

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

Form #5

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2010 NOV 15 PM 3:22

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE  
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: West Virginia Public Service Commission TITLE NUMBER: 150

CITE AUTHORITY: W.Va. Code §24-2F-1 et seq.

RULE TYPE: PROCEDURAL \_\_\_\_\_ INTERPRETIVE \_\_\_\_\_

EXEMPT LEGISLATIVE RULE X

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

W.Va. Code §24-1-7

AMENDMENT TO AN EXISTING RULE: YES \_\_\_\_\_ NO X

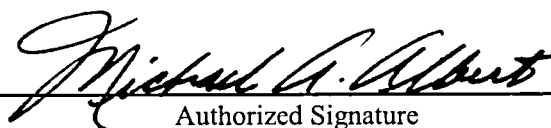
IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

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 Act

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE  
EFFECTIVE DATE OF THIS RULE IS January 4, 2011

  
Authorized Signature

#12.20

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 will collect, from 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 will not exceed \$200,000 in the first year the compliance plan requirements is in effect after July 1, 2009 (which has already been assessed), and will not exceed \$100,000 in successive years pursuant to W.Va. Code §24-2F-6(k). The assessments and fees collected by the Commission will be used by the Commission to offset direct and indirect costs associated with this rulemaking. As authorized by W.Va. Code §24-2-1 et seq., the Commission hired a consultant to assist in the preparation of the proposed rules. Aside from costs associated with hiring the consultant (approximately \$250,000 for FY 2011) the fiscal impact associated with 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.

| FISCAL YEAR                 |                                     |                                  |  |
|-----------------------------|-------------------------------------|----------------------------------|--|
| Effect of Proposal          | Current Increase/Decrease (use "-") | Next Increase/Decrease (use "-") | Fiscal Year (Upon Full Implementation) |
| 1. Estimated Total Cost     | 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                                   |
| 2. Estimated Total Revenues | 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 designed to assist utilities to meet their portfolio compliance standards.

Date: November 5, 2010

Signature of Agency Head or Authorized Representative

Michael A. Albert  
Chairman



## Public Service Commission

Richard E. Hitt, General Counsel

201 Brooks Street, P.O. Box 812  
Charleston, West Virginia 25323

Phone: (304) 340-0450  
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November 5, 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 final 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 are a notice of agency adoption, a fiscal note, a summary of the rule, and a statement of circumstances.

Enclosed you will also find the final Commission Order, dated November 5, 2010, attaching the final rules in both a clean copy and a blackline copy indicating amendments from the proposed rules. A clean copy of the final rules on a CD is also enclosed. By prior Order issued July 30, 2010, the Commission issued the proposed rules, provided notice and publication of the rulemaking and provided a comment period for interested parties. The

Letter to Judy Cooper  
November 5, 2010  
Page 2

comments filed in this rulemaking proceeding are also enclosed. The final Commission Order, dated November 5, 2010, contains the Commission response to the comments filed in this proceeding.

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.

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,

*Richard E. Hitt /mt*

Richard E. Hitt  
General Counsel

cc: Amy Haden, Law Clerk

## Summary of the Rule

The Public Service Commission of West Virginia (Commission) has issued final Rules Governing Alternative and Renewable Energy Portfolio Standard, 150 C.S.R. 34. This rulemaking is responsive to recent legislation enacted by the West Virginia Legislature 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 electric utilities to own an amount of alternative and renewable energy resource credits equal to a certain percentage of electricity sold by the utility in the preceding calendar year to retail customers in West Virginia. 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 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 of the electricity sold by the utility in the preceding calendar year. On and after the date of January 1, 2025, an electric utility is required to own credits equal to at least twenty-five percent 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 a portfolio standard compliance plan and to file that plan with the Commission for approval on or after January 1, 2011, and, (ii) submit to the Commission an annual progress report within a year of the Commission 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 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. Credits may also be earned through participation in energy efficiency or demand-side energy initiative projects and greenhouse gas emission reductions or offset projects. 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 Act authorizes the Commission to charge administrative transaction fees for the costs of processing the credit transactions pursuant to W.Va. Code §24-2F-4(c)(4).

The final 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 Public Service Commission of West Virginia (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.*

The Act requires the 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. Credits may also be earned through participation in energy efficiency or demand-side energy initiative projects and greenhouse gas emission reduction or offset projects. 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 28, 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, by Order issued July 30, 2010, the Commission (i) issued proposed legislative rules, Rules Governing Alternative and Renewable Energy Portfolio Standard, 150 C.S.R. 34, (ii) required notice and publication of the rulemaking by the Commission Executive Secretary, and (iii) established a comment period.

Numerous entities and interested parties filed comments in response to the July 30, 2010 Order, issuing the proposed rules. After receipt and review of the comments filed, the

Commission finds it is in the public interest to issue final rules in response to the statutory requirements of W.Va. Code §24-2F-1 et seq.

**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 5<sup>th</sup> day of November 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**

The Public Service Commission of West Virginia (Commission) promulgates final Rules Governing Alternative and Renewable Energy Portfolio Standard, 150 C.S.R. 34.

**BACKGROUND**

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.

In enacting the Portfolio Act, West Virginia joins twenty-nine other states, and the District of Columbia, that have enacted portfolio standards. Generally, the portfolio standard promulgated under the Rules requires that a specified minimum percentage of electricity sold to retail customers in West Virginia by electric utilities each year be derived from alternative and renewable energy resources according to a predetermined schedule of increasing percentage targets, ten percent by 2015, fifteen percent by 2020, and twenty-five percent by 2025. In recognition of West Virginia's natural resources, which support the State's economy and energy needs and our Nation's energy security, the portfolio standard includes alternative energy resources, such as advanced coal technology, coal bed methane and natural gas, and renewable energy resources, such as solar and wind power. Currently, of the twenty-nine other states with portfolio standards, only Pennsylvania and Ohio allow certain coal and natural gas technologies to be used for compliance with portfolio standard requirements. Like these two states, West Virginia includes advanced coal and natural gas technologies in the portfolio standard to encourage further advancement of these technologies to reduce greenhouse gas emissions from their use and improve West Virginia's energy future.

The Portfolio Act authorizes the Commission to promulgate rules to effectuate the purposes of the Act under W.Va. Code §24-2F-12. This rulemaking is responsive to the comprehensive legislation enacted under W.Va. Code §24-2F-1 et seq.<sup>1</sup>

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<sup>1</sup>The final rules address the following statutory provisions: W.Va. Code §24-2F-3 (definitions under the Act), W.Va. Code §24-2F-4 (awarding of alternative and renewable energy resource credits), W.Va. Code §24-2F-5 (alternative and renewable portfolio standard, compliance assessments), W.Va. Code §24-2F-6 (alternative and renewable portfolio standard compliance plan and annual progress report), W.Va. Code §24-2F-7 (cost recovery and rate incentives for electric utility investment in alternative and renewable energy resources), W.Va. Code §24-2F-9 (interagency agreements; alternative and renewable energy resource planning assessment), W.Va. Code §24-2F-10 (portfolio standard requirements for rural electric cooperatives, municipally-owned utilities or utilities serving

Included in the Act is the requirement that the 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 pursuant to W.Va. Code §24-2F-4. These credits may also be earned through participation in energy efficiency or demand-side energy initiative projects and greenhouse gas emissions reductions or offset projects. 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.

W.Va. Code §24-2F-5 governs the alternative and renewable energy portfolio standard. The portfolio standard requires the state 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 its West Virginia retail customers. Each credit is equal to one megawatt hour of electricity from qualified generation. In the instance of certain emission reduction or offset projects, a credit is equal to each ton of carbon dioxide equivalent reduced or offset.<sup>2</sup> The Portfolio 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 of the electricity sold to retail customers in West Virginia 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 of the electricity sold to retail customers in West Virginia by the utility in the preceding calendar year. By January 1, 2025, an electric utility is required to own credits equal to at least twenty-five percent of the electricity sold to retail customers in West Virginia by the utility in the preceding calendar year.

By Notice and Order issued July 28, 2009, the Commission: (i) instituted this General Order proceeding, (ii) required notice and publication of the proposed rulemaking by the Commission Executive Secretary, and (iii) established a 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 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

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less than thirty thousand customers, and alternative and renewable energy resource credits for electric distribution companies or electric generation suppliers other than electric utilities), and, W.Va. Code §24-2F-11(alternative and renewable energy resources grant program).

<sup>2</sup>Consistent with the ordinary or United States English meaning of the word “ton” as it appears in W.Va. Code §24-2F-4(d)(1), the Commission has interpreted the word “ton” to mean the U.S. ton, which is a unit of measurement equal to 2,000 pounds. The Commission modified the proposed rules to remove reference to the metric ton and to clarify that a ton is the equivalent of 2,000 pounds.

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 standard of the Act (reference W.Va. Code §24-2F-5(g)).

Numerous parties filed preliminary comments that were considered by the Commission in issuing proposed legislative rules.

By Order issued July 30, 2010, the Commission: (i) issued proposed legislative rules, Rules Governing Alternative and Renewable Energy Portfolio Standard, 150 C.S.R. 34, (ii) required notice and publication of the rulemaking by the Commission Executive Secretary, and (iii) established a comment period.

Comments were filed by the following entities and interested parties: (i) Longview Power LLC (Longview Power), (ii) Monongahela Power Company, the Potomac Edison Company, and West Virginia Power, dba Allegheny Power (Allegheny Power), (iii) Voluntary Carbon Standard Association (VCS), (iv) Appalachian Power Company and Wheeling Power Company (the AEP Companies), (v) the West Virginia Energy Users Group (WVEUG), (vi) Augusta Systems, (vii) the Mid-Atlantic Renewable Energy Coalition (MAREC), and (viii) American Municipal Power, Inc. (AMP) and the City of New Martinsville and the City of Philippi (Municipal Systems).

### DISCUSSION

The Commission has reviewed the comments filed in this proceeding and, by this Order, promulgates final Rules Governing Alternative and Renewable Energy Portfolio Standard, 150 C.S.R. 34, attached hereto as Attachment A. The final rules set forth the requirements for electric utility compliance with the alternative and renewable energy portfolio standard and establish a system of tradeable credits that may be traded, sold, or used to meet the portfolio standard requirements.

After careful consideration of the comments filed, the Portfolio Act requirements, and its own review of the proposed rules, the Commission made a number of revisions to the proposed rules, as shown in a strike-through version of rules, attached hereto as Attachment B. The Commission, in this Order, will discuss the main issues presented in this rulemaking proceeding. In addition, the Commission will respond to some of the comments filed and will address the rule revisions.

#### Application of the Portfolio Standard to All Electric Providers

W.Va. Code §24-2F-10(a) provides that the Commission shall consider adopting, by rule, the portfolio standard requirements for rural electric cooperatives, municipally-owned electric utilities or utilities serving less than thirty-thousand customers. As stated in the Order issued July 30, 2010, the Commission intends to apply the portfolio standard requirements to the rural electric

cooperatives, municipally-owned electric utilities or utilities serving less than thirty thousand customers.

In the preliminary joint comments filed on behalf of the Cities of New Martinsville and Philippi, Harrison Rural Electrification Association, Inc., Craig-Botentourt Electric Cooperative and the Shenandoah Valley Electric Cooperative (collectively the Public Systems), the Public Systems recommend that the Commission not apply the portfolio standard to the rural electric cooperatives and the municipally-owned electric utilities. The Public Systems state it will be difficult for rural electric cooperatives and municipally-owned electric utilities to meet the portfolio standard requirements. In addition, the Public Systems assert that compliance with the portfolio standard requirements will place an undue economic burden on the smaller electric utilities.

The Commission has considered the comments filed by the Public Systems. The Commission believes, however, that the legislative goals of the Act will be better met with the application of the portfolio standard to all the state electric utilities. In addition, the Commission believes that the portfolio standard requirements should be applied equally to the state electric utilities. West Virginia is not alone in including rural electric cooperatives and municipally-owned electric utilities in the portfolio standard program. Currently, fourteen states require cooperative utilities to participate in a portfolio standard program, and ten states require municipally-owned utilities to participate in a portfolio standard program. In the event the small utilities, including the rural electric cooperatives, municipally-owned electric utilities, and other smaller utilities, cannot comply with the portfolio standard requirements in a given year the standard is in effect, the utilities may seek modification of the portfolio standard requirements pursuant to Rule 7.9.

#### Awarding of Credits to Nonutility Generators

W.Va. Code §24-2F-10(b) provides that the Commission shall consider extending, by rule, the awarding of alternative and renewable energy resource credits to electric distribution companies or electric generation suppliers other than electric utilities. After considering the comments filed, the Commission has extended the awarding of credits for the generation of electricity from alternative and renewable energy resources under W.Va. Code §§24-2F-4(b)(1)-(3) to nonutility generators. The final rules, however, limit the awarding of credits for greenhouse gas emission reduction or offset projects and energy efficiency and demand-side energy initiative projects under W.Va. Code §24-2F-4(d) and (e) to the state electric utilities and do not extend the awarding of these credits to nonutility generators and other nonutility entities.

In its comments, Longview Power, a privately-owned exempt wholesale generator, requested the modification of Rules 2, 4, and 5 to allow exempt wholesale generator facilities to participate in the award of credits for greenhouse gas emission reduction or offset projects. The Commission declines to modify the proposed rules because the rules, as proposed, represent the policy that is most consistent with W.Va. Code §24-2F-4 and the intent of the Portfolio Act.

In the absence of a clear statutory directive specifying that the credits under W.Va. Code §24-2F-4 should be awarded to the nonutility generators, the Commission has endeavored to construe

the statutory provisions of W.Va. Code §24-2F-4 and to follow the intent of the Act in drafting final rules awarding credits to nonutility generators. The Legislature directed the Commission to consider awarding alternative and renewable energy resource credits to nonutility generators for the generation of electricity from nonutility alternative and renewable energy resource facilities. Based on the statutory language, the Commission concludes that the credits associated with greenhouse gas emission reduction or offset projects and energy efficiency and demand-side energy initiative projects referenced under W.Va. Code §24-2F-4 in W.Va. Code §24-2F-4(d) and (e) were intended to be awarded to the electric utilities only. The statutory language in W.Va. Code §24-2F-4 supports this interpretation because W.Va. Code §24-2F-4(d) and (e) specifically reference the electric utility compliance requirements under W.Va. Code §24-2F-6. In addition, W.Va. Code §24-2F-4(e) specifically provides for the award of credits to an electric utility for investment in energy efficiency and demand-side energy initiative projects.

Consistent with our interpretation of the Act, the final rules extend the awarding of credits for the generation of electricity from alternative and renewable energy resources under W.Va. Code §§24-2F-4(b)(1)-(3) to nonutility generators and limit the awarding of credits for greenhouse gas emission reduction or offset projects and for energy efficiency and demand-side energy initiative projects under W.Va. Code §24-2F-4(d) and (e) to electric utilities. This does not preclude nonutility entities from developing greenhouse gas emission reduction or offset projects and electric utilities subsequently purchasing the associated credits and qualifying these projects under Rule 4.2.

#### Registry for Credit Tracking

W.Va. Code §24-2F-4(c)(3) requires the Commission to establish a registry or to use an independent and industry-recognized system to track the credit transactions. The final rules adopt the PJM Generation Attribute Tracking System (GATS), the environmental and emissions attributes tracking system for electric generation that is 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. The Commission adopted GATS as the credit tracking system in the final rules because (i) it is an industry-recognized system that is already utilized by other states located within the PJM regional transmission organization, (ii) it has the capacity to identify the attributes required for compliance with West Virginia alternative and renewable energy portfolio standard, and (iii) PJM does not charge the Commission a fee for recording and tracking the credits. The Commission finds that the adoption of GATS as the credit tracking system in the final rules will provide the least cost and most effective means of monitoring, verifying and documenting compliance with the West Virginia portfolio standard requirements.

#### Greenhouse Gas Emission Programs

As stated in its Order dated July 30, 2010, the Commission will adopt, by this Order, a list of greenhouse gas programs, including the Climate Action Reserve, American Carbon Registry, Voluntary Carbon Standard and the Gold Standard, recognized by the Commission for the purpose of certifying and verifying greenhouse gas emission reduction or offset projects under the rules. The Commission finds that these greenhouse gas programs currently provide the most robust methods

of verification. The Commission may in the future, by further Order, change the list of greenhouse gas programs recognized by the Commission under the rules as necessary to ensure that the most robust protocols continue to be used to certify and verify greenhouse gas emission reduction projects.

### Commission Response to Comments

The Commission will discuss the comments and rule revisions below:

Rule 2 Consistent with its interest in participating in the award of credits for greenhouse gas emission reduction or offset projects as an exempt wholesale generator facility, Longview Power requested that the Commission modify the rules to add the definition for “exempt wholesale generator facility” under Rule 2. The Commission declines to modify the rule for the reasons more fully explained in the earlier portion of this Order entitled “Awarding Credits to Nonutility Generators.”

Rule 2.2 Longview Power and Allegheny Power asked the Commission to further define the terms supercritical technology, advanced supercritical technology, and ultrasupercritical technology in Rule 2.2 and as those terms appear throughout the rules. The Commission declines to explicitly define these terms within the rules. For the purposes of qualifying and obtaining credits under the rules, the Commission clarifies, by this Order, that the terms advanced supercritical technology and ultrasupercritical technology are treated the same and used interchangeably in the rules. The Commission determines that the distinction between supercritical technology and advanced supercritical or ultrasupercritical technology is best determined on a case-by-case basis. The Commission intends to examine the designation of a facility as a supercritical or advanced supercritical or ultrasupercritical technology facility on a case-by-case basis upon application for certification as a qualified alternative energy resource facility. In response to the comments filed by Longview Power and Allegheny Power, the Commission added a new Rule 4.2.b providing a petition process for a facility not yet in operation seeking predetermination from the Commission as a specific type of advanced coal technology facility.

Longview Power also asked the Commission to clarify the definition of the baseline for determining reductions in airborne carbon dioxide emissions for new facilities, by identifying: (i) the specific benchmark facility and facility’s demonstrated baseline carbon dioxide emission rate, measured in pounds per megawatt hour of net generation and (ii) whether the facility must be located in West Virginia or owned by a West Virginia utility. The Commission finds that no further modification to the rules is necessary to clarify the location of the facility. In accordance with the provisions of W.Va Code §24-2F-4(b), the facility may be located either within West Virginia or elsewhere, provided that it is within the service territory of the PJM regional transmission organization.

The Commission intends to issue a further Order identifying the specific benchmark facility and the facility baseline carbon dioxide rate for new generating facilities. In order to obtain the information required to identify the specific benchmark facility and the its baseline carbon dioxide

rate, the Commission, by this Order, directs Allegheny Power and the AEP Companies, the West Virginia utilities that own generating facilities, to file a verified statement from a responsible utility officer containing the following information: (i) a list of the coal-fired generating facilities located within West Virginia or the PJM region owned by the West Virginia utilities as of July 1, 2009, and (ii) for each facility, the gross amount of carbon dioxide emitted by the facility measured in pounds per megawatt hour of net generation for the calendar year 2009. Upon receipt of this information, the Commission will issue a further Order identifying the specific benchmark facility and baseline carbon dioxide emission rate to be used as the baseline for determining reductions in airborne carbon dioxide emissions under Rule 2.2 and for the predetermination process under new Rule 4.2.b.

Rule 2.12 AMP and the Municipal Systems asked the Commission to amend Rule 2.12 to allow the small electric utilities, rural electric cooperatives, municipally-owned electric facilities or utilities serving less than thirty thousand customers, to consent to interconnection with a Customer-generator greater than fifty kilowatts. The parties note that the fifty kilowatt limitation was included in the Commission Rules Governing Electric Utility Net Metering Arrangements and Interconnections, 150 C.S.R. 33, to protect the distribution systems of the smaller utilities. The parties argue the same justification for the fifty kilowatt limitation does not apply to the portfolio standard rules. The Commission agrees with AMP and the Municipal Systems and has amended the rule consistent with the language suggested by the parties. The Commission would like to clarify, however, that the amendment of Rule 2.12 in the rules does not amend or otherwise affect the definition of Customer-generator in the Commission Rules Governing Electric Utility Net Metering Arrangements and Interconnections, 150 C.S.R. 33.

Rule 2.12 WVEUG filed comments suggesting that the rules do not apply to customer-generator facilities exceeding two megawatts that are installed at an industrial location. The Commission disagrees with the WVEUG interpretation of the rules. The Commission clarifies that if a generating facility exceeds the two megawatt limitation specified in Rule 2.12, it does not meet the definition of a customer-generator. However, if a generating facility exceeds two megawatts, this does not preclude the qualification of the facility as a qualified energy resource under Rule 4.2. The Commission agrees with the WVEUG comments stating that the rules are not intended to displace or otherwise negate any PJM rule applicable to such facilities or the ability of such facilities to participate in other PJM alternative and renewable energy credit markets or energy efficiency and demand-side response programs.

Rule 2.14.a Augusta Systems requested that the Commission amend the rule to include the specific words, "including the use of energy management and building automation systems," within the terms describing "energy efficiency technologies" under Rule 2.14.a. The Commission finds that the rule, as proposed, includes energy management and building automation systems within the term "energy efficiency technologies," and no modification of Rule 2.14.a is necessary.

Rule 2.14.b Allegheny Power requested that the Commission amend the rule to include "time of use rates" to the listing of strategies that shift load from high demand to low demand periods. The Commission finds that the rule, as written, includes time of use rates, and no

modification of Rule 2.14.b is necessary.

Rule 2.14.e Augusta Systems requested that the Commission amend the rule to include the words, “improve distribution system reliability, improve power quality,” after the words, “energy efficiency” to include distribution system reliability projects. The Commission finds that the rule, as proposed, includes these types of projects, and no modification of Rule 2.14.e is necessary.

New Rule 2.14.f Allegheny Power and Augusta Systems requested that the Commission add a new Rule 2.14.f under the definition of a energy efficiency or demand-side initiative project. Allegheny Power proposed a new Rule 2.14.f adding language, “Any other resource, method, project or technology certified by the Commission as an Energy Efficiency or Demand-Side Energy Initiative Project.” The Commission finds there is no statutory language to support the inclusion of proposed Rule 2.14.f, and declines to add the new rule.

Rule 2.15 VCS Association asked the Commission to amend the rule to add a catch-all phrase to include greenhouse gas emission reduction or offset project types other than the projects specifically listed under Rules 2.15.a, 2.15.b, and 2.15.c. The Commission finds that the proposed amendment of Rule 2.15 is unnecessary. The language in the existing rule lists certain projects; however, it also contains language stating that the greenhouse gas emission reduction or offset projects will “include but are not limited to” the projects listed in the rules.

Rule 2.22.d The AEP Companies asked the Commission to amend the definition of run of river hydropower to be consistent with the operating conditions of run of river projects. AMP and Municipal Systems requested that the Commission amend the Rule 2.22.d. to ensure that the definition includes changes to flow subject to the jurisdiction of the United States Army Corps of Engineers. The Commission agrees and has amended Rule 2.22.d. consistent with the language suggested by the parties.

New Rule 2.22 Allegheny Power proposed that a new rule be added after Rule 2.22.d to include “Low Impact Hydropower” within the definition of a renewable energy resource. The Commission declines Allegheny Power’s request to include a definition for “Low Impact Hydropower” in the rules because it does not appear as an eligible resource in the statute.

Rule 2.22.g The Commission modified the rule to delete the words “not produced from corn” to reflect the statutory amendments by the Legislature in 2010 with the enactment of Senate Bill No. 350, effective June 11, 2010, that removed the restriction that ethanol be produced from sources other than corn in order to be a renewable energy resource.

Rule 3.1 AMP and the Municipal Systems requested that the Commission amend the rule to clarify whether the credits are initially awarded to, and thus owned by, the entity that generates the electricity or the entity that purchases the electricity. AMP and the Municipal Systems suggest that there is ambiguity in the rules because it is possible to generate renewable energy and sell the credits to one buyer and sell the actual energy generated from the facility to another buyer. The Commission agrees with the comments, and has amended Rule 5.6 to add language clarifying

that the credit awarded under Rule 5.6 may be bundled with the purchase of power or may be unbundled and held or sold independently from the underlying power.

Rules 4.2.a.1 and 4.2.b.2 The Commission agrees with the suggestion by AMP and Municipal Systems to amend the proposed Rules 4.2.a.1 and 4.2.b.1 to state “PJM Region,” instead of “service area of PJM.” The rules have been modified consistent with the language suggested by AMP and the Municipal Systems.

Rules 4.2.a.2, 4.2.b.2, 4.2.c.1 and 4.2.d.1 Allegheny Power suggested that the Commission amend Rule 4.2 provisions to provide that (i) any facilities disqualified as a “qualified energy resource” under proposed Rules 4.2.a.2, 4.2.b.2, 4.2.c.1. and 4.2.d.1 should have the ability to qualify under the rules after special consideration by the Commission and (ii) any project undertaken for another objective under West Virginia law, policy or regulations should be qualified under Rule 4.1, provided that the credits generated are not be double-counted. The Commission disagrees with the modifications suggested by Allegheny Power. The Commission finds that the proposed modifications are contrary to W.Va. Code §§24-2F-4(d)(3) and 24-2F-4(e)(2) prohibiting the award of credits to an electric utility for greenhouse gas emission or offset projects and energy efficiency or demand-side energy initiative projects undertaken pursuant to any obligation under any other state law, policy or regulation.

New Rule 4.2.b Longview Power and Allegheny Power sought clarification from the Commission about the criteria that will be used by the Commission to determine whether a facility is a supercritical technology or ultrasupercritical technology facility within the meaning of the rules. The Commission is aware that the determination of a facility as a supercritical technology facility is significant, given the statutory ten percent limitation for credits used each year from supercritical technology to meet the portfolio standard compliance requirements under W.Va. Code §24-2F-5(b). However, for the reasons discussed under Rule 2.2, the Commission does not wish to limit the definition of advanced coal technology by rule. In order to address the concerns of the Longview Power and Allegheny Power, however, the Commission modified the rule to add a petition process for a facility not yet in operation seeking predetermination as a specific type of advanced coal technology facility. As previously discussed under Rule 2.2, the distinction between supercritical technology and advanced supercritical or ultrasupercritical technology will be determined on a case-by-case basis. The Commission will consider the carbon emissions of a proposed facility as compared to the lowest carbon emitting coal-fired energy generation facility owned by a West Virginia utility in operation on or before July 1, 2009, in determining whether a facility is a supercritical, advanced supercritical or ultrasupercritical technology facility. The identification of the baseline unit will be the subject of a further Order by the Commission.

Proposed Rule 4.2.c<sup>3</sup> In response to the comments filed by VCS, the Commission modified Proposed Rule 4.2.c consistent with the terminology suggested by VCS. The change replaces all uses of the term “offset registries” with “greenhouse gas programs” and replaces all uses of “adopted” with “approved” or “recognized.” The Commission made corresponding

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<sup>3</sup>Proposed Rule 4.2.c is renumbered as Rule 4.2.d in the final rules.

modifications in Proposed Rules 4.3, 4.4.c.6, 4.4.c.8, 8.4.h, and 8.4.i consistent with the language suggested by VCS.

Proposed Rule 4.2.d.3<sup>4</sup> Allegheny Power requested that the Commission modify the rule to include projects designed to create behavioral changes if the projects are certified by the Commission. The Commission disagrees with the Allegheny Power suggestion, noting that it is extremely difficult to quantify energy efficiency and savings associated with such projects.

Rule 4.4 The Commission modified the rule to require the submission of a verified application.

Rule 4.4 AMP and the Municipal Systems requested that the Commission amend the rule to establish a specific certification form to facilitate the application process. The Commission declines to adopt this suggestion at this time.

Rule 4.4.c Longview Power requested that the Commission amend various provisions under Rule 4.4.c to enable exempt wholesale generators to be certified as a qualified energy resource facility to generate credits for greenhouse gas emission reduction or offset projects. The Commission declines Longview Power's request to modify the provisions under Rule 4.4.c for the reasons discussed in the section entitled "Awarding Credits to Nonutility Generators."

Rule 4.4.c.5 The Commission modified the rule to reflect that the word "ton" means a U.S. ton or 2,000 pounds, as explained in Footnote 2.

Rule 4.4.c.6 In response to the comments of VCS, the Commission modified this rule to add the clarifying language suggested by VCS. AMP and the Municipal Systems suggested that it was premature to include the requirement of "proof of registration of the project with an offset registry approved by the Commission" because the Commission had not yet formally approved a list of greenhouse gas offset registries. By this Order, the Commission is adopting a list of recognized greenhouse gas programs, so the Commission finds that no change to the rule is necessary.

Rule 4.4.d.6 Allegheny Power requested that the Commission modify proposed Rules 4.4.d.6 and Rules 5.5.a.3 to allow electric utilities to provide documentation of costs paid, in lieu of customer attestation, for energy efficiency and demand-side energy initiative projects. The Commission agrees with this suggestion and has modified the rules to include a new Rule 4.4.d.8.

Rule 4.5 Longview Power requested that the Commission modify this rule provision to change the words "electric utility" to "qualified energy resource" to clarify that this provision applies to nonutility generators as well as electric utilities. The Commission agrees with this suggestion and has modified the rule to reflect this suggestion.

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<sup>4</sup>Proposed Rule 4.2.d.3 is renumbered as Rule 4.2.e.3 in the final rules.

Rule 5 Table The Commission modified the Table under Rule 5. In the final rules, the Table appears as Table 150-34A at the end of the rules, consistent with the West Virginia Secretary of State Standardized Size and Format for Rules and Procedures for Publication of the State Register or Parts of the State Register, 153 C.S.R. 6.

Rules 5.2.a.1 AMP and the Municipal Systems requested that the Commission provide a specific timeframe under which credits can be generated and banked for future use. In response to the comments filed by AMP and the Municipal Systems and after its own consideration, the Commission amended the rules by eliminating Proposed Rule 7.9 that provided for the expiration of credits. Under the revised rules, the credits do not expire and may be used toward compliance in any year the portfolio standard is in effect.

Rule 5.2.a.1 Allegheny Power suggested that the Commission revise the rules to allow credits for generation commencing on January 1, 2010, at an alternative or renewable energy resources facility before the generating resource is certified under proposed Rules 4.2.a and 4.2.b, and that those credits should be permitted to be “banked” in order to ensure that adequate credits are available upon adoption of the proposed rules. Allegheny Power requested that the facilities generating credits be allowed to commence registering credits immediately after rules are adopted and requested that any unit that registers within the first six months should be eligible to register as a qualifying resource creating credits retroactively back to January 1, 2010. The Commission disagrees with Allegheny Power’s suggestions and declines to modify the rule.

Rule 5.4 Longview Power asked the Commission to add the words, “exempt wholesale generating facility” after the words, “electric utility” to allow exempt wholesale generators to participate in the awarding of credits for greenhouse gas emission or offset projects. The Commission declines to modify Rule 5.4 for the reasons we have discussed previously. The Commission amended the rule by deleting the phrase “certified under Rule 4” and modified the rule to make it consistent with Rule 5.2.a.1. The Commission also modified the rule to reflect that a ton is the equivalent of the U.S. ton or 2,000 pounds, as explained in Footnote 2.

Rule 5.5 Allegheny Power requested that the Commission add the phrase “per year for the life of the project” to recognize that energy savings continue for the life of the project, and the credit should apply every year that it is saved. The Commission agrees with this suggestion and has modified the rule.

Rule 5.5.a.3 Allegheny Power recommended that the Commission modify Rules 4.4.d.6 and Rules 5.5.a.3 to allow electric utilities to provide documentation of costs paid in lieu of customer attestation. In response to the comments filed, the Commission added a new Rule 4.4.d.8, allowing electric utility documentation of project costs paid by the utility in lieu of customer attestation as discussed previously.

Rule 5.6 In response to the comments filed by AMP and the Municipal Systems regarding Rule 3.1, the Commission modified Rule 5.6 to reflect that credits may be either bundled with the purchase of power or unbundled and held or sold independently from the purchased power.

Rule 5.6.a AMP and the Municipal Systems requested that the Commission provide a specific timeframe under which credits can be generated and banked for future use. As previously discussed, in response to the comments filed by AMP and the Municipal Systems, the Commission eliminated Rule 7.9. Under the revised rules, the credits do not expire if not used within a certain time and can be used for any year the portfolio standard is in effect.

Rule 5.6.c Allegheny Power requested that the Commission clarify the term “administrative transaction fee” in order to establish parameters or “not to exceed” specified levels for the actual amount of the fee and to permit full and timely recovery of the fee in ratemaking proceedings. AMP and the Municipal Systems asked the Commission to eliminate Rule 5.6.c because Rule 8.5.c states that the special assessment fees can be used to offset all direct and indirect costs in implementing the rules. Because the credit trading system is not yet in effect, the Commission does not know the costs associated with processing the credit transactions and cannot specify a maximum level for the fees. The Commission disagrees with the comments filed by AMP and the Municipal Systems suggesting that administrative transaction fees and the special assessment fees are duplicative. The Commission finds that the inclusion of Rule 5.6.c is consistent with the statutory provisions authorizing two separate fees: the administrative transaction fee pursuant to W.Va. Code §24-2F-4(c)(4) and the special assessment fee pursuant to W.Va. Code §24-2F-6(k).

Rules 5.7 and 5.8 Allegheny Power recommended that the Commission modify the rules to clarify that third parties, such as electric utilities, may own credits generated by customer-generators or BTM generators facilities by way of contract with the customer-generator or BTM generator. As noted in the Order entered July 30, 2010, a BTM generator or a “behind-the-meter” generator is a customer-sited generation project that is not interconnected to utility-owned facilities and a customer-generator is customer-sited generation project that is interconnected to utility-owned facilities. The Commission agrees with Allegheny Power and has modified the rules consistent with Allegheny Power’s suggestion.

Rule 6.1.b AMP and Municipal Systems asked the Commission to clarify the term “aggregate” and to modify the rule to protect the confidentiality of pricing data for the individual utilities. The Commission has modified the rule to address the concerns expressed by AMP and the Municipal Systems.

Rule 7.1 Allegheny Power suggested that the Commission modify the rule to reflect that the portfolio standard applies to retail electricity sales as recorded at the customer meter. The Commission agrees with this suggestion and has modified the rule consistent with Allegheny Power’s suggestion.

Rule 7.2 Longview Power asked the Commission to eliminate the language in Rule 7.2 stating that no more than ten percent of the credits used each year by an electric utility to comply with the Portfolio Standard may be acquired from the generation or purchase of electricity generated from supercritical technology. If this provision is retained in the final rules, Longview Power requested that the Commission amend the rule to specify that the ten percent provision does not

affect credits acquired from the generation or purchase of electricity generated from “advanced supercritical technology” or “ultrasupercritical technology” facilities. The Commission declines the suggestion to eliminate the ten percent limit for credits from supercritical sources because that is consistent with the statutory language in W.Va Code§24-2F-5(b), however, Rule 7.2 should be interpreted to exempt advanced supercritical or ultrasupercritical technology facilities from the ten percent limitation. The Commission modified Rule 7.2 to clarify that the ten percent limitation does not apply to advanced supercritical or ultrasupercritical technology facilities.

Rules 7.6.a and 7.6.b Allegheny Power asked the Commission to eliminate the reporting requirements to prevent double counting under Rules 7.6.a and 7.6.b. Allegheny Power asserts that the reporting requirements are unnecessary and burdensome. The Commission disagrees with Allegheny Power. The utilities are required to file the information with the Commission to prevent double counting in the utility compliance plans and annual progress reports pursuant to W.Va. Code §24-2F-5(e). The Commission eliminated the reporting requirements under Rules 7.6.a and 7.6.b and modified the rules to clarify that the reporting requirements are addressed in Rule 8. The Commission also added a new Rule 8.4.j and revised Rule 8.4.k.

Rule 7.7 Allegheny Power suggested that the Commission eliminate this rule, asserting that voluntary purchases made by an electric utility should count toward total portfolio standard requirements. In its reply comments, AMP and the Municipal Systems support the intent of the rule, but have requested that the Commission modify the rule. The Commission has modified language to clarify that voluntary purchases made specifically by retail customers are not eligible to earn credits under the rules.

Proposed Rule 7.9 Longview Power, AMP and the Municipal Systems objected to this rule as unfair because the credits owned by nonutility generators and customer-generators expire after two years, while utility-owned credits last indefinitely. The Commission agrees and deleted this provision. Under the final rules, the credits do not expire and can be carried forward for use in any year the portfolio standard is in effect.

New Rule 7.9 MAREC asked the Commission to adopt a new Rule 7.9 that would require electric utilities to enter into long-term contracts to meet the portfolio standard requirements. There is no specific statutory language that creates an obligation for the utilities to enter into long-term contracts to meet the portfolio standard requirements. In the absence of specific statutory authority to support the inclusion of this requirement in the rules, the Commission declines MAREC’s request.

Proposed Rule 7.10<sup>5</sup> AMP and the Municipal Systems requested that the Commission modify the rule to include a requirement for notice and comment and a hearing prior to making any modification of a utility portfolio standard requirements. The Commission disagrees with AMP and the Municipal Systems’ suggestion. Given the statutory requirement to make its determination within sixty days of a filing requesting modification, the Commission will not by rule bind itself to

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<sup>5</sup> Proposed Rule 7.10 is renumbered as Rule 7.9 in the final rules.

a specific process.

Proposed Rule 7.11 Allegheny Power requested that the Commission clarify the end date of the proposed rules and whether the Commission expects to promulgate new rules before that date. The end date in proposed Rule 7.11 is based on the statutory termination date for the portfolio standard in W.Va. Code §24-2F-5(i). Recognizing that the Legislature determines the end date of the portfolio standard and may modify the sunset provision in the future, the Commission deleted this rule provision.

New Rule 8.2.d MAREC suggested that the Commission add a new Rule 8.2 consistent with MAREC's request for modification of the rules to require electric utilities to enter into long term contract to meet the portfolio standard requirements. As discussed previously, the Commission disagrees with MAREC's suggestion.

Rule 8.2.g As discussed previously, the Commission disagrees with Allegheny Power's suggestion to eliminate the reporting requirement under Rule 8.2.g.

Rule 8.4 AMP and the Municipal Systems asked the Commission to clarify the first year the progress reports are due. The Commission finds that further clarification of Rule 8.4 is unnecessary. The rules provide that the progress reports are due March 31, beginning in 2012, the year following Commission's review of the electric utility's compliance plan that must be filed by January 1, 2011.

Rule 8.5 Allegheny Power requested that the Commission further define the term special assessment to establish the parameters by which the assessment is calculated and to clarify whether the special assessment fee and the administrative transaction fee for credit transactions under Rule 5.6.c are overlapping fees. Allegheny Power requested modification of the rules to permit recovery of the fees in ratemaking proceedings. As discussed previously, the Act includes the special assessment fee and the administrative transaction fees for credit transactions as two separate fees. The Commission modified Rule 8.5.b to clarify that calculation of the special assessment fee is based on W.Va. Code §24-2F-6(k). Pursuant to W.Va. Code §24-2F-6(k), the Commission assessed the electric utilities serving more than thirty-thousand electric retail customers \$200,000 in 2009 and \$100,000 in 2010. Beginning September 1, 2011, the rural electric cooperatives, municipally-owned electric utilities and utilities serving less than thirty-thousand customers will be included in the assessment and proration of the \$100,000 special assessment fee. The Commission believes that the special assessment fees are recoverable by the utilities in ratemaking proceedings under Rule 11.1, but finds that it is not necessary to modify the rule.

Rule 9.1 Allegheny Power requested modification of the rule to permit the credits purchased by utilities up to March 31 of the following year to be applied retroactively to the previous year's requirements. Allegheny Power also requested modification of the rule to change the filing date of the annual progress reports to June 1. The Commission declines Allegheny Power's request to modify the compliance timeline in Rule 9.1. The Commission believes that Rule 9.1 provides the utilities with sufficient time to obtain annual credits required for each calendar year

by 2015 and annually thereafter. In response to Allegheny Power's comments, the Commission amended proposed Table 2 to clarify that the electric utilities will have a full year to comply with the annual portfolio standard requirements because the requirements are based on the utility's retail sales in the previous calendar year. As explained previously, the Commission also modified the final rules so that proposed Table 2 under Rule 9.1.b appears as Table 150-34B at the end of the rules, consistent with the West Virginia Secretary of State Standardized Size and Format for Rules and Procedures for Publication of the State Register or Parts of the State Register, 153 C.S.R. 6.

Rule 9.1.d AMP and the Municipal Systems requested modification of the rule to delete the words "at least," stating that this language gives the Commission too much discretion in evaluating the compliance assessment. In its reply comments, MAREC requested that the Commission retain the existing rule language. The Commission disagrees with AMP and the Municipal Systems' request, noting that the language in Rule 9.1.d is consistent with the statutory language in W.Va. Code §24-2F-5(g)(1).

Rule 10.1 Augusta Systems requested that the Commission amend Rule 10.1 to specify that demand-side energy initiative technologies are eligible for grants under the Alternative and Renewable Energy Resource Research Fund and to give priority for grant funding to private sector demonstration and commercialization projects. The Commission declines to modify the rule as requested because the rule is consistent with the statutory language in W.Va. Code §24-2F-11. Also, the Commission notes that because the Division of Energy is the designated agency to distribute the grant funds under the statute, it should determine priority for grant funding.

Rule 11.2 MAREC requested modification of the rule to provide that long-term contracts for electric utilities are the types of utility investments in construction that qualify for incentive rate-making. The Commission declines to modify the rule as requested because the rule is consistent with the statutory language in W.Va. Code §24-2F-7.

### **FINDINGS OF FACT**

1. In 2009, the West Virginia Legislature enacted House Bill 103, the Alternative and Renewable Energy Portfolio 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.

2. The Portfolio Act requires the 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 and to govern the alternative and renewable energy portfolio standard.

3. By Notice and Order issued July 28, 2009, the Commission: (i) instituted this General Order proceeding, (ii) required notice and publication of the proposed rulemaking by the Commission Executive Secretary, and (iii) established a 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.

4. Preliminary comments were filed by the following entities and interested parties: (i) Longview Power LLC, (ii) PJM Environmental Information Services, Inc., (iii) the Cities of New Martinsville and Philippi, Harrison Rural Electrification Association, Inc. (collectively as the Public Systems), (iv) the West Virginia Energy Users Group, (v) Appalachian Power and Wheeling Power Company (the AEP Companies), (vi) Monongahela Power Company, the Potomac Edison Company, and West Virginia Power, dba Allegheny Power, and (vii) the Consumer Advocate Division.

5. By Order issued July 30, 2010, the Commission: (i) issued proposed legislative Rules Governing Alternative and Renewable Energy Portfolio Standard, 150 C.S.R. 34, (ii) required notice and publication of the rulemaking by the Commission Executive Secretary, and (iii) established a comment period.

6. Comments were filed by the following entities and interested parties: (i) Longview Power LLC, (ii) Monongahela Power Company, the Potomac Edison Company, and West Virginia Power, dba Allegheny Power, (iii) the Voluntary Carbon Standard Association, (iv) Appalachian Power Company and Wheeling Power Company (the AEP Companies), (v) the West Virginia Energy Users Group, (vi) Augusta Systems, (vii) the Mid-Atlantic Renewable Energy Coalition, and (viii) American Municipal Power, Inc. and the City of New Martinsville and the City of Philippi.

7. No hearing was held in this rulemaking proceeding.

### CONCLUSION OF LAW

The Commission has considered the comments filed in this proceeding and by this Order promulgates final Rules Governing Alternative and Renewable Energy Portfolio Standard, 150 C.S.R. 34, in response to the statutory requirements of W.Va. Code §24-2F-1 et seq.

### 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 A, are hereby promulgated as Commission final legislative rules.

IT IS FURTHER ORDERED that Attachment B hereto is a blackline version of the final rules, showing changes between the rules as proposed on July 30, 2010 and the final rules.

IT IS FURTHER ORDERED that the new Rules Governing Alternative and Renewable Energy Portfolio Standard, 150 C.S.R. 34, and the forms attached thereto, shall be effective sixty days from the date of this order, or on January 4, 2011.

IT IS FURTHER ORDERED that the greenhouse gas programs of the Climate Action

Reserve, the American Carbon Registry, the Voluntary Carbon Standard and the Gold Standard are adopted as the list of greenhouse gas programs recognized by the Commission for the purposes of the Rules Governing Alternative and Renewable Energy Portfolio Standard, 150 C.S.R. 34.

IT IS FURTHER ORDERED that Allegheny Power and the AEP Companies shall file a verified statement from a designated utility officer to include the following information: (i) a list of the coal-fired generating facilities located within West Virginia or the PJM region owned by the West Virginia utilities as of July 1, 2009, and (ii) for each facility, the gross amount of carbon dioxide emitted by the facility measured in pounds per megawatt hour of net generation for the calendar year 2009. The verified statements must be filed within thirty days of this Order.

IT IS FURTHER ORDERED that upon entry hereof, the Commission Executive Secretary shall file a copy of this order and the rules, together with the required forms, with the Secretary of State of West Virginia.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission serve a copy of this order by electronic service on all electric utilities and on all parties of record who have filed an e-service agreement, by United States First Class Mail on all parties of record who have not filed an e-service agreement, and on Staff and the Consumer Advocate Division by hand delivery.

A True Copy. Teste:

  
Sandra Squire  
Executive Secretary

ASH/rmt  
go184.25cc.wpd

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

TITLE 150  
LEGISLATIVE RULES  
PUBLIC SERVICE COMMISSION

SERIES 34  
RULES GOVERNING ALTERNATIVE AND  
RENEWABLE ENERGY PORTFOLIO STANDARD

**§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. -- November 5, 2010

1.4. Effective Date. -- January 4, 2011

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, in determining whether a particular technology constitutes “advanced coal technology,” the Commission will include in its determination the baseline for determining reductions in airborne carbon dioxide emissions which shall be the most efficient coal-fired energy generating facility, measured in

pounds of carbon dioxide emissions per megawatt hour of net generation, owned by a West Virginia utility in operation before July 1, 2009, as certified by a responsible utility officer.

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. – An alternative or 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.

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 or Public Service Commission. – The Public Service Commission of West Virginia as continued pursuant to W. Va. Code §24-1-3.

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 unless such a utility consents to interconnection with a Customer-generator with a maximum nameplate capacity greater than 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 that approximates the inflow of the project. 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 flood control and navigation control requirements of the U.S. Army Corps of Engineers or 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, 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-4, 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 that 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 PJM Region.

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 not yet in operation seeking predetermination as a specific type of "advanced coal technology" shall file a petition with the Commission.

4.2.c. A facility that generates electricity from a renewable energy resource as defined in Rule 2.22.

4.2.c.1. A facility will not be qualified if it operates outside the PJM Region.

4.2.c.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.d. 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 certified by one of the greenhouse gas programs approved by the Commission.

4.2.d.1. A greenhouse gas emission reduction or offset 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.e. An energy efficiency or demand-side energy initiative project will be qualified after demonstrating that it 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.e.1. An energy efficiency or demand-side energy initiative 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.e.2. An energy efficiency or demand-side energy initiative project will not be qualified if it has previously been certified as an alternative or renewable energy resource;

4.2.e.3. An energy efficiency or demand-side energy initiative 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.e.4. An energy efficiency or demand-side energy initiative 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.e.5. An energy efficiency or demand-side energy initiative 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 programs or 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 a verified 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 PJM Region;

4.4.b.11. Whether the facility is certified by another state as an eligible generation resource to meet the portfolio standard 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 tons (1 ton equals 2,000 pounds) of carbon dioxide equivalent to be converted into credits;

4.4.c.6. Proof of registration of the project with a greenhouse gas program approved by the Commission;

4.4.c.7. The location and a description 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 of an approved greenhouse gas program 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 and a description 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. Acknowledgment 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. Instead of customer attestation or acknowledgment, as required by Rules 4.4.d.6-7, alternate submission requirements will be allowed by the Commission for state-wide energy efficiency or demand-side energy initiative projects. Such alternative submission requirements may include, but are not limited to, documentation of project costs paid and that the utility has informed the customers that the utility will retain credits associated with the state-wide initiative projects.

4.4.d.9. 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 as part of the application process for certification 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, a qualified energy resource 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 Standard 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 Rule 4.2.a or 4.2.c shall be awarded certified alternative and renewable energy resource credits as summarized in Table 150-34A at the end of this rule 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 of PJM Region.

5.2.a.1. Only electricity generated after the alternative or renewable energy resource is certified under Rule 4.2.a or 4.2.c 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 PJM Region.

5.2.c. For the purpose of determining compliance with the Portfolio Standard requirements, the Commission will allow three 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 if the renewable energy resource facility is sited upon a reclaimed surface mine.

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 may be awarded one credit for each ton (1 ton equals 2,000 pounds) of carbon dioxide equivalent reduced or offset as a result of a greenhouse gas emission reduction or offset project after the project is certified under Rule 4.2.d. Credits will be awarded to the electric utility upon retiring tons 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 credits 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 per year for the life of the project as a result of an energy efficiency or demand-side energy initiative project certified under Rule 4.2.e.

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 in, or bundled with, the purchase of the power. Credits may also be purchased independently, or unbundled from, purchased power.

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 unless the customer-generator contracts with a third party for the credits awarded, in which case the third party shall own the credits awarded for generation.

5.8. A BTM generator shall own the credits awarded for its generation unless the BTM contracts with a third party for the credits awarded, in which case the third party shall own the credits awarded for generation.

5.9. The Commission may verify information submitted for certification of credits 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 the credits are decertified, a qualifying electric utility or facility will be given thirty (30) days' written notice and an opportunity to demonstrate why the credits should not be decertified.

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

6.1. The Commission designates the 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 in a manner that seeks to maintain confidentiality of pricing data for individual transactions.

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 Standard 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 as recorded at the customer's meter, except as provided for under 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, provided however, that this limit does not apply to other advanced coal technologies as determined by the Commission.

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 Standard 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 Standard 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.

7.7. An electric utility shall not apply any voluntary purchases by retail customers of energy from renewable sources or voluntary purchases by retail customers 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. 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.

7.9.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.

7.9.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.

7.9.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.

7.9.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.

#### **§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 as recorded at the customer's meter 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 Standard 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 Standard set forth in this rule;

8.2.e. A nonbinding estimate of the costs to comply with the Portfolio Standard 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 or those 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 Standard set forth herein.

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 Standard. The progress report shall include:

8.4.a. The electric utility's sales to retail customers in West Virginia as recorded at the customer's meter 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 as recorded at the customer's meter in the two previous calendar years, by year, corresponding to voluntary purchases by retail customers 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 as recorded at the customer's meter in the two previous years, by year, corresponding to voluntary purchases by retail customers 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 of the approved greenhouse gas program 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 greenhouse gas program where the reductions or offsets were registered;

8.4.j. 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,

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

8.4.l. 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 will be determined as provided in W. Va. Code §24-2F-6.

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 Standard 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 150-34B at the end of this rule:

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 Standard 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 the West Virginia Code to the contrary, an electric utility may not recover in rates

the costs of compliance assessments imposed under Article 2F, Chapter 24 of the West Virginia Code or these rules.

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 purchases by retail customers 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.

**TABLE 150-34A**

**CRITERIA FOR AWARDING CERTIFIED ALTERNATIVE AND RENEWABLE ENERGY  
RESOURCE CREDITS**

| <b>Energy resource facility type</b>                                      | <b>Credit multiplier applied during compliance<br/>determination</b> |
|---|--|
| Alternative energy resource facility                                      | 1x   |
| Renewable energy resource facility  | 2x   |
| Renewable energy resource facility sited upon<br>a reclaimed surface mine | 3x   |

**TABLE 150-34B**

SUMMARY OF CREDIT ACCOUNTING AND REPORTING REQUIREMENTS FOR  
UTILITIES  
(2010 – 2025)

| <b>Calendar Year</b> | <b>Portfolio Standard</b> | <b>Acquisition of Credits</b> | <b>Annual Progress Report and Retirement in GATS (due date)</b> |
|----------------------|---------------------------|-------------------------------|---|
| 2011                 | 0% of 2010 retail sales   | Not applicable                | By 3/31/2012  |
| 2012                 | 0% of 2011 retail sales   | Not applicable                | By 3/31/2013  |
| 2013                 | 0% of 2012 retail sales   | Not applicable                | By 3/31/2014  |
| 2014                 | 0% of 2013 retail sales   | Not applicable                | By 3/31/2015  |
| 2015                 | 10% of 2014 retail sales  | By 12/31/2015                 | By 3/31/2016  |
| 2016                 | 10% of 2015 retail sales  | By 12/31/2016                 | By 3/31/2017  |
| 2017                 | 10% of 2016 retail sales  | By 12/31/2017                 | By 3/31/2018  |
| 2018                 | 10% of 2017 retail sales  | By 12/31/2018                 | By 3/31/2019  |
| 2019                 | 10% of 2018 retail sales  | By 12/31/2019                 | By 3/31/2020  |
| 2020                 | 15% of 2019 retail sales  | By 12/31/2020                 | By 3/31/2021  |
| 2021                 | 15% of 2020 retail sales  | By 12/31/2021                 | By 3/31/2022  |
| 2022                 | 15% of 2021 retail sales  | By 12/31/2022                 | By 3/31/2023  |
| 2023                 | 15% of 2022 retail sales  | By 12/31/2023                 | By 3/31/2024  |
| 2024                 | 15% of 2023 retail sales  | By 12/31/2024                 | By 3/31/2025  |
| 2025                 | 25% of 2024 retail sales  | By 12/31/2025                 | By 3/31/2026  |