesale electricity is coordinated by PJM interconnection. The PJM region is as described in the Amended and Restated Operating Agreement of PJM, including future supplements and amendments.

2.21. Reclaimed Surface Mine. – A surface mine, as that term is defined in W. Va. Code §22-3-3, that is reclaimed or is being reclaimed in accordance with state or federal law.

2.22. Renewable Energy Resource. – Any of the following resources, methods, projects or technologies for the production or generation of electricity:

2.22.a. Solar photovoltaic or other solar electric energy;

2.22.b. Solar thermal energy;

2.22.c. Wind power;

2.22.d. Run of river hydropower – A hydropower facility that, during normal operating conditions, does not utilize storage and that has outflow from the project equal to inflow of the project on an instantaneous basis. The flow regime below a run of the river hydropower project will essentially be the river's natural regime, except in special circumstances such as might follow reinstallation of flashboards, project

shutdowns, or as required pursuant to the terms and conditions of the facility's Federal Energy Regulatory Commission license to promote the environment, recreation, or fish habitat. Under those circumstances, a change in storage contents is necessary, and outflow is reduced below inflow for a period. Another circumstance is the flow transition after an idle station is brought online, causing initial flows downstream to exceed inflow.

2.22.e. Geothermal energy, which means a technology by which electricity is produced by extracting hot water or steam from geothermal reserves in the earth's crust to power steam turbines that drive generators to produce electricity.

2.22.f. Biomass energy, which means a technology by which electricity is produced from a nonhazardous organic material that is available on a renewable or recurring basis, including pulp mill sludge.

2.22.g. Biologically derived fuel including methane gas, ethanol not produced from corn, or biodiesel fuel;

2.22.h. Fuel cell technology, which means any electrochemical device that converts chemical energy in a hydrogen-rich fuel directly into electricity, heat and water without combustion.

2.22.i. Recycled energy, which means useful thermal, mechanical or electrical energy produced from: (i) Exhaust heat from any commercial or industrial process; (ii) waste gas, waste fuel or other forms of energy that would otherwise be flared, incinerated, disposed of or vented; and (iii) electricity or equivalent mechanical energy extracted from a pressure drop in any gas, excluding any pressure drop to a condenser that subsequently vents the resulting heat.

2.22.j. Any other resource, method, project or technology certified by the Commission as a renewable energy resource.

2.23. Renewable Energy Resource Facility. – A facility or equipment that generates electricity from renewable energy resources.

2.24. Retail Customer. – A customer that receives retail electricity in West Virginia.

2.25. Waste Coal. – A technology by which electricity is produced by the combustion of the by-product, waste or residue created from processing coal (such as gob).

### **§150-34-3. Electric Utility Obligations.**

3.1. Each electric utility doing business in West Virginia shall meet the alternative and renewable energy portfolio standard set forth in this rule. In order to meet these standards, an electric utility each year shall own an amount of certified credits equal to a certain percentage of electricity, as set forth in this rule, sold by the electric utility in the preceding year to retail customers in West Virginia.

**§150-34-4. Qualified Energy Resources Application and Certification.**

4.1. In order to be a qualified energy resource, an electricity generator or project seeking entitlement to credits must be certified as such by the Commission. If the Commission determines an energy resource qualifies to generate credits under W. Va. Code §24-2F, the Commission will issue a certification number for the qualified energy resource to be recorded in the registry system referenced in Rule 6.1.

4.2. The following types of facilities may apply to be a qualified energy resource:

4.2.a. A facility will be qualified after demonstrating that it generates electricity from an alternative energy resource as defined in Rule 2.4.

4.2.a.1. A facility will not be qualified if it operates outside the service area of PJM; and

4.2.a.2. Customer-sited generation, demand-response, whether new or existing, that the customer commits for integration into the electric utility's demand-response, energy efficiency or peak demand reduction programs will not be qualified if it has previously been certified as an energy efficiency or demand-side energy initiative project.

4.2.b. A facility will be qualified after demonstrating that it generates electricity from a renewable energy resource as defined in Rule 2.22.

4.2.b.1. A facility will not be qualified if it operates outside the service area of PJM; and

4.2.b.2. Customer-sited generation, demand-response, whether new or existing, that the customer commits for integration into the electric utility's demand-response, energy efficiency or peak demand reduction programs will not be qualified if it has previously been certified as an energy efficiency or demand-side energy initiative project.

4.2.c. A greenhouse gas emission reduction or offset project will be qualified after demonstrating that the emission reductions or offsets occur within the state

and have been approved by the list of greenhouse gas offset registries selected by the Commission.

4.2.c.1. A project will not be qualified if it has been undertaken pursuant to an obligation under any other West Virginia state law, policy or regulation.

4.2.d. An energy efficiency or demand-side energy initiative project will be qualified after demonstrating that is located within the geographic boundaries of this state and it reduces the consumption of electricity by retail customers through the implementation of technologies, programs, and strategies as defined in Rule 2.14 and subject to the following rules:

4.2.d.1. A project will not be qualified if it has been undertaken pursuant to an obligation under any other West Virginia state law, policy or regulation;

4.2.d.2. A project will not be qualified if it has previously been certified as an alternative or renewable energy resource;

4.2.d.3. A project will be qualified only if equipment, physical, or program changes are made that reduce electricity consumption by the customer. Projects that solely involve changes, such as signage, newsletters, or other policies designed to encourage behavioral change, will not be qualified;

4.2.d.4. A project will be qualified if the costs of the implementation, acquisition, or installation of the project have been paid for or are directly reimbursed, in whole or in part, by the electric utility. The contract controlling the project shall be just and reasonable and must clearly provide an agreement of the parties that the electric utility shall own all credits generated by the project; and

4.2.d.5. A project will be qualified if the amount of electricity conserved by the project is verifiable in accordance with industry accepted evaluation, measurement, and verification protocols that are approved by the Commission. An electric utility shall propose an evaluation, measurement, and verification plan for each project by which the Commission may evaluate the effectiveness of the project. All assumptions contained in the proposed evaluation, measurement, and verification plan should be identified, explained and supported by documentation where possible. Utilities may propose incorporating tracking and evaluation measures using existing data streams currently in use provided that they permit the Commission to evaluate the program using the reported data.

4.3. The Commission shall have the discretion to approve or prescribe evaluation, measurement, and verification protocols and to update its list of approved greenhouse gas emission reduction or offset project protocols.

4.4. Any electricity generator seeking certification of facilities or any electric utility seeking certification of an energy efficiency or demand-side energy initiative project, or greenhouse gas emission reduction or offset project as a qualified energy resource shall submit to the Commission an application stating, at a minimum:

4.4.a. For any facility or project to be a qualified energy resource, in addition to requirements under Rules 4.4.b. and 4.4.c.:

4.4.a.1. Current certificate of Authority issued by the Secretary of State for a foreign corporation; and

4.4.a.2. A current Certificate of Good Standing for the applicant issued by the state in which the business was formed.

4.4.b. If seeking qualification as an electric generating facility:

4.4.b.1. The name and address of the facility for which the application is made;

4.4.b.2. The name of the owner(s) of the facility and the owner's contact information;

4.4.b.3. The name and contact information of the operator of the facility;

4.4.b.4. The name and contact information of a designated representative authorized by the electricity generator to act on its behalf;

4.4.b.5. Documentation of authority to sign on behalf of owners of the electricity generating facility;

4.4.b.6. The location of the facility, including an indication of whether the facility is sited upon a reclaimed surface mine;

4.4.b.7. The fuel type(s) and capacity information;

4.4.b.8. A description of the facility, including whether the facility is a customer generator or BTM generator;

4.4.b.9. Identification and description of the metering system that provides the “revenue-quality meter output” as that term is defined in the GATS operating rules.

4.4.b.10. Whether the electricity generation facility is within the service area of PJM;

4.4.b.11. Whether the facility is certified by another state as an eligible generation resource to meet the portfolio standards of that state;

4.4.b.12. Whether the facility is being used for a voluntary retail customer program by an electric utility in West Virginia;

4.4.b.13. The Office of Regulatory Information Systems Plant location (“ORISP”) Code for the facility;

4.4.b.14. A copy of the U.S. Department of Energy, Energy Information Administration Form EIA 860, if the rated capacity is greater than 1.0 MW.

4.4.c. If seeking qualification as a greenhouse gas emission reduction or offset project:

4.4.c.1. The name and address of the electric utility which is making the application;

4.4.c.2. The name of the owner(s) of the electric utility and the owner's contact information;

4.4.c.3. The name and contact information of a designated representative authorized by the electric utility to act on its behalf;

4.4.c.4. Documentation of authority to sign on behalf of owners of the electric utility;

4.4.c.5. A report or statement indicating the estimated quantity of metric tons of carbon dioxide equivalent to be converted into credits;

4.4.c.6. Proof of registration of the project with an offset registry approved by the Commission;

4.4.c.7. The location of the project;

4.4.c.8. Attestation by the electric utility that the reductions or offsets will not be retired in the offset registry pursuant to any other program, law, policy, regulation, or voluntary retail customer program;

4.4.c.9. Attestation by the electric utility of ownership of the emission reductions or offsets attained from the project developer;

4.4.d. If seeking qualification as an energy efficiency or demand-side energy initiative project:

4.4.d.1. The name and address of the electric utility which is making the application;

4.4.d.2. The name of the owner(s) of the electric utility and the owner's contact information;

4.4.d.3. The name and contact information of a designated representative authorized by the electric utility to act on its behalf;

4.4.d.4. Documentation of authority to sign on behalf of owners of the electric utility;

4.4.d.5. The location of the project;

4.4.d.6. Attestation from the retail customer that the costs of the acquisition or installation of the energy efficiency or demand-side energy initiative project have been paid for, or are directly reimbursed, in whole or in part, by the electric utility;

4.4.d.7 Acknowledgement from the retail customer that the project may generate credits of financial value which will be awarded to the utility and used for portfolio standard compliance purposes, banked for future compliance with the portfolio standard, or traded or sold to another entity; and

4.4.d.8. The proposed evaluation, measurement and verification plan for the project, including a schedule for submitting information to the Commission required in Rule 5.5.a.

4.5. The Commission may verify information submitted to be certified as a qualified energy resource by performing a review or site visit to the qualified energy resource. The qualified energy resource shall provide the Commission access to the qualified energy resource or furnish documentation to substantiate information submitted

as part of the qualification application process. If physical access to the qualified energy resource is not provided or documentation requested by the Commission is not provided within thirty (30) days of a request by the Commission, the qualified energy resource may be decertified by the Commission. Before being decertified, an electric utility will be given thirty (30) days' written notice and an opportunity to show cause why it should not be decertified.

4.6. The owner or the owner's designated representative of an alternative or renewable energy resource must notify the Commission of any changes in the operating characteristics of a qualified energy resource at least thirty (30) days prior to the effective date of a planned change and within thirty (30) days of an unplanned change. Substantive changes include, but are not limited to, changes in fuel type, fuel mix, generator type or the rate of net carbon dioxide emissions. Failure to timely notify the Commission of such changes may result in the decertification of the qualified energy resource from the date of the change until a new certification is issued by the Commission. The Commission may decertify any credits awarded to an energy resource following such changes if the energy resource is decertified and not recertified. Whenever such changes have taken place, if the facility wishes to continue to be certified at its previous or at a revised level, a revised application should be submitted, at the time of notifying the Commission of the change, for Commission review according to the provisions of this rule.

4.7. If a qualified energy efficiency or demand-side energy initiative project or greenhouse gas emission reduction or offset project has been modified, removed, destroyed, disabled, or abandoned since the date of application for approval by the Commission, the electric utility must notify the Commission at least thirty (30) days prior to the effective date of a planned change and within thirty (30) days of an unplanned change. Removed, destroyed, disabled, or abandoned projects are decertified. The Commission may decertify any credits awarded to the project following such changes if the energy resource is decertified and not recertified. For modified projects, if the project wishes to continue to be certified at its previous or at a revised level, a revised application should be submitted, at the time of notifying the Commission of the change, for Commission review according to the provisions of this rule.

4.8. A qualified energy resource or project may be decertified by the Commission if it is determined to no longer be an eligible qualified energy resource or project due to fraud or a material change in the nature of the resource or project. Before being decertified, a qualified energy resource or project will be given thirty (30) days' written notice and an opportunity to show cause why it should not be decertified. If the Commission decertifies an energy resource or project, it will determine the eligibility of previously generated credits for use with the Portfolio Standards in Rule 7.

**§150-34-5. Certified Alternative and Renewable Energy Resource Credits.**

5.1. Awarded credits shall be created and tracked through the registry system referenced in Rule 6.1.

5.2. A qualified energy resource certified under Rules 4.2.a-b. shall be awarded certified alternative and renewable energy resource credits as summarized in Table 1 and as described below:

5.2.a. One credit for each megawatt hour of electricity generated or purchased from an alternative or renewable energy resource facility located within the geographical boundaries of this state or located outside of the geographical boundaries of this state but within the service territory of PJM.

5.2.a.1. Only electricity generated after the alternative or renewable energy resource is certified under Rules 4.2.a-b. is eligible for a credit; and

5.2.a.2. Any facility that is capable of producing electricity from more than one type of alternative or renewable energy resource, either simultaneously or as alternatives, shall be awarded credits in proportion to the electricity generation attributable to each alternative or renewable energy resource as provided for in the operating rules of GATS.

5.2.b. For the purpose of determining compliance with the Portfolio Standard requirements, the Commission will allow two times the credit awarded under Rule 5.2.a.1 for each megawatt hour of electricity generated from a renewable energy resource facility located within the geographical boundaries of this state or located in the service territory of PJM.

5.2.c. For the purpose of determining compliance with the Portfolio Standard requirements, the Commission will allow three times the credit awarded credit under Rule 5.2.a.1 for each megawatt hour of electricity generated from a renewable energy resource facility located within the geographical boundaries of this state if the renewable energy resource facility is sited upon a reclaimed surface mine.

**Table 1**  
**Criteria for Awarding Certified Alternative and Renewable Energy Resource Credits**

Energy resource facility type	Credit multiplier applied during compliance determination
Alternative energy resource facility	1x
Renewable energy resource facility	2x
Renewable energy resource facility sited upon a reclaimed surface mine	3x

5.3. A customer-generator or BTM generator must file an Alternative or Renewable Meter Generation Report with the Commission that corresponds with recordation of any energy production through the registry system. A customer-generator or BTM generator must use a revenue-quality meter that meets the applicable American National Standards Institute (ANSI) C-12 standard or its equivalent.

5.3.a. Credits created by a customer-generator or BTM generator must be recorded in GATS, as provided for in the operating rules of GATS, at least once each calendar year in order to be eligible for compliance.

5.3.b. An authorized representative of the customer-generator or BTM generator shall file the Alternative or Renewable Meter Generation Report required under Rule 5.3.a. which, shall be on a form provided by the Commission and shall contain, at a minimum, the following information:

5.3.b.1. A certification that the credits attributable to the customer-generation or BTM generation have not expired or been retired, transferred, or redeemed; and

5.3.b.2. A report or statement indicating the quantity of electricity generated as determined by a revenue-quality meter.

5.4. An electric utility certified under Rule 4 may be awarded one credit for each metric ton of carbon dioxide equivalent reduced or offset as a result of a greenhouse gas emission reduction or offset project if qualified in Rule 4.2.c. A credit will be awarded to the electric utility upon retiring of a metric ton of carbon dioxide equivalent reduced or offset in the offset registry in which the reductions or offsets were registered for the express purpose of creating a credit under this rule. Credits will be verified in the annual progress report filed under Rule 8.4

5.5. An electric utility may be awarded one credit for each megawatt hour of electricity conserved as a result of an energy efficiency or demand-side energy initiative project certified under Rule 4.2.d.

5.5.a. Credits may be awarded to utilities by presenting to the Commission the following information or documentation in accordance with the submission schedule submitted with the application under Rule 4.4.d.8., unless an alternative schedule has been subsequently requested by the Commission or proposed by the utility and approved by the Commission:

5.5.a.1. A statement indicating the megawatt hours of electricity savings being claimed;

5.5.a.2. A detailed explanation of how the methods used to determine the claimed electricity savings are in accordance with the approved evaluation, measurement, and verification plan. To the extent possible, project electricity savings should be verified by meter readings and submitted to the Commission;

5.5.a.3. Attestation from the retail customer confirming the electric utility has met all contract obligations related to the energy efficiency or demand-side energy initiative project, including, but not limited to, proper implementation and operation of the project;

5.5.a.4. Attestation from the electric utility that the project has not been modified, removed, destroyed, disabled, or abandoned since the date of application for approval by the Commission; and

5.5.a.5. Any other information or documentation deemed relevant by the Commission.

5.5.b. Based on the information submitted by utilities pursuant to this rule, the Commission shall determine the amount of electricity savings attributable to each project and shall award credits for the approved electricity savings accordingly.

5.6. An electric utility may meet the alternative and renewable energy Portfolio Standard requirements set forth in this rule by purchasing additional credits awarded pursuant to Rule 5.2. An electric utility purchasing power may meet the Portfolio Standard requirements set forth in this rule, provided that the credit awarded pursuant to Rule 5.2 is included.

5.6.a. An electric utility may buy or sell credits or bank credits and use them to meet the Portfolio Standard requirement in a subsequent year.

5.6.b. Each credit transaction shall be reported by the selling entity to the Commission as provided for in Rule 8.4.

5.6.c. The Commission may impose an administrative transaction fee on a credit transaction in an amount not to exceed the actual direct cost of processing the transaction by the Commission.

5.7. A customer-generator shall own the credits awarded for its generation.

5.8. A BTM generator shall own the credits awarded for its generation.

5.9. The Commission may verify information submitted for certification by performing a review or site visit to the electric utility or generating facility. The qualified facility shall provide the Commission access to the facility or furnish documentation to substantiate information submitted as part of the certification process. If physical access to the facility is not provided or documentation requested by the Commission is not provided within thirty (30) days of a request by the Commission, the qualified credits may be decertified by the Commission. Before being decertified, a qualifying electric utility or facility will be given thirty (30) days' written notice and an opportunity to demonstrate why it should not be decertified.

#### **§150-34-6. Trading Program & Credit Registry.**

6.1. The Commission designates the Generation Attribute Tracking System (GATS) owned and operated by PJM-Environmental Information Services, Inc. (PJM-EIS) as the credit registry to track awarded credits under Rule 5.

6.1.a. The registry shall track, and electric utilities and certified alternative or renewable energy resources shall be obligated to report to GATS, credit transactions, including the following information for each transaction: (i) The parties to the transaction; (ii) the number of credits sold or transferred; (iii) vintage of the credits; and (iv) the price paid.

6.1.b. The Commission shall, under W. Va. Code §24-2F-4(c)(3), treat as confidential and exempt from public disclosure under Rule 6.1.a., pricing information concerning individual transactions. The Commission shall make available to the public aggregate pricing data on credits.

6.2. Electric utilities and electricity generators are required to enter into agreements with the credit registry designated under this rule to enable the Commission to verify compliance with this rule. Electric utilities shall comply with the rules, policies,

and procedures of the designated credit registry identified in the registry's terms of use, subscriber agreement, or other comparable document.

6.3. To the extent necessary, electric utilities and electricity generators shall provide the Commission with direct access to information in this registry necessary to verify compliance with this rule, or with rights of access established through the agreements with the registry provider.

#### **§150-34-7. Alternative and Renewable Energy Portfolio Standard.**

7.1. For the purpose of determining an electric utility's compliance with the Portfolio Standards set forth in Rules 7.3 and 7.4, each credit shall equal one megawatt hour of electricity sold by an electric utility in the preceding year to retail customers in West Virginia, except as provided for under either Rules 5.2.a-c. Furthermore, an electric utility may not use a credit more than once in order to comply with the Portfolio Standard.

7.2. No more than ten percent of the credits used each year by an electric utility to comply with the Portfolio Standard may be credits acquired from the generation or purchase of electricity generated from natural gas. No more than ten percent of the credits used each year by an electric utility to comply with the Portfolio Standard may be credits acquired from the generation or purchase of electricity generated from supercritical technology.

7.3. On and after January 1, 2025, an electric utility shall each year own credits in an amount equal to at least twenty-five percent of the electric energy sold by the electric utility to retail customers in this state in the preceding calendar year.

7.4. The following interim Portfolio Standards shall apply:

7.4.a. For the period beginning January 1, 2015, and ending December 31, 2019, an electric utility shall each year own credits in an amount equal to at least ten percent of the electric energy sold by the electric utility to retail customers in this state in the preceding calendar year.

7.4.b. For the period beginning January 1, 2020, and ending December 31, 2024, an electric utility shall each year own credits in an amount equal to at least fifteen percent of the electric energy sold by the electric utility to retail customers in this state in the preceding calendar year.

7.5. Credits shall be retired in the registry and designated as having been used for compliance with the Portfolio Standards of this rule. Credits required to comply with the

Portfolio Standard in a calendar year shall be retired in the registry as soon as possible but no later than the date upon which the next annual progress report is due.

7.6. An electric utility that is subject to an alternative energy, advanced energy, renewable energy or similar energy portfolio standard in another state may not use electricity generated to meet that state's portfolio standard to satisfy the requirements of this rule.

7.6.a. The electric utility shall list, in the alternative and renewable energy portfolio standard compliance plan required by this rule, any portfolio standards requirements it must meet in another state and shall indicate how it satisfied those requirements.

7.6.b. The electric utility shall provide in the annual progress report required by this rule any additional information required by the Commission to prevent double-counting of credits.

7.7. An electric utility shall not apply any voluntary retail purchases of energy from renewable sources or voluntary retail purchases of offset or greenhouse gas emission reductions offsetting retail power use toward its mandatory Portfolio Standard requirements.

7.8. An electric utility may apply any credits owned by the electric utility and that are in excess of the Portfolio Standard in any given year to the requirements for any future year's Portfolio Standard.

7.9. Any credits awarded pursuant to Rule 5 not owned by an electric utility will expire for the purposes of meeting the Portfolio Standard after the end of the second reporting year following the reporting year in which the credit is awarded.

7.10. Upon its own initiative or upon the request of an electric utility, the Commission may modify the Portfolio Standard requirements of an electric utility in a given year or years, or recommend to the Legislature that the Portfolio Standard requirements be eliminated if the Commission determines that alternative or renewable energy resources are not reasonably available in the marketplace in sufficient quantities for the electric utility to meet the requirements of this rule.

7.10.a. In making its determination, the Commission shall consider whether the electric utility made good faith efforts to acquire sufficient credits to comply with the requirements of this rule. Such good faith efforts shall include, but are not limited to, banking excess credits, seeking credits through competitive solicitations and seeking to acquire credits through long-term contracts. The Commission shall assess the availability

of credits on the open market, including the availability of qualified resources both in West Virginia and within the PJM region. The Commission may also require that the electric utility solicit credits before a request for modification may be granted.

7.10.b. If an electric utility requests a modification of its Portfolio Standard requirements, the Commission shall make a determination as to the request within sixty days.

7.10.c. Commission modification of an electric utility's Portfolio Standard requirements shall apply only to the Portfolio Standard in the year or years modified by the Commission. Commission modification may not automatically reduce an electric utility's Portfolio Standard requirements in future years.

7.10.d. If the Commission modifies an electric utility's Portfolio Standard requirements, the Commission may also require the electric utility to acquire additional credits in subsequent years equivalent to the requirements reduced by the Commission in accordance with Rules 7.10.a-c.

7.11. The provisions of Rule 7 shall have no force and effect after June 30, 2026.

#### **§150-34-8. Compliance Plan and Annual Report.**

8.1. On or before January 1, 2011, each electric utility subject to the provisions of this rule shall prepare an alternative and renewable energy portfolio standard compliance plan and shall file an application with the Commission, in filing formats to be determined by the Commission, seeking approval of such plan.

8.2. A portfolio standard compliance plan shall include:

8.2.a. Statistics and information concerning the electric utility's sales to retail customers in West Virginia during the preceding ten calendar years;

8.2.b. A calculation of the electric utility's projected yearly sales to retail customers for the years 2011-2025;

8.2.c. A calculation of the expected number of credits required to meet the Portfolio Standards set forth in this rule;

8.2.d. An anticipated time line for the development, purchase or procurement of credits sufficient to meet the Portfolio Standards set forth in this rule;

8.2.e. A nonbinding estimate of the costs to comply with the Portfolio Standards set forth in this rule;

8.2.f. A description of any greenhouse gas emission reduction or offset projects or energy efficiency or demand-side energy initiative projects that have been or will be submitted for certification under Rule 4 that the electric utility proposes to convert to credits in accordance with this rule;

8.2.g. A list of any requirements and a description of how the electric utility satisfied or will satisfy those requirements if an electric utility is subject to an alternative energy, advanced energy, renewable energy or similar energy portfolio standard in any other state,

8.2.h. Information on the electric utility's resource acquisition activities of its affiliated utilities; and

8.2.i. Such further information as required by the Commission.

8.3. Upon the filing of an application for approval of a portfolio standard compliance plan, and after hearing and proper notice, the Commission may, in its discretion, approve or disapprove, or approve in part or disapprove in part, the application.

8.3.a. After giving proper notice and receiving no protest within thirty days after the notice is given, the Commission may waive formal hearing on the application. Notice shall be published as a Class I legal advertisement in compliance with the provisions of W. Va. Code §59-3-1, and shall be given in a manner and in such form as may be prescribed by the Commission.

8.3.b. The Commission shall, following proper notice and hearing, if any, render a final decision on any application filed pursuant to Rule 8 within two hundred seventy days of the filing of the application.

8.3.c. If, and to the extent, the Commission determines that a portfolio standard compliance plan has a reasonable expectation of achieving the Portfolio Standard requirements at a reasonable cost to electric customers in this state, the Commission shall approve the plan. In establishing that the requisite standard for approval of a portfolio standard compliance plan is met, the burden of proof shall be upon the applicant.

8.3.d. In the event the Commission disapproves of an application filed pursuant to Rule 8, in whole or in part, the Commission shall specify its reason or reasons for disapproval. Any portion of the application not approved by the Commission shall be modified and resubmitted by the applicant.

8.3.e. Either upon an application of the electric utility, a petition by a party or the Commission's own motion, a compliance plan proceeding may be reopened for the purpose of considering and making, if appropriate, alterations to the plan. If an electric

utility seeks to alter an approved compliance plan it shall submit an application in accordance with Rule 8.2.

8.3.f. Approval of the compliance plan does not eliminate the need for an electric utility to otherwise obtain required approvals, including, but not limited to, certificates to construct, consent to enter into affiliated contracts and recovery of compliance costs. Furthermore, nothing in this rule shall be interpreted to alter or amend the existing power and authority of the Commission.

8.3.g. Approval of the compliance plan does not relieve an electric utility from its obligation to pay a compliance assessment pursuant to the provisions of this rule if it fails to comply with the Portfolio Standards set forth therein.

8.4. By March 31 each year following the Commission's approval of an electric utility's compliance plan, the electric utility shall submit to the Commission an annual progress report, in filing formats to be determined by the Commission, demonstrating compliance with the requirements of the Portfolio Standards. The progress report shall include:

8.4.a. The electric utility's sales to retail customers in West Virginia in the previous two calendar years, by year, in total number of megawatt-hours;

8.4.b. The total amount of energy the electric utility has generated, purchased or procured from alternative or renewable energy resources as of December 31 of the previous calendar year;

8.4.b.1. The portions, stated separately, of the total amount of energy required in Rule 8.4.b corresponding to energy generated, purchased or procured from the combustion of natural gas and generated from supercritical technology, if any;

8.4.b.2. The electric utility's sales to retail customers in West Virginia in the two previous calendar years, by year, corresponding to voluntary retail purchases of energy from renewable sources, if any;

8.4.c. The balance of the credits from alternative and renewable energy resource facilities the electric utility has purchased or procured as of December 31 of the previous calendar year;

8.4.d. The balance of the credits the utility has been awarded or purchased from energy efficiency or demand-side energy initiative projects or greenhouse gas emission reduction or offset projects as of December 31 of the previous calendar year;

8.4.d.1. The electric utility's sales to retail customers in West Virginia in the two previous years, by year, corresponding to voluntary retail purchases of offsets or greenhouse gas emission reductions offsetting retail power use, if any;

8.4.e. A comparison of the budgeted and actual costs as compared to the estimated cost of the portfolio standard compliance plan, including the information on credit transactions required under Rule 6.1.a, subject to the same public disclosure provisions in Rule 6.1.b.;

8.4.f. An accounting issued by PJM-EIS that shows the number of alternative and renewable energy resource credits purchased and/or held by the electric utility as of December 31 of the previous calendar year;

8.4.g. An accounting issued by PJM-EIS that shows the portions, reported separately, of alternative and renewable energy resource credits retired to meet the Portfolio Standard of the previous calendar year corresponding to energy generated from the combustion of natural gas and energy generated from supercritical technology, if any;

8.4.h. The vintage year and serial number of the greenhouse gas emission reductions or offsets awarded or purchased and attestation by the electric utility that all greenhouse gas emission reductions or offsets used for compliance under this rule were retired in the offset registry in which the reductions or offsets were registered for the purpose of this rule;

8.4.i. For any credits awarded for emission reductions or offsets under Rule 5.4 in any previous year, an attestation that the offsets remain in compliance with the reversal rules of the offset registry in which the reductions or offsets were registered;

8.4.j. Any information required by the Commission to prevent the double-counting of credits;

8.4.k. Such further information as required by the Commission.

8.5. The Commission shall impose a special assessment on all electric utilities required to file a compliance plan.

8.5.a. The assessments shall be prorated among the covered electric utilities on the basis of kilowatt hours of retail sales in West Virginia and shall be due and payable on September 1 of each year.

8.5.b. The amount of revenue collected pursuant to this Rule 8.5 may not exceed \$200,000 in the first year following the effective date of the Act, July 1, 2009, and may not exceed \$100,000 in successive years.

8.5.c. The funds generated from the assessments shall be used exclusively to offset all reasonable direct and indirect costs incurred by the Commission in administering the provisions of this rule.

**§150-34-9. Compliance Determination and Assessment.**

9.1. The Commission shall determine whether each electric utility doing business in this state is in compliance with the Portfolio Standards following the end of each calendar year during which a Portfolio Standard applies.

9.1.a. An electric utility must own credits needed to comply with the Portfolio Standard of a given year by December 31, 2015 for the first year and by December 31 of each following year with a Portfolio Standard. Credits owned to meet the Portfolio Standard of a given year must be retired in the registry as provided for in Rule 7.5 by submission of the annual progress report required by Rule 8.4 in the next calendar year.

9.1.b. The requirements of this rule for an electric utility in each year are summarized in Table 2 below:

**Table 2  
Summary of Credit Accounting and Reporting Requirements for Utilities  
(2010 – 2025)**

Calendar year	Portfolio Standard (corresponding to retail sales in previous calendar year)	Acquisition of Credits	Annual Progress Report and Retirement of Credits
2012	0%	Not applicable	March 31, 2013
2013	0%	Not applicable	March 31, 2014
2014	0%	Not applicable	March 31, 2015
2015	10%	December 31, 2015	March 31, 2016
2016	10%	December 31, 2016	March 31, 2017
2017	10%	December 31, 2017	March 31, 2018
2018	10%	December 31, 2018	March 31, 2019
2019	10%	December 31, 2019	March 31, 2020
2020	15%	December 31, 2020	March 31, 2021
2021	15%	December 31, 2021	March 31, 2022
2022	15%	December 31, 2022	March 31, 2023
2023	15%	December 31, 2023	March 31, 2024
2024	15%	December 31, 2024	March 31, 2025
2025	25%	December 31, 2025	March 31, 2026

9.1.c. On or after March 31, 2016 and after March 31 of each following year, the Commission shall verify compliance of the electric utility with the Portfolio Standard in the previous calendar year. By June 30, 2016 and by June 30 of each following year in which an annual progress report is required, the Commission will initiate a proceeding and provide written notice to each electric utility of an initial assessment of its compliance status, including any preliminary calculation of a compliance assessment due.

9.1.d. The Commission shall impose a compliance assessment on the electric utility that shall equal at least the lesser of the following:

9.1.d.1. Fifty dollars multiplied by the number of additional credits that would be needed to meet an alternative and renewable energy Portfolio Standard in a given year; or

9.1.d.2. Two hundred percent of the average market value of credits sold for the purpose of compliance with the Portfolio Standards of this rule in a given year multiplied by the number of additional credits needed to meet the alternative and renewable energy Portfolio Standard for that year.

9.2. An electric utility shall advise the Commission in writing within 15 days of the issuance of the notice under 9.1.c. whether it accepts the Commission's compliance assessment determination or chooses to contest the determination.

9.2.a. If an electric utility or an interested person chooses to contest the Commission's compliance assessment determination, it must file a petition to modify the level of the compliance assessment. The petition must include documentation supporting the proposed modification.

9.2.b. The Commission shall schedule a hearing on the petition, and render its decision in writing to the electric utility.

9.2.c. Failure of an electric utility or an interested person to respond by filing a petition for a hearing to the Commission within 15 days of the issuance of the notice under Rule 9.1.c. shall be deemed an acceptance of the Commission's compliance assessment determination.

9.3. Compliance assessments collected by the Commission shall be deposited into the Alternative and Renewable Energy Resources Research Fund.

#### **§150-34-10. Alternative and Renewable Energy Resources Research Fund.**

10.1. The Commission and the Division of Energy shall jointly administer a special revolving fund in the State Treasury, which shall be designated the "Alternative and Renewable Energy Resources Research Fund." The fund shall be used to award

matching grants for demonstration, commercialization, research and development projects relating to alternative and renewable energy resources and energy efficiency technologies.

10.2. The fund shall consist of any moneys appropriated by the Legislature, any compliance assessments collected by the Commission under this rule, any gifts, bequests or other contributions to the fund from private entities or electric customers, and any interest or other return on the moneys in the fund.

10.3. Any donations to the fund collected by an electric generation supplier or electric distribution company shall be forwarded to the Commission and the Commission shall deposit such moneys in the fund.

**§150-34-11. Cost Recovery and Rate Incentives for Electric Utility Investment in Alternative and Renewable Energy Resources.**

11.1. An electric utility shall have the right to recover the costs of complying with the alternative and renewable energy Portfolio Standard set forth in this rule in a manner prescribed by the Commission. Although the Commission may approve costs that exceed the costs of current utility generation or purchased power, the electric utility has the burden to demonstrate that the costs are reasonable and represent the least cost of compliance. Notwithstanding any provision of this code to the contrary, an electric utility may not recover in rates the costs of compliance assessments imposed under this rule.

11.2. Upon a finding that it is in the public interest of this state, as provided in W. Va. Code §24-2F-1, the Commission may authorize incentive rate-making allowances for electric utility investment in the construction of new alternative or renewable energy resource facilities in West Virginia to encourage investments in the use and development of alternative or renewable energy resource facilities.

11.3. The Commission shall determine, at such time and in such proceeding, form and manner as is considered appropriate by the Commission, the extent to which any electric utility investment qualifies for the incentive rate making pursuant to this Rule 11.

**§150-34-12. Public Reporting.**

12.1. The Commission shall, under W. Va. Code §29B-1-4, treat as confidential and exempt from public disclosure under Rule 6.1.a. pricing information received from utilities concerning individual transactions. The Commission shall make available to the public aggregate pricing data on credits.

12.2. The Commission may publish electric utilities' aggregate sales to retail customers in West Virginia corresponding to voluntary retail purchases of energy from renewable sources and voluntary retail purchases of offsets or greenhouse gas emission reductions offsetting retail power use.

12.3. The Commission may publish information on the compliance record of an electric utility and overall program performance.

# Public Service Commission

Richard E. Hitt, General Counsel



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July 30, 2010

## Via Hand Delivery

Judy Cooper, Director  
Administrative Law Division  
Secretary of State's Office  
Building 1, Suite 157K  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0771

Re: Public Service Commission; Rules Governing  
Alternative and Renewable Energy Portfolio Standard,  
150 C.S.R. Series 34

Dear Ms. Cooper:

Enclosed for filing is a copy of the proposed rules in the above series in response to the Alternative and Renewable Energy Portfolio Act, enacted by the West Virginia Legislature in 2009 with the enactment of House Bills 103 and 408, as later amended in 2010 with the enactment of Senate Bill 350. The relevant statutory provisions are codified in W.Va. Code §§24-2F-1 et seq. The rules are promulgated under the Commission's existing rulemaking authority, exempt from legislative rulemaking review pursuant to W.Va. Code §24-1-7 and under specific rulemaking authority pursuant to W.Va. Code §24-2F-12.

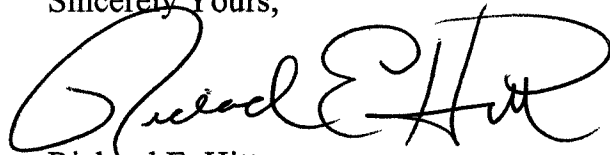
Enclosed is a notice of a comment period, a fiscal note, a summary of the rule, and a statement of circumstances.

Because the Commission is not part of the Cabinet structure, the Commission Order is the evidence of the approval of the filing by the agency head, Chairman Michael A. Albert.

Letter to Judy Cooper  
July 30, 2010  
Page 2

Please date stamp the enclosed three extra copies of the filing packet and return them with our messenger. If you have any questions or if there are any problems please bring them to my attention.

Sincerely Yours,

A handwritten signature in black ink, appearing to read "Richard E. Hitt". The signature is fluid and cursive, with the first name "Richard" being the most prominent part.

Richard E. Hitt  
General Counsel

cc: Amy Haden, Law Clerk