R8-67 RENEWABLE ENERGY AND ENERGY EFFICIENCY PORTFOLIO STANDARD (REPS)

(a) Definitions.

(1) The following terms shall be defined as provided in G.S. 62-133.8: "Combined heat and power system"; "demand-side management"; "electric power supplier"; "new renewable energy facility"; "renewable energy certificate"; "renewable energy facility"; "renewable energy resource"; and "incremental costs."

(2) For purposes of determining an electric power supplier's avoided costs, "avoided cost rates" mean an electric power supplier's most recently approved or established avoided cost rates in this state, as of the date the contract is executed, for purchases of electricity from qualifying facilities pursuant to Section 210 of the Public Utility Regulatory Policies Act of 1978. If the Commission has approved an avoided cost rate for the electric power supplier for the year when the contract is executed, applicable to contracts of the same nature and duration as the contract between the electric power supplier and the seller, that rate shall be used as the avoided cost. Therefore, for example, for a contract by an electric public utility with a term of 15 years, the avoided cost rate applicable to that contract would be the comparable, Commission-approved, 15-year, long-term, levelized rate in effect at the time the contract was executed. In all other cases, the avoided cost shall be a good faith estimate of the electric power supplier's avoided cost, levelized over the duration of the contract, determined as of the date the contract is executed, taking into consideration the avoided cost rates then in effect as established by the Commission. In any event, when found by the Commission to be appropriate and in the public interest, a good faith estimate of an electric public utility's avoided cost, levelized over the duration of the contract, determined as of the date the contract is executed, may be used in a particular REPS cost recovery proceeding. Determinations of avoided costs, including estimates thereof, shall be subject to continuing Commission oversight and, if necessary, modification should circumstances so require.

(3) "Energy efficiency measure" means an equipment, physical, or program change that when implemented results in less use of energy to perform the same function or provide the same level of service. "Energy efficiency measure" does not include demand-side management. It includes energy produced from a combined heat and power system that uses nonrenewable resources to the extent the system:

(i) Uses waste heat to produce electricity or useful, measurable thermal or mechanical energy at a retail electric customer's facility; and

(ii) Results in less energy used to perform the same function or provide the same level of service at a retail electric customer's facility.

(4) "Year-end number of customer accounts" means the number of accounts within each customer class as of December 31 for a given calendar year determined in a manner approved by the Commission pursuant to subsection (c)(4) or determined in the same manner as that information is reported to the Energy Information Administration, United States Department of Energy, for annual electric sales and revenue reporting.

(5) "Utility compliance aggregator" is an organization that assists an electric power supplier in demonstrating its compliance with REPS. Such demonstration may include, among other things, filing REPS compliance plans or reports and participating in NC-RETS on behalf of the electric power supplier or a group of electric power suppliers.

(b) REPS compliance plan.

(1) Each year, beginning in 2008, each electric power supplier or its designated utility compliance aggregator shall file with the Commission the electric power supplier's plan for complying with G.S. 62-133.8(b), (c), (d), (e) and (f). The plan shall cover the calendar year in which the plan is filed and the immediately subsequent two calendar years. At a minimum, the plan shall include the following information:

(i) a specific description of the electric power supplier's planned actions to comply with G.S. 62-133.8(b), (c), (d), (e) and (f) for each year;

(ii) a list of executed contracts to purchase renewable energy certificates (whether or not bundled with electric power), including type of renewable energy resource, expected MWh, and contract duration;

(iii) a list of those planned or implemented energy efficiency and demand side management measures that the electric power supplier plans to use toward REPS compliance,

including a brief description of each measure, its projected impacts, and a measurement and verification plan if such plan has not otherwise been filed with the Commission;

(iv) the projected North Carolina retail sales and year-end number of customer accounts by customer class for each year;

(v) the current and projected avoided cost rates for each year;

(vi) the projected total and incremental costs anticipated to implement the compliance plan for each year;

(vii) a comparison of projected costs to the annual cost caps for each year;

(viii) for electric public utilities, an estimate of the amount of the REPS rider and the impact on the cost of fuel and fuel-related costs rider necessary to fully recover the projected costs; and

(ix) to the extent not already filed with the Commission, the electric power supplier shall, on or before September 1 of each year, file a renewable energy facility registration statement pursuant to Rule R8-66 for any facility it owns and upon which it is relying as a source of power or RECs in its REPS compliance plan.

(2) Each electric power supplier shall file in a docket to be established by the Commission, its REPS compliance plan on or before September 1 of each year.

(3) Approval of the REPS compliance plan shall not constitute an approval of the recovery of costs associated with REPS compliance or a determination that the electric power supplier has complied with G.S. 62 133.8(b), (c), (d), (e), and (f).

(4) An REPS compliance plan filed by an electric power supplier not subject to Rule R8-60 or Rule R8-60A shall be for information only.

(c) REPS compliance report.

(1) Each year, beginning in 2009, each electric power supplier or its designated utility compliance aggregator shall file with the Commission a report describing the electric power supplier's compliance with the requirements of G.S. 62-133.8(b), (c), (d), (e) and (f) during the previous calendar year. The report shall include all of the following information, including supporting documentation:

(i) the sources, amounts, and costs of renewable energy certificates, by source, used to comply with G.S. 62-133.8(b), (c), (d), (e) and (f). Renewable energy certificates for energy efficiency may be based on estimates of reduced energy consumption through the implementation of energy efficiency measures, to the extent approved by the Commission;

(ii) the actual North Carolina retail sales and year-end number of customer accounts by customer class;

(iii) the current avoided cost rates and the avoided cost rates applicable to energy received pursuant to long-term power purchase agreements;

(iv) the actual total and incremental costs incurred during the calendar year to comply with G.S. 62-133.8(b), (c), (d), (e) and (f);

(v) a comparison of the actual incremental costs incurred during the calendar year to the per-account annual charges (in G.S. 62-133.8(g)(4)) applied to its total number of customer accounts as of December 31 of the previous calendar year;

(vi) the status of compliance with the requirements of G.S. 62-133.8(b), (c), (d), (e) and (f);

(vii) the identification of any renewable energy certificates or energy savings to be carried forward pursuant to G.S. 62-133.8(b)(2)f or (c)(2)f;

(viii) the dates and amounts of all payments made for renewable energy certificates; and

(ix) for electric membership corporations and municipal electric suppliers, reduced energy consumption achieved in each year after January 1, 2008, through the implementation of energy efficiency or demand-side management programs, along with the results of each program's measurement and verification plan, or other documentation supporting an estimate of the program's energy reductions achieved in the previous year pending implementation of a measurement and verification plan. Supporting documentation shall be retained and made available for audit.

(2) Each electric public utility shall file its annual REPS compliance report , together with direct testimony and exhibits of expert witnesses, on the same date that it files (1) its cost recovery request under Rule R8-67(e), and (2) the information required by Rule R8-55. The Commission

shall consider each electric public utility's REPS compliance report at the hearing provided for in subsection (e) of this rule and shall determine whether the electric public utility has complied with G.S. 62-133.8(b), (d), (e) and (f). Public notice and deadlines for intervention and filing of additional direct and rebuttal testimony and exhibits shall be as provided for in subsection (e) of this rule.

(3) Each electric membership corporation and municipal electric supplier or their designated utility compliance aggregator shall file a verified REPS compliance report on or before September 1 of each year. The Commission may issue an order scheduling a hearing to consider the REPS compliance report filed by each electric membership corporation or municipal electric supplier, requiring public notice, and establishing deadlines for intervention and the filing of direct and rebuttal testimony and exhibits.

(4) In each electric power supplier's initial REPS compliance report, the electric power supplier shall propose a methodology for determining its cap on incremental costs incurred to comply with G.S. 62-133.8(b), (c), (d), (e) and (f) and fund research as provided in G.S. 62-133.8(h)(1), including a determination of year-end number of customer accounts. The proposed methodology may be specific to each electric power supplier, shall be based upon a fair and reasonable allocation of costs, and shall be consistent with G.S. 62-133.8(h). The electric power supplier may propose a different methodology that meets the above requirements in a subsequent REPS compliance report filing. For electric public utilities, this methodology shall also be used for assessing the per-account charges pursuant to G.S. 62-133.8(h)(5).

(5) In any year, an electric power supplier or other interested party may petition the Commission to modify or delay the provisions of G.S. 62-133.8(b), (c), (d), (e) and (f), in whole or in part. The Commission may grant such petition upon a finding that it is in the public interest to do so. If an electric power supplier is the petitioner, it shall demonstrate that it has made a reasonable effort to meet the requirements of such provisions. Retroactive modification or delay of the provisions of G.S. 62-133.8(b), (c), (d), (e) or (f) shall not be permitted. The Commission shall allow a modification or delay only with respect to the electric power supplier or group of electric power suppliers for which a need for a modification or delay has been demonstrated.

(6) A group of electric power suppliers may aggregate their REPS obligations and compliance efforts provided that all suppliers in the group are subject to the same REPS obligations and compliance methods as stated in either G.S. 133.8(b) or (c). If such a group of electric power suppliers fails to meet its REPS obligations, the Commission shall find and conclude that each supplier in the group, individually, has failed to meet its REPS obligations.

(d) Renewable energy certificates.

(1) Renewable energy certificates (whether or not bundled with electric power) claimed by an electric power supplier to comply with G.S. 62-133.8(b), (c), (d), (e) and (f) must have been earned after January 1, 2008; must have been purchased by the electric power supplier within three years of the date they were earned; shall be retired when used for compliance; and shall not be used for any other purpose. A renewable energy certificate may be used to comply with G.S. 62-133.8(b), (c), (d), (e) and (f) in the year in which it is acquired or obtained by an electric power supplier or in any subsequent year; provided, however, that an electric public utility must use a renewable energy certificate to comply with G.S. 62-133.8(b), (d), (e) and (f) within seven years of cost recovery pursuant to subsection (e)(10) of this Rule.

(2) For any facility that uses both renewable energy resources and nonrenewable energy resources to produce energy, the facility shall earn renewable energy certificates based only upon the energy derived from renewable energy resources in proportion to the relative energy content of the fuels used.

(3) Renewable energy certificates earned by a renewable energy facility after the date the facility's registration is revoked by the Commission shall not be used to comply with G.S. 62-133.8(b), (c), (d), (e) and (f).

(4) Renewable energy certificates must be issued by, or imported into, the renewable energy certificate tracking system established in Rule R8-67(h) in order to be eligible RECs under G.S. 62-133.8.

(e) Cost recovery.

(1) For each electric public utility, the Commission shall schedule an annual public hearing pursuant to G.S. 62-133.8(h) to review the costs incurred by the electric public utility to comply with G.S.

62-133.8(b), (d), (e) and (f). The annual rider hearing for each electric public utility will be scheduled as soon as practicable after the hearing held by the Commission for the electric public utility under Rule R8-55.

(2) The Commission shall permit each electric public utility to charge an increment or decrement as a rider to its rates to recover in a timely manner the reasonable incremental costs prudently incurred to comply with G.S. 62-133.8(b), (d), (e) and (f). The cost of an unbundled renewable energy certificate, to the extent that it is reasonable and prudently incurred, is an incremental cost and has no avoided cost component.

(3) Unless otherwise ordered by the Commission, the test period for each electric public utility shall be the same as its test period for purposes of Rule R8-55.

(4) Rates set pursuant to this section shall be recovered during a fixed cost recovery period that shall coincide, to the extent practical, with the recovery period for the cost of fuel and fuel-related cost rider established pursuant to Rule R8-55.

(5) The incremental costs will be further modified through the use of an REPS experience modification factor (REPS EMF) rider. The REPS EMF rider will reflect the difference between reasonable and prudently incurred incremental costs and the revenues that were actually realized during the test period under the REPS rider then in effect. Upon request of the electric public utility, the Commission shall also incorporate in this determination the experienced over-recovery or under-recovery of the incremental costs up to thirty (30) days prior to the date of the hearing, provided that the reasonableness and prudence of these costs shall be subject to review in the utility's next annual REPS cost recovery hearing.

(6) The REPS EMF rider will remain in effect for a fixed 12-month period following establishment and will carry through as a rider to rates established in any intervening general rate case proceedings.

(7) Pursuant to G.S. 62-130(e), any over-collection of reasonable and prudently incurred incremental costs to be refunded to a utility's customers through operation of the REPS EMF rider shall include an amount of interest, at such rate as the Commission determines to be just and reasonable, not to exceed the maximum statutory rate.

(8) Each electric public utility shall follow deferred accounting with respect to the difference between actual reasonable and prudently-incurred incremental costs and related revenues realized under rates in effect.

(9) The incremental costs to be recovered by an electric public utility in any cost recovery period from its North Carolina retail customers to comply with G.S. 62-133.8(b), (d), (e), and (f) shall not exceed the per-account charges set forth in G.S. 62-133.8(h)(4) applied to the electric public utility's year-end number of customer accounts determined as of December 31 of the previous calendar year. These annual charges shall be collected through fixed monthly charges. Each electric public utility shall ensure that the incremental costs recovered under the REPS rider and REPS EMF rider during the cost recovery period, inclusive of gross receipts tax and the regulatory fee, from any given customer account do not exceed the applicable per-account charges set forth in G.S. 62-133.8(h)(4).

(10) Incremental costs incurred during a calendar year toward a current or future year's REPS obligation may be recovered by an electric public utility in any 12-month recovery period up to and including the 12-month recovery period in which the RECs associated with any incremental costs are retired toward the prior year's REPS obligation, as long as the electric public utility's charges to customers do not exceed, in any 12-month period, the per-account annual charges provided in G.S. 62-133.8(h)(4). A renewable energy certificate must be used for compliance and retired within seven years of the year in which the electric public utility recovers the related costs from customers. An electric public utility shall refund to customers with interest the costs for renewable energy certificates that are not used for compliance within seven years.

(11) Each electric public utility, at a minimum, shall submit to the Commission for purposes of investigation and hearing the information required for the REPS compliance report for the 12-month test period established in subsection (3) normalized, as appropriate, consistent with Rule R8-55, accompanied by supporting workpapers and direct testimony and exhibits of expert witnesses, and any change in rates proposed by the electric public utility at the same time that it files the information required by Rule R8-55.

(12) The electric public utility shall publish a notice of the annual hearing for two (2) successive weeks in a newspaper or newspapers having general circulation in its service area, normally beginning at least 30 days prior to the hearing, notifying the public of the hearing before the Commission pursuant to G.S. 62-133.8(h) and setting forth the time and place of the hearing.

(13) Persons having an interest in said hearing may file a petition to intervene setting forth such interest at least 15 days prior to the date of the hearing. Petitions to intervene filed less than 15 days prior to the date of the hearing may be allowed in the discretion of the Commission for good cause shown.

(14) The Public Staff and other intervenors shall file direct testimony and exhibits of expert witnesses at least 15 days prior to the hearing date. If a petition to intervene is filed less than 15 days prior to the hearing date, it shall be accompanied by any direct testimony and exhibits of expert witnesses the intervenor intends to offer at the hearing.

(15) The electric public utility may file rebuttal testimony and exhibits of expert witnesses no later than 5 days prior to the hearing date.

(16) The burden of proof as to whether the costs were reasonable and prudently incurred shall be on the electric public utility.

(f) Contracts with owners of renewable energy facilities.

(1) The terms of any contract entered into between an electric power supplier and a new solar electric facility or new metered solar thermal energy facility shall be of sufficient length to stimulate development of solar energy.

(2) Each electric power supplier shall include appropriate language in all agreements for the purchase of renewable energy certificates (whether or not bundled with electric power) prohibiting the seller from remarketing the renewable energy certificates being purchased by the electric power supplier.

(g) Metering of renewable energy facilities.

(1) Except as provided below, for the purpose of receiving renewable energy certificate issuance in NC-RETS, the electric power generated by a renewable energy facility shall be measured by an electric meter supplied by and read by an electric power supplier. Facilities whose renewable energy certificates are issued in a tracking system other than NC-RETS shall be subject to the requirements of the applicable state commission and/or tracking system.

(2) The electric power generated by an inverter-based solar photovoltaic (PV) system with a nameplate capacity of 10 kW or less may be estimated using generally accepted analytical tools.

(3) The electric power generated by a renewable energy facility interconnected on the customer's side of the utility meter at a customer's location may be measured by (1) an ANSI-certified electric meter not provided by an electric power supplier provided that the owner of the meter complies with the meter testing requirements of Rule R8-13, or (2) another industry-accepted, auditable and accurate metering, controls, and verification system. The data provided by such meter or system may be read and self-reported by the owner of the renewable energy facility, subject to audit by the Public Staff. The owner of the meter shall retain for audit for 10 years the energy output data.

(4) Thermal energy produced by a combined heat and power system or solar thermal energy facility shall be the thermal energy recovered and used for useful purposes other than electric power production. The useful thermal energy may be measured by meter, or if that is not practicable, by other industry-accepted means that show what measurable amount of useful thermal energy the system or facility is designed and operated to produce and use. Renewable energy certificates shall be earned based on one certificate for every 3,412,000 British thermal units (Btu) of useful thermal energy produced. Meter devices, if used, shall be located so as to measure the actual thermal energy consumed by the load served by the facility. Thermal energy output that is used as station power or to process the facility's fuel is not eligible for RECs. Thermal energy production data, whether metered or estimated, shall be retained for audit for 10 years.

(h) North Carolina Renewable Energy Certificate Tracking System (NC-RETS)

(1) Definitions

(i) "Balancing area operator" means an electric power supplier that has the responsibility to act as the balancing authority for a portion of the regional transmission grid, including maintaining the load-to-generation balance, accounting for energy delivered into and exported out of the area, and supporting interconnection frequency in real time.

(ii) "Multi-fuel facility" means a renewable energy facility that produces energy using more than one fuel type, potentially relying on a fuel that does not qualify for REC issuance in North Carolina.

(iii) "Participant" means a person or organization that opens an account in NC-RETS.

(iv) "Qualifying thermal energy output" is the useful thermal energy: (1) that is made available to an industrial or commercial process (net of any heat contained in condensate return and/or makeup water); (2) that is used in a heating application (e.g., space heating, domestic hot water heating); or (3) that is used in a space cooling application (i.e., thermal energy used by an absorption chiller).

(2) A renewable energy certificate (REC) tracking system, to be known as NC-RETS, is established by the Commission. NC-RETS shall issue, track, transfer and retire RECs. It shall calculate each electric power supplier's REPS obligation and report each electric power supplier's REPS accomplishments, consistent with the compliance report filed under Rule R8-67(c). NC-RETS shall be administered by a third-party vendor selected by the Commission. Only RECs issued by or imported into NC-RETS are qualifying RECs under G.S. 62-133.8.

(3) Each electric power supplier shall be a participant in NC-RETS and shall provide data to NC-RETS to calculate its REPS obligation and to demonstrate its compliance with G.S. 62-133.8. An electric power supplier may select a utility compliance aggregator to participate in NC-RETS on its behalf and file REPS compliance plans and compliance reports, but the supplier shall nonetheless remain responsible for its own compliance. For reporting purposes, an electric power supplier or its utility compliance aggregator may aggregate the supplier's compliance obligations and accomplishments with those of other suppliers that are subject to the same obligations under G.S. 62-133.8.

(4) Each renewable energy facility or new renewable energy facility registered by the Commission under Rule R8-66 shall participate in NC-RETS in order to have RECs issued, or in another REC tracking system in order to have RECs issued and transferred into NC-RETS, but no facility's meter data for the same time period shall be used for simultaneous REC issuance in two such systems. Beginning June 1, 2011, renewable energy facilities registered in NC-RETS may only enter historic energy production data for REC issuance that goes back up to two years from the current date. Facilities that produce energy using one or more renewable energy resource(s) and another resource that does not qualify toward REPS compliance under G.S. 62-133.8 shall calculate on a monthly basis and provide to NC-RETS the percentage of energy output attributable to each fuel source. NC-RETS will issue RECs only for energy emanating from sources that qualify under G.S. 62-133.8.

(5) Each balancing area operator shall provide monthly electric generation production data to NC-RETS for renewable and new renewable energy facilities that are interconnected to the operator's electric transmission system. Such balancing area operator shall retain documentation verifying the production data for audit by the Public Staff.

(6) Each electric power supplier that has registered renewable energy facilities or new renewable energy facilities interconnected with its electric distribution system and that reads the electric generation production meters for those facilities shall provide monthly the facilities' energy output to NC-RETS, and shall retain for audit for 10 years that energy output data. Municipalities and electric membership corporations may elect to have the facilities' production data reported to NC-RETS and retained for audit by a utility compliance aggregator.

(7) A renewable energy facility or new renewable energy facility that produces thermal energy that qualifies for RECs shall report the facility's qualifying thermal energy output to NC-RETS at least every 12 months. A renewable energy facility or new renewable energy facility that reports its data pursuant to Rule R8-67(g)(3) shall report its energy output to NC-RETS at least every 12 months.

(8) The owner of an inverter-based solar photovoltaic system with a nameplate capacity of 10 kW or less may estimate its energy output using generally accepted analytical tools pursuant to Rule R8-67(g)(2). Such an owner, or its agent, of this kind of facility shall report the facility's energy output to NC-RETS at least every 12 months.

(9) All energy output and fuel data for multi-fuel facilities, including underlying documentation, calculations, and estimates, shall be retained for audit for at least ten years immediately following the provision of the output data to NC-RETS or another tracking system, as appropriate.

(10) Each electric power supplier that complies with G.S. 62-133.8 by implementing energy efficiency or demand-side management programs shall use NC-RETS to report the energy savings of those programs. Municipal power suppliers and electric membership corporations may elect to have their energy savings from their energy efficiency and demand-side management programs reported to NC-RETS by a utility compliance aggregator, and to have their reported savings consolidated with the reported savings from other municipal power suppliers or electric membership corporations if and as necessary to permit aggregate reporting through their utility compliance aggregator. Records regarding which electric power supplier achieved the energy efficiency and demand-side management, the programs that were used, and the year in which it was achieved, shall be retained for audit.

(11) All Commission-approved costs of developing and operating NC-RETS shall be allocated among all electric power suppliers based upon their respective share of the total megawatt-hours of retail electricity sales in North Carolina in the previous calendar year. Each electric power supplier, or its utility compliance aggregator, shall, within 60 days of NC-RETS beginning operations, and by June 1 of each subsequent year, enter its previous year's retail electricity sales into NC-RETS, which sales will be used by NC-RETS to calculate each electric power supplier's REPS obligations and NC-RETS charges. NC-RETS shall update its billings beginning each July based on retail sales data for the previous calendar year. Such NC-RETS charges shall be deemed to be costs that are reasonable, prudent, incremental, and eligible for recovery through each electric public utility's annual rider established pursuant to G.S. 62-133.8(h).

(12) Each account holder in NC-RETS shall pay the NC-RETS administrator for service according to the following fee schedule:
   (i) $0.01 for each REC export to an account residing in a different REC tracking system.
   (ii) $0.01 for each REC retired for reasons other than compliance with G.S. 62-133.8.

(13) The Commission shall adopt NC-RETS Operating Procedures. The Commission shall establish an NC-RETS Stakeholder Group that shall meet from time to time and which may recommend changes to the NC-RETS Operating Procedures and NC-RETS.

(14) All data retention requirements of this Rule R8-67(h) may be accomplished via retention of electronic documents.

(NCUC Docket No. E-100, Sub 113, 2/29/08; NCUC Docket No. E-100, Sub 113, 3/13/08; NCUC Docket No. E-100, Subs 113 & 121, 1/31/11; NCUC Docket No. E-43, Sub 6, E-100, Sub 113, EC-33, Sub 58, EC-83, Sub 1, 5/14/2012; NCUC Docket No. E-100, Sub 191; 11/21/2023.)