

## REVISOR OF STATUTES OFFICE

300 S.W. 10th Street, Ste. 010-E  
Topeka, KS 66612-1592  
Telephone 785-296-2321 Fax 785-296-6668

### MEMORANDUM

To: Chairman Knox and members of the Joint Energy and Environmental Policy Committee  
From: Matt Sterling, Assistant Revisor of Statutes  
Date: November 20, 2012  
Subject: Renewable Energy Standards Act

The renewable energy standards act requires that a certain percentage of an electric utility's energy portfolio include energy generated from renewable resources.

#### Definitions

K.S.A. 66-1257 provides definitions for the terms used in the act, some of which include:

- (a) "Affected utility" means any electric public utility, as defined in K.S.A. 66-101a, and amendments thereto, but does not include any portion of any municipally owned or operated electric utility.
- (c) "Net renewable generation capacity" means the gross generation capacity of the renewable energy resource over a four-hour period when not limited by ambient conditions, equipment, operating or regulatory restrictions less auxiliary power required to operate the resource, and refers to resources located in the state or resources serving ratepayers in the state.
- (d) "Peak demand" means the demand imposed by the affected utility's retail load in the state.
- (e) "Renewable energy credit" means a credit representing energy produced by renewable energy resources issued as part of a program that has been approved by the state corporation commission.

#### Renewable Portfolio Requirements

K.S.A. 66-1258 requires the Kansas Corporation Commission to establish a portfolio requirement, by rules and regulations, for all affected utilities to generate or purchase electricity generated from renewable energy resources or purchase renewable energy credits. Such portfolio requirement requires net renewable generation capacity of at least 10% of the affected utility's peak demand by 2011, at least 15% by 2016, and at least 20% by 2020<sup>1</sup>. The affected utility uses its actual capacity factor from its owned renewable generation<sup>2</sup> from the immediately previous calendar year.

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<sup>1</sup> Determination of a utility's peak demand is based on the average demand of the prior three years of requirements.

<sup>2</sup> "Capacity from generation" means the net capacity of renewable generation resources owned or leased by a utility. Net capacity is the gross capacity minus auxiliary power required to operate the resource as determined in a test conducted as soon as possible after commercial operation begins. This test shall reflect operation of the resource over a four-hour period under conditions that do not limit performance due to ambient conditions, equipment, or operating or regulatory restrictions. The determination for a multiunit resource, including a wind farm, may be made through tests for a representative sample of at least 10% of the units. If the tests specified in this subsection are not practicable, the nameplate capacity of the resource minus the associated auxiliary power may be used as the net capacity unless there are factors that would prevent the resource from achieving nameplate capacity, other than ambient conditions, equipment, or operating or regulatory

Renewable energy credits may only be used to meet a portion of an affected utility's portfolio requirements for the years 2011, 2016 and 2020, unless otherwise allowed by the commission.

The renewable portfolio requirements apply to all power sold to Kansas retail consumers whether the power is self-generated or purchased from another source in or outside of the state. The capacity of all net metering systems interconnected with the affected utilities under the net metering and easy connection act in K.S.A. 2012 Supp. 66-1263 *et seq.*<sup>3</sup> count toward compliance.

## **Cost Recovery**

K.S.A. 66-1259 permits the commission to allow affected utilities to recover reasonable costs incurred to meet the new renewable energy resource requirements required in the renewable energy standards act.

## **Annual Reporting**

K.S.A. 66-1260 requires the commission to determine the annual statewide retail rate impact resulting from investment in renewable energy resources required to meet the renewable portfolio requirements and whether such investment causes any affected utility's total revenue requirement to increase by more than one percent. The commission is required to submit an annual report of the statewide retail rate impact to the governor, the senate committee on utilities and the house committee on energy and utilities.

## **Administration and Penalties**

K.S.A. 66-1261 requires the commission to establish rules and regulations for the administration of the renewable energy standards act<sup>4</sup>, including reporting and enforcement mechanisms necessary to ensure that each affected utility complies with the portfolio requirement<sup>5</sup>. The commission is required to exempt an affected utility from administrative penalties for an individual compliance year if the utility demonstrates that the retail rate impact described in K.S.A. 66-1260 has been reached or exceeded and the utility has not achieved full compliance with the portfolio requirement. The commission has discretion to consider mitigating circumstances in imposing penalties. A utility is prohibited from recovering the costs of administrative penalties from the utility's Kansas retail customers.

## **Certification of Renewable Energy Resources**

K.S.A. 66-1262 requires the commission to establish rules and regulations for the certification process for use of renewable energy resources for the purposes of fulfilling the portfolio requirements.

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restrictions. K.A.R. 82-16-1(c).

"Nameplate capacity" means the maximum rated output of a generator under specific conditions designated by the manufacturer, generally indicated in units of kilowatts (kW) on a nameplate attached to the generator. K.A.R. 82-16-1(j).

3 An affected utility is required to make net metering available to customer-generators on a first-come, first-served basis, until the total rated generating capacity of all net metered systems equals or exceeds one percent of the utility's peak demand during the previous year. K.S.A. 66-1265(a).

4 Electric Utility Renewable Energy Standards, K.A.R. 82-16-1 *et seq.*

5 The standard minimum penalty shall be equal to two times the market value during the calendar year of sufficient Renewable Energy Credits to have met the portfolio requirement. The penalty may be set by the commission above or below the standard minimum based on consideration of: The reasons for noncompliance, the degree of noncompliance, plans to achieve compliance, the impact of noncompliance on utility costs and revenues, and the impact of noncompliance on the environment. K.A.R. 82-16-3(a) and (b).

## RENEWABLE ENERGY STANDARDS ACT

**66-1256. Renewable energy standards act.** K.S.A. 2011 Supp. 66-1256 through 66-1262, and amendments thereto, shall be known and may be cited as the renewable energy standards act.

**History:** L. 2009, ch. 141, § 1; May 28.

**66-1257. Same; definitions.** As used in the renewable energy standards act:

- (a) “Affected utility” means any electric public utility, as defined in K.S.A. 66-101a, and amendments thereto, but does not include any portion of any municipally owned or operated electric utility.
- (b) “Commission” means the state corporation commission.
- (c) “Net renewable generation capacity” means the gross generation capacity of the renewable energy resource over a four-hour period when not limited by ambient conditions, equipment, operating or regulatory restrictions less auxiliary power required to operate the resource, and refers to resources located in the state or resources serving ratepayers in the state.
- (d) “Peak demand” means the demand imposed by the affected utility’s retail load in the state.
- (e) “Renewable energy credit” means a credit representing energy produced by renewable energy resources issued as part of a program that has been approved by the state corporation commission.
- (f) “Renewable energy resources” means net renewable generation capacity from:
  - (1) Wind;
  - (2) solar thermal sources;
  - (3) photovoltaic cells and panels;
  - (4) dedicated crops grown for energy production;
  - (5) cellulosic agricultural residues;
  - (6) plant residues;
  - (7) methane from landfills or from wastewater treatment;
  - (8) clean and untreated wood products such as pallets;
  - (9) (A) existing hydropower; (B) new hydropower;
  - (10) fuel cells using hydrogen produced by one of the above-named renewable energy resources;
  - (11) energy storage that is connected to any renewable generation by means of energy storage equipment including, but not limited to, batteries, fly wheels, compressed air storage and pumped hydro; and
  - (12) other sources of energy, not including nuclear power, that become available after the effective date of this section, and that are certified as renewable by rules and regulations established by the commission pursuant to K.S.A. 2011 Supp. 66-1262, and amendments thereto.

**History:** L. 2009, ch. 141, § 2; May 28; L. 2012, ch. 101, § 3; July 1.

**66-1258. Same; renewable energy portfolio standards; rules and regulations.** (a) The commission shall establish by rules and regulations a portfolio requirement for all affected utilities to generate or purchase electricity generated from renewable energy resources or purchase renewable energy credits. For the purposes of calculating the capacity from renewable energy credit purchases, the affected utility shall use its actual capacity factor from its owned renewable generation from the immediately previous calendar year. Renewable energy credits may only be used to meet a portion of portfolio requirements for the years 2011, 2016 and 2020, unless otherwise allowed by the commission. Such portfolio requirement shall provide net renewable generation capacity that shall constitute the following portion of each affected utility's peak demand:

- (1) Not less than 10% of the affected utility's peak demand for calendar years 2011 through 2015, based on the average demand of the prior three years of each year's requirement;
  - (2) not less than 15% of the affected utility's peak demand for calendar years 2016 through 2019, based on the average demand of the prior three years of each year's requirements; and
  - (3) not less than 20% of the affected utility's peak demand for each calendar year beginning in 2020, based on the average demand of the prior three years of each year's requirement.
- (b) The portfolio requirements described in subsection (a) shall apply to all power sold to Kansas retail consumers whether such power is self-generated or purchased from another source in or outside of the state. The capacity of all net metering systems interconnected with the affected utilities under the net metering and easy connection act in K.S.A. 2011 Supp. 66-1263 et seq., and amendments thereto, shall count toward compliance.
- (c) Each megawatt of eligible capacity in Kansas installed after January 1, 2000, shall count as 1.10 megawatts for purposes of compliance.
- (d) The commission shall establish rules and regulations required in this section within 12 months of the effective date of this act.

**History:** L. 2009, ch. 141, § 3; May 28.

**66-1259. Same; renewable energy resource requirements; recovery of costs by affected utilities.**

The commission shall allow affected utilities to recover reasonable costs incurred to meet the new renewable energy resource requirements required in the renewable energy standards act.

**History:** L. 2009, ch. 141, § 4; May 28.

**66-1260. Same; renewable energy resource investment by affected utilities; calculation by commission.** (a)(1) For each affected utility, the commission shall determine whether investment in renewable energy resources required to meet the renewable portfolio requirement, as required by K.S.A. 2012 Supp. 66-1258, and amendments thereto, causes the affected utility's total

revenue requirement to increase one percent or greater.

(2) The commission shall annually determine the annual statewide retail rate impact resulting from affected utilities meeting the renewable portfolio requirement.

(b) Submission of information pertaining to an affected utility's portfolio requirement shall be determined by rules and regulations promulgated by the commission or by order of the commission.

(c) Beginning in 2013, on or before March 1 of each year, the commission shall submit a report of the annual statewide retail rate impact for the previous year to the governor, the senate committee on utilities and the house committee on energy and utilities.

**History:** L. 2009, ch. 141, § 5; May 28; L. 2012, ch. 101, § 4; July 1.

**66-1261. Same; rules and regulations; violations; penalties; exceptions.** (a) The commission shall establish rules and regulations for the administration of the renewable energy standards act, including reporting and enforcement mechanisms necessary to ensure that each affected utility complies with this standard and other provisions governing the imposition of administrative penalties assessed after a hearing held by the commission. Administrative penalties should be set at a level that will promote compliance with the renewable energy standards act, and shall not be limited to penalties set forth in K.S.A 66-138 and 66-177, and amendments thereto.

(b) For the calendar years 2011 and 2012, the commission is not required to assess penalties if the affected utility can demonstrate it made a good faith effort to comply with the portfolio standards requirement. The commission shall exempt an affected utility from administrative penalties for an individual compliance year if the utility demonstrates that the retail rate impact described in K.S.A. 2011 Supp. 66-1260, and amendments thereto, has been reached or exceeded and the utility has not achieved full compliance with K.S.A. 2011 Supp. 66-1258, and amendments thereto. In imposing penalties, the commission shall have discretion to consider mitigating circumstances. Under no circumstances shall the costs of administrative penalties be recovered from Kansas retail customers.

(c) The commission shall establish rules and regulations required in this section within 12 months of the effective date of this act.

**History:** L. 2009, ch. 141, § 6; May 28.

**66-1262. Same; certification of renewable energy resources; rules and regulations.** (a) The commission shall establish rules and regulations for the administration of a certification process for use of renewable energy resources described in subsection (f)(11) of K.S.A. 2012 Supp. 66-1257, and amendments thereto, for purposes of fulfilling the requirements of K.S.A. 2012 Supp. 66-1258, and amendments thereto. Criteria for the certification process shall be determined by factors that include, but are not limited to: Fuel type, technology and the environmental impacts of renewable energy resources described in subsection (f)(11) of K.S.A. 2012 Supp. 66-1257, and amendments thereto. Use of renewable energy resources described in subsection (f)(11) of K.S.A. 2012 Supp. 66-1257, and amendments thereto, shall not cause undue or adverse air, water or land use impacts.

(b) The commission shall establish rules and regulations required in this section within 12 months of the effective date of this act.

**History:** L. 2009, ch. 141, § 7; May 28.