

2011 REQUEST FOR PROPOSALS
FOR
SOLAR PROJECTS

EL PASO ELECTRIC COMPANY

P.O. Box 982
El Paso, Texas 79960

ISSUE DATE: January 27, 2011



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1.0 INTRODUCTION

El Paso Electric Company ("EPE") is issuing its 2011 Request for Proposals ("RFP") to solicit competitive proposals for solar renewable energy projects. **THIS IS A SOLAR RENEWABLE ENERGY PROJECTS' RFP ONLY.** Proposals must be for EPE's equity purchase of new solar renewable energy generation facility of one to two megawatts ("MW") AC power to be located at or surrounding EPE's Newman Generating Station.

EPE would like to notify all potential Bidders that EPE intends to submit a self-build option into this RFP process.

EPE will evaluate all proposals taking into consideration the overall cost of the various solar projects and Bidder's experience. EPE also requires that the proposals utilize local distributors and contractors and requires that the Bidder details how it will accomplish this RFP requirement. The PUCT's Substantive Rule, §25.173, Goal for Renewable Energy, ("Rule"), is attached to this RFP as Attachment 8.6, and Bidders are required to familiarize themselves with its requirements and conform proposals appropriately. **Bidders must certify that proposals meet the PUCT's Renewable Energy Rule requirements.**

1.1 Purpose

EPE's intent is to construct a solar project at its Newman Generating Station, or surrounding buffer zone, located at 4900 Stan Roberts Drive, El Paso TX 79934. The targeted capacity range for this solar project is between one to two MW AC power. The solar generating facility must be on-line by June 1, 2012. EPE will take into consideration the overall cost of the various solar projects, the Bidder's experience and the Bidder's use of local distributors/manufacturers and contractors.

1.2 Regulatory Standards

The Rule defines a renewable energy resource as a resource that produces energy derived from renewable energy technologies. The Rule defines Renewable energy technology as any technology that exclusively relies on an energy source that is naturally regenerated over a short time and derived directly from the sun, indirectly from the sun, or from moving water or other natural movements and mechanisms of the environment. Renewable energy technologies include those that rely on energy derived directly from the sun, wind, geothermal, hydroelectric, wave, or tidal energy, or on biomass or biomass-based waste products, including landfill gas. A renewable energy technology does not rely on energy resources derived from fossil fuels, waste products from fossil fuels, or waste products from inorganic sources.

The Rule is subject to modification by the PUCT, and Bidders are responsible for complying with any such modifications. EPE reserves the right to make changes in its RFP process and evaluation and selection processes and criteria in the event that the Rule is modified or for any other reason in EPE's sole discretion.

1.3 Solar Renewable Energy Project Capacity Target

EPE seeks solar renewable projects that will be available to EPE by June 1, 2012.

Bidders are required to provide proposals for EPE purchase of new solar facility in the range of one to two MW AC power. EPE may elect to select a combination of projects from different Bidders if economically feasible.

1.4 Communications

All submittals, inquiries, and communications relating in any manner to this RFP should be directed to the following EPE point of contact:

Ricardo Acosta
Director of Resource and Delivery Planning
P.O. BOX 982
Location 135
El Paso, Texas 79960
Fax: (915) 521-4656
E-mail: racosta@epelectric.com

All communication between Bidders and EPE shall be conducted in writing. Oral communications are discouraged and shall not be binding upon EPE.

1.5 Confidentiality of Responses

EPE will consider proposals and other information submitted by Bidders to be confidential only if such materials are clearly designated as "Confidential." Bidders should be aware that information received in response to the RFP will be subject to the review of applicable local, state or federal regulatory agencies, specifically including, but not limited to, the PUCT. Information submitted in response to the RFP may become subject to federal or state laws pertaining to public access to information as a result of any reviews conducted by the aforementioned agencies. Except as required by regulatory reviews by the PUCT, EPE will use reasonable efforts to avoid disclosure of information designated as confidential to persons other than those involved with the evaluation, selection and any subsequent negotiations. If a Bidder's proposal is selected by EPE for inclusion in EPE's renewable energy portfolio, the Bidder shall cooperate with EPE in making technological descriptions, pricing, and other contract terms publicly available as part of any regulatory approval process that EPE deems necessary or appropriate. EPE will follow applicable orders of the PUCT such as disclosing price, term or other information required by the PUCT.

2.0 EL PASO ELECTRIC COMPANY SYSTEM DESCRIPTION

2.1 Overview

EPE is a public utility engaged in the generation, transmission and distribution of electricity in an area of approximately 10,000 square miles in the Rio Grande Valley in west Texas and south central New Mexico. EPE serves approximately 370,000 residential, commercial, industrial and wholesale customers. EPE distributes electricity to retail customers principally in El Paso, Texas and Las Cruces, New Mexico from remote and local generating stations. The EPE service territory extends from west Texas to south-central New Mexico as illustrated in Figure 1. EPE's Copper, Rio Grande and Newman Generating Stations are located in the El Paso area. Palo Verde Nuclear Generating Station ("PVNGS") Units 1, 2, and 3 are located west of Phoenix, Arizona (PVNGS Unit 3 is deregulated in New Mexico). Four Corners Generating Station Units 4 and 5 are located in northwestern New Mexico.

2.2 Existing Generation Resources

The net installed generation resources owned by EPE total approximately 1,643 MW in 2010. EPE owns 633 MW of capacity in PVNGS and 104 MW of capacity in Four Corners Generating Station. Of EPE's net total installed capacity, EPE owns 905 MW of local generation resources which are fueled by natural gas (Newman Generating Station also has fuel-oil burning capability for backup). Local EPE generation resources include 62 MW at Copper Generating Station, 229 MW at Rio Grande Generating Station and 614 MW at Newman Generating. EPE also owns approximately 1 MW of capacity from wind energy generation at its Hueco Mountain Wind Ranch and a total of approximately 151 kW of capacity from two solar projects, one at the Newman Generating Station and the other at the Rio Grande Generating Station.

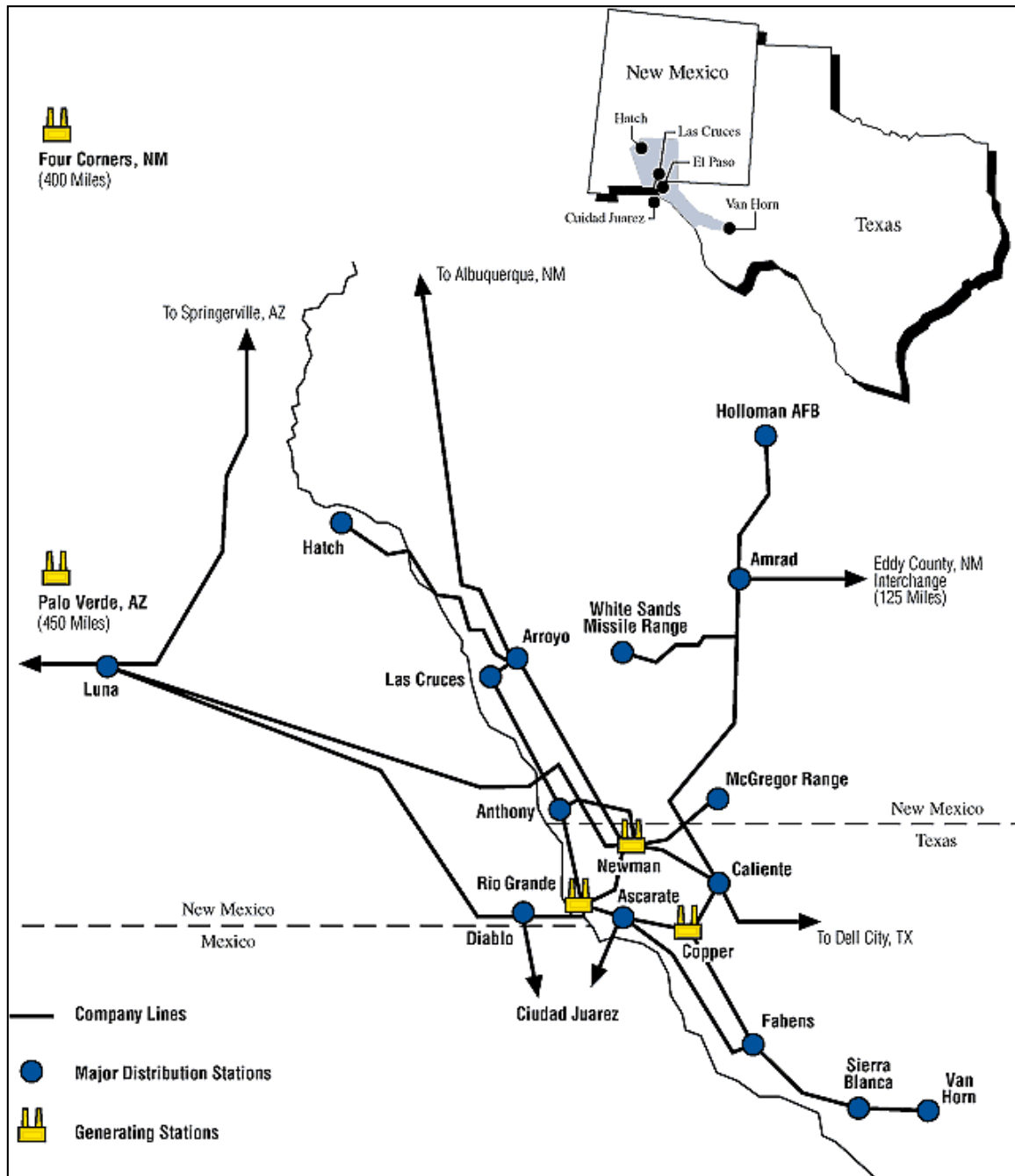
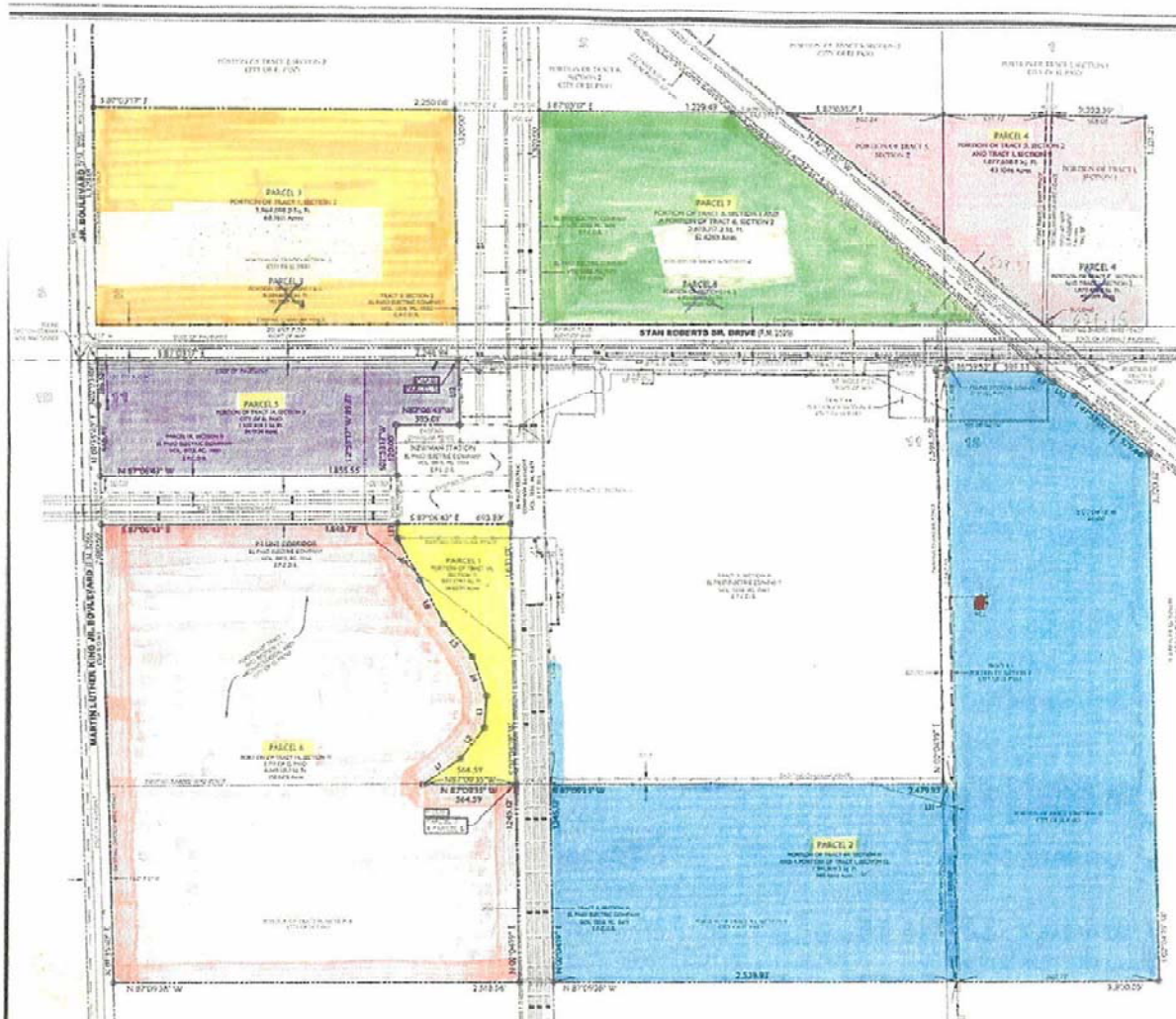


Figure 1 - EPE Service Territory and Electric System

2.3 El Paso Electric Property

EPE has land available for the solar renewable energy project at its Newman Generating Station located in northeast El Paso Texas at 4900 Stan Roberts Drive, 79934 and surrounding buffer zone (Parcels 1, 2, 3, 4, 5 and 7; Parcel 6 (southwest Parcel shown at bottom left) is excluded due to existing artifacts. EPE will provide potential Bidders more detail during the Site Visit on February 21, 2011 and accept any clarification questions.



3.0 RFP SCHEDULE

The following schedule and deadlines apply to this solicitation:

RFP Issuance Date	January 27, 2011
Notice of Intent to Bid Due Date	February 14, 2011
Site Visit	February 21, 2011
Date for Final Submission of Questions	March 7, 2011
Proposal Due Date	May 2, 2011
Tentative Date for EPE Selection of Project(s)*	June 1, 2011

EPE reserves the right to modify, cancel or withdraw this RFP and to revise the schedule specified above if, in the sole discretion of EPE, such changes are necessary. To the extent reasonably possible, EPE will inform Bidders that have filed a Notice of Intent to Bid of any schedule change.

3.1 RFP Issuance

EPE will extend an electronic invitation to participate in its 2011RFP process to a number of solar companies and entities that have bid into past EPE RFP.

Receipt of the RFP invitation should be confirmed via e-mail response from Bidders to EPE's point of contact, Ricardo Acosta, to the following e-mail address:

racosta@epelectric.com

3.2 Notice of Intent to Bid

Bidders must submit a Notice of Intent to Bid, included as Attachment 8.1, by 5:00pm (MST) on Monday, February 14, 2011. The Notice of Intent to Bid may be submitted via facsimile to Ricardo Acosta at (915) 521-4656, or mailed to Ricardo Acosta, Director of Resource and Delivery Planning, at P.O. Box 982, El Paso, Texas 79960. Failure to submit a Notice of Intent to Bid will foreclose participation in the Bid Process

Receipt of the Notice of Intent to Bid will be confirmed via e-mail response from EPE to the Bidder.

3.3 Date for Final Submission of Questions

All questions related to the RFP should be submitted in writing to the following EPE representative:

Ricardo Acosta
Director of Resource and Delivery Planning
P.O. BOX 982
Location 135
El Paso, Texas 79960
Fax: (915) 521-4656
E-mail: racosta@epelectric.com

EPE will prepare written responses to questions received and distribute the questions and responses to Bidders that filed a timely Notice of Intent to Bid. Responses will be distributed to such Bidders with the question included but will not identify who originally submitted the question. Any questions related to the RFP must be submitted in writing by Monday, March 7, 2011 to ensure a response prior to the proposal due date.

3.4 Proposal Due Date

All proposals must be received at EPE's offices to the attention of Ricardo Acosta at P.O. Box 982, El Paso, Texas 79960 by 5:00pm (MST) on Monday, May 2, 2011. Any proposal submitted after the due date will be excluded from consideration. Proposals should be as complete as possible.

A \$250 non-refundable filing fee must be submitted with each proposal. Filing fees should be by check made payable to El Paso Electric Company.

Three hard copies of the proposal must be submitted. In addition, a soft copy of the proposal must be submitted on a compact disc or USB. Facsimile submittals shall be excluded from consideration.

3.5 Tentative Date for Selection of Resources and Bidder Discussions

Should EPE choose to initiate discussions with any Bidder(s), the anticipated date for selection of resources and discussion of any potential contract(s) is Wednesday, June 1, 2011.

3.6 Proposal Validity

Each Bidder must hold its proposal open and valid for a period of 180 days following the submittal.

3.7 EPE Purchase of Bidder's Facility

Proposals considered must be for the purchase of a new solar generating facility to be located at EPE's Newman Generating Station.

Flexibility is afforded to Bidders regarding the facility's characteristics, as may be necessary to meet the requirements of the RFP. Bidders may propose to increase the size of facility and associated delivery capability over time if adequate space is available for project expansion. Proposals for renewable facilities whose production bid amounts would exceed EPE's required capacity may not be considered. The Bidder must provide the sale price for the facility, and a specific cost forecast for ongoing operations and maintenance ("O&M") up until the transfer of the O&M of the facility to EPE is completed. An O&M manual must be provided to EPE which details the maintenance schedule and cycle for the PV facility's components. EPE is also interested in receiving proposals that include ongoing O&M performed by the Bidder or a third-party contractor under an O&M contract. Bidder should specify contract terms and operating cost guarantees for this option.

Proposals must also provide an available energy profile (MWh or kWh) on an hourly basis for a typical day in each month using the Microsoft Excel spreadsheet located in EPE's website (www.epelectric.com) under "2011 Solar Project RFP". An example of an energy profile is also available in EPE's website (www.epelectric.com). EPE reserves the right to request additional information from the Bidder regarding limitations or any other details related to the proposal.

Bidders are responsible for acquiring and maintaining all applicable present and future federal, state and local approvals, licenses, permits or variances, and the specific requirements to construct and/or operate any generation facility and associated connection facilities.

3.8 Interconnection Requirements

Bidders are responsible for any interconnection costs and arrangements associated with the point of interconnection identified by EPE. However, since EPE has identified the site for the project, the related interconnection costs of the project will be addressed after the short-list has been selected. A meeting will be scheduled with the

short-listed candidates to discuss the interconnection requirements and associated costs. After the interconnection requirements and costs have been established for each short-listed proposal, this will allow EPE to determine the winning bid and complete the RFP process.

For interconnection inquiries relating to this RFP, Bidders must pose questions in writing to EPE's point of contact:

Ricardo Acosta
Email: racosta@epelectric.com

4.0 SUBMITTAL PREPARATION INSTRUCTIONS

Proposals must be prepared in accordance with the guidelines set forth in this section. Failure to follow the preparation instructions may result in the exclusion of the proposal from consideration.

Each proposal should be organized by section as described below. Each page of the proposal shall have the following information in top right corner.

- 2011Solar Project RFP
- Name
- Project Name

All of the following sections shall be completed or identified as "Not Applicable".

4.1 Completed Proposals

All applicable forms appended to this RFP must be completed and returned with the proposal.

4.2 Proposal Overview

The proposal should contain a general overview and a summary including the following information, as applicable.

4.2.1 Executive Summary

The executive summary should provide an overall description of the proposal. The description should include details about the type of solar project being proposed and key benefits to EPE. The summary should include the technology, size of project and should include how and to what extent the Bidder intends to use local distributors/manufacturers, and contractors to construct the solar generating facility.

4.2.2 Technical Information

The following technical information should be discussed in this section, as applicable for the project proposed.

- Major equipment manufacturers
- Description of technology and configuration
- Summary of the commercial operating experience of the equipment used or to be chosen
- Solar system layout and characteristics
- Electrical interconnection Metering
- Level of efficiency

- AC capacity rating
- Communications, control and instrumentation
- Facility limitations that may constrain operation
- Typical day hourly profile proposed construction period
- Project Management
- Quality assurance plans
- Performance guarantees and warranties
- Start-up testing
- Factory and performance tests
- Design life loading (wind, seismic, etc.)
- Description of pre-operational milestones (i.e., construction financing, commencement, installation, testing and completion dates)
- Description of frequency and duration of scheduled maintenance of facility
- Provide any information that could impact the cost, construction schedule or output capability of the project

4.2.3 Economic Information

The following economic information should be discussed in this section, as applicable for the project proposed.

- Liquidated damages, if applicable
- Limitations on damages and remedies, if applicable
- Other charges

4.2.4 Delivery of Power

Since the facility will be directly interconnected with the EPE distribution system, the interconnection of the short-listed projects will be assessed at a later time.

The individual project interconnection-related costs will be added to each Bidder's proposed project cost.

4.3 Operations and Maintenance

Discuss the current or expected O&M plan, including staffing, budget, management and control over any facility, authority over the O&M budget, and guarantees on O&M costs. Provide a description of the basic philosophy for performing O&M and include a discussion of contracting for outside services, if applicable.

4.4 Regulatory and Environmental Compliance

The Bidder is exclusively responsible for meeting all required federal, state and local permits, licenses, approvals and/or variances, current or future. Bidders are required to demonstrate that all required permits have been attained or provide a specific timeline for future permit approval.

Provide information on the following as applicable.

- Regulatory permit
- Other applicable permits

4.5 Project Schedule

Proposals should provide the anticipated time schedule for the permitting, regulatory approvals, design, manufacture, delivery, construction, startup and commission of the facility, and include as applicable performance incentives and delay damages.

4.6 Financial Capability

The financial viability of any proposal must be demonstrated to provide assurance that the Bidder, and any other party involved in the proposal, has adequate financial capability. Each proposal must include the following information at a minimum:

- Recent annual report for the Bidder and any other parties involved, or recent copy of audited (or Reviewed) income statement, balance sheet and cash flow statement
- Provide annual reports for the 3 most recent fiscal years or consolidated income statement and balance sheet for the 3 most recent fiscal years
- Investment rating of Bidder or its parent company by Moody's and/or Standard & Poor's, as applicable
- Description of any current credit issues raised by rating agencies, banks, or accounting firms
- Description of construction financing for the project, include any financing commitments and available lines of credit
- Financial guarantees from affiliates or others, as appropriate
 - Note: If project is selected, EPE will request points of contact for financing partners/institutions and manufacturers providing lines of credit

- List all lawsuits, regulatory proceedings, or arbitration in which the bidder or its affiliates or predecessors have been or are engaged in that could affect Bidder's performance of its bid
 - Identify the parties involved in such lawsuits, proceedings, or arbitration, and the final resolution or present status of such matters

4.7 Capability and Experience of Bidder

The capability and experience of any Bidder must be demonstrated to provide assurance that the Bidder, and any other party involved in the proposal, has adequate competence, resources and skill. Each proposal must include the following information as a minimum.

- Description of technical experience, specifically with respect to renewable generation facilities and collaboration efforts with electric utilities, if any
- Description of operating and maintenance experience
- Description of completed projects and customers
 - Note: If project is selected, EPE will request list of projects at different stages of development (completed, under construction, and under development) and will require a point of contact be provided along with a description, size (kW/MW), cost, initiation date, and completion date for each project listed

5.0 EVALUATION PROCESS

EPE will assess, pursuant to the requirements of the RFP and the evaluation criteria developed by EPE, the proposals to determine which, if any, will provide the most economical alternatives for EPE's customers. EPE will evaluate all Bids based on price; interconnection cost; overall cost per kWh and life cycle cost on a net present value basis; utilization of local inputs and other relevant factors. The assessment will consider economic and technical factors. Favorable proposal characteristics include:

- Solar Projects – EPE seeks solar projects and will consider the overall project cost
- Low Cost – EPE seeks proposals that will provide low-cost projects
- High Efficiency and Performance – Proposals that provide high efficiency and performance will provide additional value to EPE
- Completeness and Responsiveness – Proposals must meet all criteria set forth in the RFP. A thorough explanation of all aspects of the proposal should be included. Detailed Project Engineering should be provided
- Financial Viability and Creditworthiness – Success of the project relies on the financial capabilities of all parties involved; Bidders should have a proven financial track record
- Experience – EPE seeks proposals from Bidders that possess extensive engineering, construction, technical, operating and maintenance experience, and a history of successful projects
- Compliance with Texas renewable energy laws and regulations

5.1 Evaluation for Responsiveness

Timely proposals received will be reviewed to ensure their completeness and that they follow the guidelines and requirements set forth in the RFP and that they include all information required for a thorough review. Proposals should be as complete as possible and contain as much detail as is reasonably available. Proposals meeting these threshold criteria will undergo additional technical and economic evaluations as described generally below.

In EPE's sole judgment, any proposal deemed materially incomplete or technically deficient may be excluded from further consideration. EPE also reserves the right to seek clarification of proposal information or additional proposal information from Bidders.

5.2 Technical Evaluation

Proposals will be reviewed from a technical perspective to determine that the project will be capable of meeting the requirements of the RFP and the Rule consistent with the description set forth in the proposal in a reliable manner, and within the timeframe proposed.

5.3 Economic Evaluation

Proposals will be evaluated from an economic standpoint to determine the proposed delivered cost of the resource based on the pricing and operational characteristics of each proposal, as provided in Bidder's submission package. An economic screening evaluation will be conducted first based on a number of potential dispatch scenarios. A further detailed economic evaluation using production costing models that incorporate the proposal with EPE's existing resources may also be prepared for the lowest cost alternatives identified in the screening analysis.

5.4 Environmental Evaluation

Proposals will be evaluated from an environmental standpoint to determine whether existing resources are in environmental compliance with current regulations, and proposed facilities can be permitted within the timeframe indicated. The overall environmental impact of the facilities will be assessed.

5.5 EPE's Selection of Bids and Discussions with Bidders

EPE may initiate contract discussions with Bidder(s), as appropriate, following a review of technical, economic and environmental factors. EPE reserves the right to enter into an agreement at any time with a Bidder who, in the opinion of EPE, will provide the greatest value to EPE and its customers. EPE also reserves the right to pursue contracts with other than the lowest price Bidder or with other than the Bidder evidencing the greatest technical ability, if EPE, in its sole discretion, determines that to do so would result in the greatest value to EPE and its customers. EPE reserves the right to enter into discussions with multiple Bidders at any time in order to determine and pursue what EPE believes is in the best interest of EPE and its customers. **EPE, in its sole discretion, may decline to enter discussions with any Bidder, may terminate negotiations with any Bidder, and/or decline to select any Bidder at any time during the RFP process.**

6.0 NOTICE OF DISCLAIMER

EPE has prepared the information provided in this RFP to assist interested persons and entities in making a decision whether to respond with a proposal. EPE reserves the right to modify, change, supplement or withdraw the RFP at its sole discretion. No part of this document or any other correspondence from EPE, its employees, officers or consultants shall be taken as legal, financial or other advice, nor as establishing a contract or any contractual obligations. All communication between Bidders and EPE shall be conducted in writing.

EPE makes no representations or warranties regarding the completeness of the information contained within the RFP and does not purport that this RFP contains all of the information needed for Bidders to determine whether to submit a proposal. Neither EPE nor its employees, officers or consultants will make, or will be deemed to have made, any current or future representation, promise or warranty, expressed or implied, as to the accuracy, reliability or completeness of the information contained within the RFP or any other information provided to Bidders.

Bidders who submit proposals do so without legal recourse against EPE, or EPE's directors, management, employees, agents or contractors, due to EPE's rejection, in whole or in part, of their proposal or for failure to execute any agreement with EPE. EPE shall not be liable to any Bidder or to any other party, in law or equity, for any reason whatsoever related to EPE's acts or omissions arising out of, or in connection with, the RFP process.

EPE reserves the right to reject, for any reason, any and/or all proposals. EPE further reserves the right to waive any irregularity or technicality in proposals received, or to consider alternatives outside of this solicitation, at its sole discretion, to satisfy its RPS requirements or other capacity and energy needs. In addition, EPE reserves the right, in its sole discretion, to modify or waive any of the criteria contained herein and/or the process described herein.

No Bidder will have any claim whatsoever against EPE, its employees, officers, or consultants arising from, in connection with, or in any way relating to this RFP. Without limiting the generality of the foregoing, each Bidder agrees, by and through its submission of a proposal, that rejection of a proposal will be without liability on the part of EPE, its employees, officers, or consultants, nor shall a Bidder seek recourse of any kind against any of the foregoing on account of such rejection. The filing of a proposal shall constitute an agreement of the Bidder to each and all of these conditions. Each Bidder and recipient of this RFP is responsible for all costs incurred in evaluating, preparing and responding to this RFP. Any other costs incurred by any Bidder during negotiations are also the responsibility of the Bidder.

7.0 ATTACHMENTS

8.1 Notice of Intent to Bid

8.2 Data for All Projects

8.3 Additional Data for Equity Purchase (Full)

8.4 PUCT Goal for Renewable Energy Substantive Rule §25.173,

8.1 Notice of Intent to Bid

1. Company Name: _____

2. Company Address: _____

3. Contact Person Information:

Name	
Title/Position	
Mail Address	
Courier Address (if different)	
Telephone Number	
Fax Number	
E-mail Address	

4. Type of Project or Bid to be Proposed: _____

5. Size (MW): _____

6. Authorized Signature: _____
 Name: _____
 Title: _____

7. Date: _____

The Notice of Intent to Bid may be submitted via facsimile to Ricardo Acosta at (915) 521-4656, or mailed to Ricardo Acosta, Director of Resource and Delivery Planning, at P.O. Box 982, Location 135, El Paso, Texas 79960. Receipt of the Notice of Intent to Bid will be confirmed in an e-mail from EPE to the Bidder. **This form should be delivered to the above address no later than 5:00pm (MST) on Monday, February 14, 2011.**

8.2 Data for Project

1. Provide a detail description of the PV project:

8.3 Additional Data for Equity Purchase (Full)

1. Lump-sum purchase price (\$) and date for payment: _____

Alternatively, a schedule of progress payments may be substituted for the lump-sum purchase price. Provide a schedule of such payments (\$ and date of payment).

2. Bidders must provide a detailed pro forma financial projection of all operating costs on a year-by-year basis for a period of five (5) years in a Microsoft Excel spreadsheet format. Such statements shall identify the following applicable cost components:
 - a. Fixed O&M costs
 - b. Variable O&M costs
 - c. Maintenance and replacement costs
3. Bidders must provide contractual terms for any long-term agreements that would be transferred with the facility purchase to EPE such as long-term service agreements on equipment, etc. that define and support the operating cost projections.
4. EPE is also interested in receiving purchase proposals for Bidder's facility that includes ongoing operations and maintenance performed by the Bidder or a third-party contractor under an operations and maintenance contract. Bidder should specify contract terms and operating cost guarantees for this option, if applicable.

8.4 PUCT Goal for Renewable Energy Substantive Rule §25.173

§25.173. Goal for Renewable Energy.

- (a) **Purpose.** The purpose of this section is to ensure that an additional 2,000 megawatts (MW) of generating capacity from renewable energy technologies is installed in Texas by 2009 pursuant to the Public Utility Regulatory Act (PURA) §39.904, to establish a renewable energy credits trading program that would ensure that the new renewable energy capacity is built in the most efficient and economical manner, to encourage the development, construction, and operation of new renewable energy resources at those sites in this state that have the greatest economic potential for capture and development of this state's environmentally beneficial resources, to protect and enhance the quality of the environment in Texas through increased use of renewable resources, to respond to customers' expressed preferences for renewable resources by ensuring that all customers have access to providers of energy generated by renewable energy resources pursuant to PURA §39.101(b)(3), and to ensure that the cumulative installed renewable capacity in Texas will be at least 2,880 MW by January 1, 2009.
- (b) **Application.** This section applies to power generation companies as defined in §25.5 of this title (relating to definitions), and competitive retailers as defined in subsection (c) of this section. This section shall not apply to an electric utility subject to PURA §39.102(c) until the expiration of the utility's rate freeze period.
- (c) **Definitions.**
- (1) **Competitive retailer** — A municipally-owned utility, generation and transmission cooperative (G&T), or distribution cooperative that offers customer choice in the restructured competitive electric power market in Texas or a retail electric provider (REP) as defined in §25.5 of this title.
 - (2) **Compliance period** — A calendar year beginning January 1 and ending December 31 of each year in which renewable energy credits are required of a competitive retailer.
 - (3) **Designated representative** — A responsible natural person authorized by the owners or operators of a renewable resource to register that resource with the program administrator. The designated representative must have the authority to represent and legally bind the owners and operators of the renewable resource in all matters pertaining to the renewable energy credits trading program.
 - (4) **Early banking** — Awarding renewable energy credits (RECs) to generators for sale in the trading program prior to the program's first compliance period.
 - (5) **Existing facilities** — Renewable energy generators placed in service before September 1, 1999.
 - (6) **Generation offset technology** — Any renewable technology that reduces the demand for electricity at a site where a customer consumes electricity. An example of this technology is solar water heating.
 - (7) **New facilities** — Renewable energy generators placed in service on or after September 1, 1999. A new facility includes the incremental capacity and associated energy from an existing renewable facility achieved through repowering activities undertaken on or after September 1, 1999.
 - (8) **Off-grid generation** — The generation of renewable energy in an application that is not interconnected to a utility transmission or distribution system.
 - (9) **Program administrator** — The entity approved by the commission that is responsible for carrying out the administrative responsibilities related to the renewable energy credits trading program as set forth in subsection (g) of this section.

§25.173(c) continued

- (10) **REC offset (offset)** — An REC offset represents one MWh of renewable energy from an existing facility that may be used in place of an REC to meet a renewable energy requirement imposed under this section. REC offsets may not be traded, shall be calculated as set forth in subsection (i) of this section, and shall be applied as set forth in subsection (h) of this section.
- (11) **Renewable energy credit (REC or credit)** — An REC represents one megawatt hour (MWh) of renewable energy that is physically metered and verified in Texas and meets the requirements set forth in subsection (e) of this section.
- (12) **Renewable energy credit account (REC account)** — An account maintained by the renewable energy credits trading program administrator for the purpose of tracking the production, sale, transfer, purchase, and retirement of RECs by a program participant.
- (13) **Renewable energy credits trading program (trading program)** —The process of awarding, trading, tracking, and submitting RECs as a means of meeting the renewable energy requirements set out in subsection (d) of this section.
- (14) **Renewable energy resource (renewable resource)** — A resource that produces energy derived from renewable energy technologies.
- (15) **Renewable energy technology** — Any technology that exclusively relies on an energy source that is naturally regenerated over a short time and derived directly from the sun, indirectly from the sun, or from moving water or other natural movements and mechanisms of the environment. Renewable energy technologies include those that rely on energy derived directly from the sun, on wind, geothermal, hydroelectric, wave, or tidal energy, or on biomass or biomass-based waste products, including landfill gas. A renewable energy technology does not rely on energy resources derived from fossil fuels, waste products from fossil fuels, or waste products from inorganic sources.
- (16) **Repowering** — Modernizing or upgrading an existing facility in order to increase its capacity or efficiency.
- (17) **Settlement period** — The first calendar quarter following a compliance period in which the settlement process for that compliance year takes place.
- (18) **Small producer** — A renewable resource that is less than two megawatts (MW) in size.
- (d) **Renewable energy credits trading program (trading program).** Renewable energy credits may be generated, transferred, and retired by renewable energy power generators, competitive retailers, and other market participants as set forth in this section.
- (1) The program administrator shall apportion a renewable resource requirement among all competitive retailers as a percentage of the retail sales of each competitive retailer as set forth in subsection (h) of this section. Each competitive retailer shall be responsible for retiring sufficient RECs as set forth in subsections (h) and (k) of this section to comply with this section. The requirement to purchase RECs pursuant to this section becomes effective on the date each competitive retailer begins serving retail electric customers in Texas.
- (2) A power generating company may participate in the program and may generate RECs and buy or sell RECs as set forth in subsection (j) of this section.
- (3) RECs shall be credited on an energy basis as set forth in subsection (j) of this section.
- (4) Municipally-owned utilities and distribution cooperatives that do not offer customer choice are not obligated to purchase RECs. However, regardless of whether the municipally-owned utility or distribution cooperative offers customer choice, a municipally-owned utility or distribution cooperative possessing renewable resources that meet the requirements of subsection (e) of this section may sell RECs generated by such a resource to competitive retailers as set forth in subsection (j) of this section.

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- (5) Except where specifically stated, the provisions of this section shall apply uniformly to all participants in the trading program.
- (e) **Facilities eligible for producing RECs in the renewable energy credits trading program.** For a renewable facility to be eligible to produce RECs in the trading program it must be either a new facility or a small producer as defined in subsection (c) of this section and must also meet the requirements of this subsection:
- (1) A renewable energy resource must not be ineligible under subsection (f) of this section and must register pursuant to subsection (n) of this section;
 - (2) The facility's above-market costs must not be included in the rates of any utility, municipally-owned utility, or distribution cooperative through base rates, a power cost recovery factor (PCRF), stranded cost recovery mechanism, or any other fixed or variable rate element charged to end users;
 - (3) For a renewable energy technology that requires fossil fuel, the facility's use of fossil fuel must not exceed 2.0% of the total annual fuel input on a British thermal unit (BTU) or equivalent basis;
 - (4) The output of the facility must be readily capable of being physically metered and verified in Texas by the program administrator. Energy from a renewable facility that is delivered into a transmission system where it is commingled with electricity from non-renewable resources can not be verified as delivered to Texas customers. A facility is not ineligible by virtue of the fact that the facility is a generation-offset, off-grid, or on-site distributed renewable facility if it otherwise meets the requirements of this section; and
 - (5) For a municipally owned utility operating a gas distribution system, any production or acquisition of landfill gas that is directly supplied to the gas distribution system is eligible to produce RECs based upon the conversion of the thermal energy in BTUs to electric energy in kWh using for the conversion factor the systemwide average heat rate of the gas-fired units of the combined utility's electric system as measured in BTUs per kWh.
 - (6) For industry-standard thermal technologies, the RECs can be earned only on the renewable portion of energy production. Furthermore, the contribution toward statewide renewable capacity megawatt goals from such facilities would be equal to the fraction of the facility's annual MWh energy output from renewable fuel multiplied by the facility's nameplate MW capacity.
- (f) **Facilities not eligible for producing RECs in the renewable energy credits trading program.** A renewable facility is not eligible to produce RECs in the trading program if it is:
- (1) A renewable energy capacity addition associated with an emissions reductions project described in Health and Safety Code §382.05193, that is used to satisfy the permit requirements in Health and Safety Code §382.0519;
 - (2) An existing facility that is not a small producer as defined in subsection (c) of this section; or
 - (3) An existing fossil plant that is repowered to use a renewable fuel.
- (g) **Responsibilities of program administrator.** No later than June 1, 2000, the commission shall approve an independent entity to serve as the trading program administrator. At a minimum, the program administrator shall perform the following functions:
- (1) Create accounts that track RECs for each participant in the trading program;
 - (2) Award RECs to registered renewable energy facilities on a quarterly basis based on verified meter reads;

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- (3) Assign offsets to competitive retailers on an annual basis based on a nomination submitted by the competitive retailer pursuant to subsection (n) of this section;
 - (4) Annually retire RECs that each competitive retailer submits to meet its renewable energy requirement;
 - (5) Retire RECs at the end of each REC's three-year life;
 - (6) Maintain public information on its website that provides trading program information to interested buyers and sellers of RECs;
 - (7) Create an exchange procedure where persons may purchase and sell RECs. The exchange shall ensure the anonymity of persons purchasing or selling RECs. The program administrator may delegate this function to an independent third party. The commission shall approve any such delegation;
 - (8) Make public each month the total energy sales of competitive retailers in Texas for the previous month;
 - (9) Perform audits of generators participating in the trading program to verify accuracy of metered production data;
 - (10) Allocate the renewable energy responsibility to each competitive retailer in accordance with subsection (h) of this section; and
 - (11) Submit an annual report to the commission. Beginning with the program's first compliance period, the program administrator shall submit a report to the commission on or before April 15 of each calendar year. The report shall contain information pertaining to renewable energy power generators and competitive retailers. At a minimum, the report shall contain:
 - (A) the amount of existing and new renewable energy capacity in MW installed in the state by technology type, the owner/operator of each facility, the date each facility began to produce energy, the amount of energy generated in megawatt-hours (MWh) each quarter for all capacity participating in the trading program or that was retired from service; and
 - (B) a listing of all competitive retailers participating in the trading program, each competitive retailer's renewable energy credit requirement, the number of offsets used by each competitive retailer, the number of credits retired by each competitive retailer, a listing of all competitive retailers that were in compliance with the REC requirement, a listing of all competitive retailers that failed to retire sufficient REC requirement, and the deficiency of each competitive retailer that failed to retire sufficient RECs to meet its REC requirement.
- (h) **Allocation of REC purchase requirement to competitive retailers.** The program administrator shall allocate REC requirements among competitive retailers. Any renewable capacity that is retired before January 1, 2009 or any capacity shortfalls that arise due to purchases of RECs from out-of-state facilities shall be replaced and incorporated into the allocation methodology set forth in this subsection. Any changes to the allocation methodology to reflect replacement capacity shall occur two compliance periods after which the facility was retired or capacity shortfall occurred. The program administrator shall use the following methodology to determine the total annual REC requirement for a given year and the final REC requirement for individual competitive retailers:
- (1) The total statewide REC requirement for each compliance period shall be calculated in terms of MWh and shall be equal to the renewable capacity target multiplied by 8,760 hours per year, multiplied by the appropriate capacity conversion factor set forth in subsection (j) of this section. The renewable energy capacity targets for the compliance period beginning January 1, of the year indicated shall be:

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- (A) 400 MW of new resources in 2002;
 - (B) 400 MW of new resources in 2003;
 - (C) 850 MW of new resources in 2004;
 - (D) 850 MW of new resources 2005;
 - (E) 1,400 MW of new resources in 2006;
 - (F) 1,400 MW of new resources in 2007;
 - (G) 2,000 MW of new resources in 2008; and
 - (H) 2,000 MW of new resources in 2009 through 2019.
- (2) The final REC requirement for an individual competitive retailer for a compliance period shall be calculated as follows:
- (A) Each competitive retailer's preliminary REC requirement is determined by dividing its total retail energy sales in Texas by the total retail sales in Texas of all competitive retailers, and multiplying that percentage by the total statewide REC requirement for that compliance period.
 - (B) The adjusted REC requirement for each competitive retailer that is entitled to an offset is determined by reducing its preliminary REC requirement by the offsets to which it qualifies, as determined under subsection (i) of this section, with the maximum reduction equal to the competitive retailer's preliminary REC requirement. The total reduction for all competitive retailers is equal to the total usable offsets for that compliance period.
 - (C) Each competitive retailer's final REC requirement for a compliance period shall be increased to recapture the total usable offsets calculated under subparagraph (B) of this paragraph. The additional REC requirement shall be calculated by dividing the competitive retailer's preliminary REC requirement by the total preliminary REC requirement of all competitive retailers. This fraction shall be multiplied by the total usable offsets for that compliance period and this amount shall be added to the competitive retailer's adjusted REC requirement to produce the competitive retailer's final REC requirement for the compliance period.
- (3) Concurrent with determining competitive retailers' final REC requirements for the current compliance period in accordance with this subsection, the Program Administrator shall recalculate the final REC requirements for the previous compliance periods, taking into account corrections to retail sales resulting from resettlements. The difference between a competitive retailer's corrected final REC requirement and its original final REC requirement for the previous compliance periods shall be added to or subtracted from the retailer's final REC requirement for the current compliance period.

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- (i) **Nomination and calculation of REC offsets.**
- (1) A REP, municipally-owned utility, G&T cooperative, distribution cooperative, or an affiliate of a REP, municipally-owned utility, or distribution cooperative, may apply offsets to meet all or a portion of its renewable energy purchase requirement, as calculated in subsection (h) of this section, only if those offsets are nominated in a filing with the commission by June 1, 2001. A G&T may nominate the combined offsets for itself and its member distribution cooperatives upon the presentation of a resolution by its Board authorizing it to do so.
 - (2) The commission shall verify any designations of REC offsets and notify the program administrator of its determination by December 31, 2001.
 - (3) REC offsets shall be equal to the average annual MWh output of an existing resource for the years 1991-2000 or the entire life of the existing resource, whichever is less.
 - (4) REC offsets qualify for use in a compliance period under subsection (h) of this section only to the extent that:
 - (A) The resource producing the REC offset has continuously since September 1, 1999 been owned by or its output has been committed under contract to a utility, municipally-owned utility, or cooperative nominating the resource under paragraph (1) of this subsection or, if the resource has been committed under a contract that expired after September 1, 1999 and before January 1, 2002, it is owned by or its output has been committed under contract to a utility, municipally-owned utility, or cooperative on January 1, 2002; and
 - (B) The facility producing the REC offsets is operated and producing energy during the compliance period in a manner consistent with historic practice.
 - (5) If the production from a facility producing the REC offset energy ceases for any reason, the competitive retailer may no longer claim the REC offset against its REC requirement.
- (j) **Calculation of capacity conversion factor.** The capacity conversion factor used by the program administrator to allocate credits to competitive retailers shall be calculated as follows:
- (1) The capacity conversion factor (CCF) shall be administratively set at 35% for 2002 and 2003, the first two compliance periods of the program.
 - (2) During the fourth quarter of the second compliance year (2003), the CCF shall be readjusted to reflect actual generator performance data associated with all renewable resources in the trading program. The program administrator shall adjust the CCF every two years thereafter and shall:
 - (A) be based on all renewable energy resources in the trading program for which at least 12 months of performance data is available;
 - (B) represent a weighted average of generator performance;
 - (C) use all valid performance data that is available for each renewable resource; and
 - (D) ensure that the renewable capacity goals are attained.
- (k) **Production and transfer of RECs.** The program administrator shall administer a trading program for renewable energy credits in accordance with the requirements of this subsection.
- (1) A REC will be awarded to the owner of a renewable resource when a MWh is metered at that renewable resource. A generator producing 0.5 MWh or greater as its last unit generated should be awarded one REC on a quarterly basis. The program administrator shall record the amount of metered MWh and credit the REC account of the renewable resource that generated the energy on a quarterly basis.

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- (2) The transfer of RECs between parties shall be effective only when the transfer is recorded by the program administrator.
 - (3) The program administrator shall require that RECs be adequately identified prior to recording a transfer and shall issue an acknowledgement of the transaction to parties upon provision of adequate information. At a minimum, the following information shall be provided:
 - (A) identification of the parties;
 - (B) REC serial number, REC issue date, and the renewable resource that produced the REC;
 - (C) the number of RECs to be transferred; and
 - (D) the transaction date.
 - (4) A competitive retailer shall surrender RECs to the program administrator for retirement from the market in order to meet its REC allocation for a compliance period. The program administrator will document all REC retirements annually.
 - (5) On or after each April 1, the program administrator will retire RECs that have not been retired by competitive retailers and have reached the end of their three-year life.
 - (6) The program administrator may establish a procedure to ensure that the award, transfer, and retirement of credits are accurately recorded.
- (l) **Settlement process.** Beginning in January 2003, the first quarter following the compliance period shall be the settlement period during which the following actions shall occur:
- (1) By January 31, the program administrator will notify each competitive retailer of its total REC requirement for the previous compliance period as determined pursuant to subsection (h) of this section.
 - (2) By March 31, each competitive retailer must submit credits to the program administrator from its account equivalent to its REC requirement for the previous compliance period. If the competitive retailer has insufficient credits in its account to satisfy its obligation, and this shortfall exceeds the applicable deficit allowance as set forth in subsection (m)(2) of this section, the competitive retailer is subject to the penalty provisions in subsection (o) of this section.
 - (3) The program administrator may request the commission to adjust the deadlines set forth in this section if changes to the ERCOT settlement calendar or other factors affect the availability of reliable retail sales data.
- (m) **Trading program compliance cycle.**
- (1) The first compliance period shall begin on January 1, 2002 and there will be 18 consecutive compliance periods. Early banking of RECs is permissible and may commence no earlier than July 1, 2001. The program's first settlement period shall take place during the first quarter of 2003.
 - (2) A competitive retailer may incur a deficit allowance equal to 10% of its REC requirement in 2002 and 2003 (the first two compliance periods of the program). This 10% deficit allowance shall not apply to entities that initiate customer choice after 2003. During the first settlement period, each competitive retailer will be subject to a penalty for any REC shortfall that is greater than 10% of its REC requirement under subsection (h) of this section. During

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the second settlement period, each competitive retailer will be subject to the penalty process for any REC shortfall greater than 10% of the second year REC allocation. All competitive retailers incurring a 10% deficit pursuant to this subsection must make up the amount of RECs associated with the deficit in the next compliance period.

- (3) The issue date of RECs created by a renewable energy resource shall coincide with the beginning of the compliance year in which the credits are generated. All RECs shall have a life of three compliance periods, after which the program administrator will retire them from the trading program.
 - (4) Each REC that is not used in the year of its creation may be banked and is valid for the next two compliance years.
 - (5) A competitive retailer may meet its renewable energy requirements for a compliance period with RECs issued in or prior to that compliance period which have not been retired.
- (n) **Registration and certification of renewable energy facilities.** The commission shall register and certify all renewable facilities that will produce either REC offsets or RECs for sale in the trading program. To be awarded RECs or REC offsets, a power generator must complete the registration process described in this subsection. The program administrator shall not award offsets or credits for energy produced by a power generator before it has been certified by the commission.
- (1) The designated representative of the generating facility shall file an application with the commission on a form approved by the commission for each renewable energy generation facility. At a minimum, the application shall include the location, owner, technology, and rated capacity of the facility and shall demonstrate that the facility meets the resource eligibility criteria in subsection (e) of this section.
 - (2) No later than 30 days after the designated representative files the certification form with the commission, the commission shall inform both the program administrator and the designated representative whether the renewable facility has met the certification requirements. At that time, the commission shall either certify the renewable facility as eligible to receive either RECs or offsets, or describe any insufficiencies to be remedied. If the application is contested, the time for acting is extended by 30 days.
 - (3) Upon receiving notice of certification of new facilities, the program administrator shall create an REC account for the designated representative of the renewable resource.
 - (4) The commission may make on-site visits to any certified unit of a renewable energy resource and may decertify any unit if it is not in compliance with the provisions of this subsection.
 - (5) A decertified renewable generator may not be awarded RECs. However, any RECs awarded by the program administrator and transferred to a competitive retailer prior to the decertification remain valid.
- (o) **Penalties and enforcement.** If by April 1 of the year following a compliance year it is determined that a competitive retailer with an allocated REC purchase requirement has insufficient credits to satisfy its allocation, the competitive retailer shall be subject to the administrative penalty provisions of PURA §15.023 as specified in this subsection.
- (1) Except as provided in paragraph (4) of this subsection, a penalty will be assessed for that portion of the deficient credits.
 - (2) The penalty shall be the lesser of \$50 per MWh or, upon presentation of suitable evidence of market value by the competitive retailer, 200% of the average market value of credits for that compliance period.

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- (3) There will be no obligation on the competitive retailer to purchase RECs for deficits, whether or not the deficit was within or was not within the competitive retailer's reasonable control, except as set forth in subsection (m)(2) of this section.
 - (4) In the event that the commission determines that events beyond the reasonable control of a competitive retailer prevented it from meeting its REC requirement there will be no penalty assessed.
 - (5) A party is responsible for conducting sufficient advance planning to acquire its allotment of RECs. Failure of the spot or short-term market to supply a party with the allocated number of RECs shall not constitute an event outside the competitive retailer's reasonable control. Events or circumstances that are outside of a party's reasonable control may include weather-related damage, mechanical failure, lack of transmission capacity or availability, strikes, lockouts, actions of a governmental authority that adversely effect the generation, transmission, or distribution of renewable energy from an eligible resource under contract to a purchaser.
- (p) **Renewable resources eligible for sale in the Texas wholesale and retail markets.** Any energy produced by a renewable resource may be bought and sold in the Texas wholesale market or to retail customers in Texas and marketed as renewable energy if it is generated from a resource that meets the definition in subsection (c)(14) of this section.
- (q) **Periodic review.** The commission shall periodically assess the effectiveness of the energy-based credits trading program in this section to maximize the energy output from the new capacity additions and ensure that the goal for renewable energy is achieved in the most economically-efficient manner. If the energy-based trading program is not effective, performance standards will be designed to ensure that the cumulative installed renewable capacity in Texas meets the requirements of PURA §39.904.