

PROJECT NO. 35768

RULEMAKING RELATING TO § PUBLIC UTILITY COMMISSION
RETAIL ELECTRIC PROVIDER §
DISCLOSURES TO CUSTOMERS § OF TEXAS

**PROPOSAL FOR PUBLICATION OF REPEAL OF §25.475,
NEW §25.475, AND AMENDMENT TO §25.476
AS APPROVED AT THE AUGUST 14, 2008 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes the repeal of §25.475, relating to Information Disclosures to Residential and Small Commercial Customers, new §25.475, relating to General Retail Electric Provider (REP) Requirements and Information Disclosures to Residential and Small Commercial Customers, and an amendment to §25.476, relating to Labeling of Electricity with Respect to Fuel Mix and Environmental Impact. The proposed repeal, new rule and amendment (collectively, rules) will allow for enhanced disclosure for customer contracts. Project Number 35768 is assigned to this proceeding.

When commenting on specific subsections of the proposed rule(s), parties are encouraged to describe “best practice” examples of regulatory policies, and their rationale, that have been proposed or implemented successfully in other states already undergoing electric industry restructuring, if the parties believe that Texas would benefit from application of the same policies. The commission is interested only in receiving “leading edge” examples which are specifically related and directly applicable to the Texas statute, rather than broad citations to other state restructuring efforts.

Shawnee Claiborn-Pinto, Senior Retail Market Analyst, Competitive Markets Division, has determined that for each year of the first five-year period the rules are in effect there will be no

fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Claiborn-Pinto has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing these sections will be clearer understanding of the contract documents by customers and REPs. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these sections. Therefore, no flexibility analysis is needed. There is some anticipated economic cost to persons who are required to comply with the proposed sections as they will require new document production and may have systems costs to some parties which are unknown to the commission and would be difficult for the commission to quantify. Ms. Claiborn-Pinto has concluded that the public benefit will outweigh the cost to persons who are required to comply with the rules.

Ms. Claiborn-Pinto has also determined that for each year of the first five years the rules are in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Friday, October 10, 2008, at 9:30 a.m. The request for a public hearing must be received within 30 days after publication.

The commission will also take comment on the following questions pertaining to the proposed rules:

1. *What information should constitute sufficient evidence that a customer has relocated as contemplated in §25.475(c)(2)(D)?*
2. *What customer protection provisions should be delineated in the waiver for commercial customers contemplated in the proposed §25.475(j)?*
3. *Should there be a disclosure statement in the contract for the purchase of electricity by a REP from a Distributed Renewable Generation owner or Independent School District Solar Generation Owner? If so, what specific disclosures should be required?*
4. *Should the commission allow products for residential and small commercial customers that do not have a method of determining the price from publicly available data or otherwise independent of the retailer's proprietary knowledge? If so, can these be considered 'contracts' because there may not be a meeting of the minds on price?*
5. *If the commission retains a variable price product should there be additional customer protections put in place? If so, what additional protections should the commission put in place?*
6. *Is the 50 kW the appropriate threshold for allowing waiver of the standard protections in the commission's rules?*

Initial comments on the rules may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Sixteen copies of comments to the proposals are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 45 days after publication. Comments should be organized in a manner consistent with the organization of the

proposed rule(s). The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the rules. The commission will consider the costs and benefits in deciding whether to adopt the sections. All comments should refer to Project Number 35768.

The repeal, new rule and amendment are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2008) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §39.101 which grants the commission the authority to establish various, specific protections for retail customers; and PURA Chapter 17, Subchapters A, C and D, which deal, respectively, with general provisions relating to customer protection policy, the retail customer's right to choice, and protection of the retail customer against unauthorized charges.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002, §39.101 and PURA Chapter 17, Subchapters A, C and D.

**§25.475. Information Disclosures to Residential and Small Commercial Customers
(REPEAL)**

§25.475. General REP Requirements and Information Disclosures.

- (a) **Applicability.** The requirements of this section apply to retail electric providers (REPs) and, when specifically stated, aggregators, in connection with service and marketing. REPs and aggregators are responsible for representations to customers and prospective customers concerning retail electric service that are made through advertising or other means. REPs have three months from the effective date of this section to conform all electricity products and contract documents to the requirements of this section. However, REPs are not required to conform term contracts in effect on December 31, 2008, but any renewal of a term contract after December 31, 2008 must comply with the requirements of this section.
- (b) **Definitions.** The following words and terms, when used in this section shall have the following meanings, unless the context indicates otherwise.
- (1) **Affirmative consent** -- A formal acknowledgement by the customer, received and documented pursuant to §25.474 of this title (related to Selection of Retail Electric Provider) or subsection (f)(5) of this section, that the customer is re-enrolling with the REP to receive a specific product.
 - (2) **Automatic renewal** -- Renewal of a contract at the end of an original contract period without obtaining the customer's affirmative consent.
 - (3) **Contract** -- The Terms of Service document (TOS), the Electricity Facts Label (EFL), Your Rights as a Customer document (YRAC), and the documentation of enrollment pursuant to §25.474 of this title.
 - (4) **Contract documents** -- The TOS, EFL and YRAC.
 - (5) **Contract period** -- The time period the contract is in effect.
 - (6) **Guaranteed fixed price product** -- A retail electric product for which the price for each billing period is the same and will not change throughout the term of the

contract and includes all Transmission and Distribution Utility (TDU) recurring charges.

- (7) **Indexed product** -- A retail electric product for which the price, including recurring TDU charges, can vary according to a pre-defined pricing formula that is based on publicly available indices or elements and is disclosed to the customer.
- (8) **Limited fixed price product** -- A retail electric product for which the price (including recurring TDU charges) for each billing period of the contract period is the same throughout the contract and may vary from the disclosed amount solely to reflect actual changes in the TDU charges, changes to the ERCOT administrative fee or Texas Regional Entity Fee or changes resulting from federal state or local laws that impose new or modified fees or costs on a REP that are beyond the REP's control.
- (9) **Price** -- The cost for a retail electric product that includes all recurring charges but may exclude non-recurring charges.
- (10) **Recurring charge** -- A charge for a retail electric product that is expected to appear on a customer's bill in every billing period or appear in three or more billing periods in a calendar year. A charge is not considered recurring if it will be billed by the TDU and passed on to the customer and will either not be applied to all customers of that class within the TDU territory, or cannot be known until the customer enrolls or requests a specific service.
- (11) **Variable price product** -- A retail product for which price may vary according to a method determined by the REP and that is disclosed to the customer.

(c) **General Retail Electric Provider requirements.**

(1) **General Disclosure Requirements.**

(A) All written, electronic, and oral communications, including advertising, websites, direct marketing materials, billing statements, TOSs, EFLs and YRACs distributed by a REP or aggregator shall be clear and not misleading, fraudulent, unfair, deceptive, or anti-competitive. Prohibited activities include, but are not limited to:

- (i) Using the term or terms “fixed” to market a product that does not meet the definition of a guaranteed fixed or limited fixed price product.
 - (ii) Suggesting, implying, or otherwise leading someone to believe that a REP or aggregator has been providing retail electric service prior to the time the REP or aggregator was certified or registered by the commission.
 - (iii) For an affiliate REP, suggesting, implying or otherwise leading someone to believe that receiving retail electric service from a REP affiliated with a TDU will provide a customer with better quality of service from the TDU as a result of that affiliation.
 - (iv) Falsely suggesting, implying or otherwise leading someone to believe that a person is a representative of a TDU or any other REP or aggregator.
 - (v) Falsely suggesting, implying or otherwise leading someone to believe that a contract has benefits for a period of time longer than the actual contract.
- (B) Written and electronic communications shall not refer to laws, including commission rules without providing those rules. All printed advertisements, electronic advertising over the Internet, and websites, shall include the REP’s certified name or the aggregator’s registered name, and the number of the certification or registration.
- (C) The TOS, EFL, and YRAC shall be provided to each residential and small commercial customer upon enrollment. Each document shall be provided to the customer whenever a material change is made to the specific document and upon a customer’s request, at any time free of charge.
- (D) A REP shall retain a copy of each version of the TOS, EFL, and YRAC during the time the plan is in effect for a customer and for four years after contract period ends.
- (E) A REP shall retain the methodology used to calculate the average price on the EFL for four years after the contract period ends.

(F) A REP shall file a copy of the TOS, and an EFL for each product offered during the quarter on March 30, June 30, September 30, and December 30 of each year in a project designated by the commission.

(2) **General contracting requirements.**

(A) A TOS, EFL, and YRAC shall be complete, shall be written in language that is clear, plain and easily understood, and shall be printed in paragraphs of no more than 250 words in a font no smaller than 10 point unless otherwise permitted by the commission. References to laws including commission rules in these documents shall include the law.

(B) All contract documents shall be in English and Spanish.

(C) All contract documents shall be available to the commission to post on its website (if the REP chooses to post offers to the website).

(D) A contract is limited to service to a customer at a location specified in the contract. If the customer moves from the location, the customer is under no obligation to continue the contract at another location. There shall be no charge to the customer as a result of the relocation of the customer if the customer provides reasonable evidence that the customer no longer occupies the location specified in the contract. The contract terminates on the day the REP receives reasonable evidence that the customer no longer occupies the location specified in the contract.

(E) A contract shall be only for one of the following types of products: guaranteed fixed price product, limited fixed price product, indexed product or a variable price product. In addition, the contract shall clearly specify the product it provides.

(F) A REP shall not use a credit score, a credit history, or utility payment data as the basis for determining the price for electric service for a product with a contract period of 12 months or less.

(G) In any dispute between a customer and a REP concerning the terms of a contract, any vagueness, obscurity, or ambiguity in the contract will be construed in favor of the customer.

(H) A REP shall comply with its contracts.

(3) Specific contract requirements.

- (A) The contract period of a guaranteed fixed price product shall be disclosed, shall not change throughout the contract period of the contract and shall be a minimum of six months. For a guaranteed fixed price product, the 45-day notice permitted in subsection (e) of this section may not be used to change customers' length of contract term, prices, or pricing methodology.
- (B) The contract period of a limited fixed price product shall be disclosed, shall not change throughout the contract period and shall be for a minimum of six months. For a limited fixed price product, the 45-day notice permitted in subsection (e) of this section may not be used to change customers' length of contract term, pricing methodology, or prices, during the contract term.
- (C) The contract period of a variable price product or an indexed product may be month to month or longer term, and the length of the term shall be disclosed in the contract. For variable price or indexed products with contract periods longer than 31 days, the 45-day notice permitted in subsection (e) of this section may not be used to change customers' pricing methodology or length of contract terms for the variable price product or indexed product contracts. If the contract period is month to month or less than or equal to 31 days, the 45-day notice may be used to change pricing methodology or length of the contract.
- (D) The start and end dates of the contract shall be available to the customer upon request. The start and end dates may be estimated if the REP cannot determine these dates. After the start date is known, the end date may be estimated consistent with the TDSP meter reading schedule for the customer during the month of expiration. An early termination fee shall not be charged to the customer for switching service on any day following the estimated or actual end date disclosed by the REP.

(4) Website and call center specific requirements.

- (A) A REP shall have call center agents who shall be able to communicate with customers in English and Spanish and any other language used to advertise to the customer.
- (B) Each REP that offers retail electric products for enrollment on its website shall prominently display the EFL for any products offered without the consumer having to enter any personal information other than zip code and type of service being sought (residential or commercial). The EFL shall be printable in no more than a two page format. The EFL, TOS, and YRAC for any products offered for enrollment on the website shall be available for viewing or downloading.
- (d) **Advertising claims.** If a REP or aggregator advertises or markets the specific benefits of a particular electric product, the REP or aggregator shall provide the name of the electric product offered in the advertising or marketing materials. All advertisements and marketing materials distributed by or on behalf of a REP or aggregator shall comply with this section.
- (1) **Print advertisements.** Print advertisements and marketing materials, including direct mail solicitations that make any claims regarding price, savings, or environmental quality for an electricity product of the REP compared to a product offered by another REP shall include the EFL of the REP making the claim. In lieu of including an EFL, the following statement shall be provided: “You may obtain important standardized information that will allow you to compare this product with other offers. Contact (name, telephone number, and Internet address (if available) of the REP).” Upon request, a REP shall provide the contract documents relating to a product being advertised.
- (2) **Television, radio, and internet advertisements.** A REP shall include the following statement in any television, Internet, or radio advertisement that makes a specific claim about price, savings, or environmental quality for an electricity product of the REP compared to a product offered by another REP: “You can obtain important standardized information that will allow you to compare this product with other offers. Contact (name, telephone number and website (if

available) of the REP).” This statement is not required for general statements regarding savings or environmental quality, but shall be provided if a specific price is included in the advertisement, or if a specific statement about savings or environmental quality compared to another REP is made. Upon request, a REP shall provide the contract documents relating to a product being advertised and any information used to develop or substantiate comparisons made in the advertisement.

(3) **Outdoor advertisements.** A REP shall include, in a font size and format that is legible to the intended audience, its certified name, certification number, telephone number and Internet address (if available).

(4) **Renewable energy claims.** A REP shall authenticate its sales of renewable energy in accordance with §25.476 of this title (relating to Fuel Mix and Emissions Disclosure). If a REP relies on supply contracts to authenticate its sales of renewable energy, it shall file a report with the commission, not later than March 15 of each year demonstrating its compliance with this paragraph and §25.476 of this title.

(e) **Changes in contract and notice of changes.** A REP may change the terms and conditions of a contract for a retail electric product only to the extent permitted by this section and by the terms of the contract. A REP shall provide written notice to its customers at least 45 days in advance of the date that the material change in the contract will be applied to the customer’s usage or any other provisions of service. For a limited fixed price product, variable product or an indexed product, a material change notice is not required for a price change that is consistent with this section and the price terms set forth in the contract.

(1) **Contents of material change notice.** The notice shall:

(A) be provided in or with the customer’s bill or in a separate document;

(B) include the following statement, “Important notice regarding changes to your contract” clearly and conspicuously in the notice;

(C) identify the material change;

- (D) clearly specify what actions the customer needs to take to terminate the contract if the customer does not accept the proposed changes to the contract; and
- (E) state in bold lettering that no termination penalty shall apply for 60 days from the date that the notice is sent to the customer. No such statement is required if the customer would not be subject to a termination penalty under any circumstances.
- (2) **Notice not required.** Notice consistent with paragraph (1) of this subsection is not required for the following changes:

 - (A) A change that benefits the customer;
 - (B) For a limited fixed price product, a pricing change that is made to reflect actual changes in TDU charges, ERCOT Administrative or TRE fees or actual charges resulting from a federal, state or local law.
- (f) **Contract expiration and renewal offers.** The REP shall send a notice of contract expiration separate from the bill at least 60 days prior to the date of contract expiration but no more than 75 days in advance of expiration. Nothing in this section shall preclude a REP from offering a new contract to the customer at any other time during the contract period.

 - (1) **Contract Expiration.** Separate written notice of contract expiration shall include:

 - (A) a statement on the outside of the envelope or in the subject line of the e-mail (if customer has agreed to receive official documents by e-mail) that states, “Contract Expiration Notice;”
 - (B) The approximate date the existing contract will expire; and
 - (C) A statement in bold lettering no smaller than 14 point font that no termination penalty shall apply for 60 days from the date that the notice is sent. No such statement is required if the customer would not be subject to a termination penalty under any circumstances.
 - (2) **Renewal Offers.** In the contract expiration notice the REP shall include:

- (A) The contract terms including EFLs of any renewal offers available to the customer;
 - (B) The actions the customer needs to take (if any) to continue to receive service from the REP under the terms of any of the disclosed renewal offers and the deadline by which actions must be taken;
 - (C) In the event that no renewal offers are presented to the customer, or the customer declines all renewal offers for which affirmative consent is required, a disclosure that the failure of the customer to switch to another REP by the specified date will result in the disconnection of service; and
 - (D) A statement in bold lettering no smaller than 14 point font that establishing service with another REP can take up to 45 days.
- (3) **Automatic Renewal.** If a customer's TOS includes an automatic renewal clause, a REP may automatically renew the customer consistent with the automatic renewal clause in the contract and consistent with this section. Any service renewed through the use of an automatic renewal clause shall be in effect for a maximum of 31 days and may be repeatedly used, unless the customer cancels the service. The pricing for an automatic renewal after the term of the original contract may be different than the pricing for the original term, but must be permitted by this section and consistent with the contract.
- (4) **Proration of Early Termination Fees.** For any contract with a term of one year or longer, the REP shall prorate any early termination fees after three quarters of the term has expired, if the customer is current in the payment of all charges. The REP shall prorate such a fee by reducing the fee by the ratio of the portion of the original term that has expired to the original term (in months).
- (5) **Affirmative consent.** A customer that is currently receiving service from a REP may be re-enrolled with the REP for service with the same product under which the customer is currently receiving service, or a different product, by conducting an enrollment pursuant to §25.474 of this title or by obtaining the customer's consent in a recording, electronic document, or written letter of authorization consistent with the requirements of this subsection. Each recording, electronic document, or written letter of authorization (LOA) must:

- (A) Indicate the customer's name, billing address, service address, ESI ID;
- (B) Indicate the identification number of the TOS and EFL under which the customer will be served;
- (C) Indicate if the customer has received, or when the customer will receive copies of the TOS, EFL and YRAC;
- (D) Indicate the price(s) which the customer is agreeing to pay;
- (E) Indicate the date of the re-enrollment, the contract period, and the start and end dates of contract period;
- (F) Affirmatively inquire whether the customer has decided to enroll for service with the product, and contain the customer's affirmative response;
- (G) Request the customer's account access verification data, as required by §25.474 of this title and obtain the customer's response with this information. If a written LOA, request and obtain the customer's response signature; and
- (H) Be entirely in plain, easily understood language, in the language that the customer has chosen for communications.

(g) **Terms of service document.** The following information shall be conspicuously contained in the TOS:

- (1) **Identity and contact information.** The REP's certified name and business name (dba) (if applicable), mailing address, e-mail and Internet address (if applicable), and a toll-free telephone number (with hours of operation and time-zone reference).
- (2) **Pricing and payment arrangements.**
 - (A) The amount of any routine non-recurring charges resulting from a move-in or switch that may be charged to the customer, including but not limited to an out-of-cycle meter read, and connection or reconnection fees;
 - (B) For small commercial customers, a description of the demand charge and how it will be applied, if applicable;
 - (C) An itemization, including name and cost, of any non-recurring charges for services that may be imposed on the customer for the retail electric product, including an application fee, charges for default in payment or

late payment, returned checks charges, and charges for cancellation or termination of service;

(D) A description of any collection fees or costs that may be assessed to the customer by the REP and that cannot be quantified in the TOS; and

(E) A description of payment arrangements and bill payment assistance programs offered by the REP.

(3) **Deposits.** If the REP requires deposits from its customers:

(A) a description of the conditions that will trigger a request for a deposit;

(B) the maximum amount of the deposit or the manner in which the deposit amount will be determined;

(C) a statement that interest will be paid on the deposit at the rate approved by the commission, and the conditions under which the customer may obtain a refund of a deposit;

(D) an explanation of the conditions under which a customer may establish satisfactory credit pursuant to §25.478 of this title (relating to Credit Requirements and Deposits);

(E) the right of a customer or applicant who qualifies for the rate reduction program to pay a required deposit that exceeds \$50 in two equal installments pursuant to §25.478 of this title; and

(F) if applicable, the customer's right to post a letter of guarantee in lieu of a deposit pursuant to §25.478(i) of this title.

(4) **Rescission, Cancellation Termination and Disconnection.**

(A) In a conspicuous and separate paragraph or box:

(i) A description of the right of a customer, for switch requests, to rescind service without fee or penalty of any kind within three federal business days after receiving the TOS, pursuant to §25.474 of this title; and

(ii) Detailed instructions for rescinding service, including the telephone number and, if available, facsimile number or email address that the customer may use to rescind service.

- (B) A statement as to how service can be cancelled and any penalties that may apply;
- (C) A statement of customer's ability to terminate service without penalty if customer moves to another premises and the notification and evidence required;
- (D) A statement of customer's ability to terminate service without penalty if the REP notifies the customer of a material change in the terms and conditions of the contract; and
- (E) If the REP has disconnection authority, pursuant to §25.483 of this title (relating to Disconnection of Service), a statement that the REP may order disconnection of the customer for non-payment.
- (5) **Antidiscrimination.** A statement informing the customer that the REP cannot deny service or require a prepayment or deposit for service based on a customer's race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, level of income, disability, familial status, location of a customer in a economically distressed geographic area, or qualification for low income or energy efficiency services. For residential customers, a statement informing the customer that the REP cannot use a credit score, a credit history, or utility payment data as the basis for determining the price for electric service for a product with a contract period of 12 months or less.
- (6) **Other terms.** Any other material terms and conditions, including, exclusions, reservations, limitations of liability, that are a part of the contract for the retail electric product.
- (7) **Automatic renewal.** If a product offered by a REP includes an automatic renewal of the contract at the end of the contract period, the TOS shall contain a statement disclosing that to the customer. The statement must clearly indicate if the price during the renewal term will be different than the price during the preceding contract term and disclose the renewal pricing and the corresponding EFL if different, or state that the month-to-month renewal price and EFL will be provided 60 days prior to the expiration of the contract.

- (8) **Version number.** A REP shall assign an identification number to each version of its TOS, and shall publish the number on the terms of service document
- (h) **Electricity Facts Label.** The EFL shall be unique for each product offered and shall include the information required in this subsection. Nothing in this subsection precludes a REP from charging a price that is less than its EFL would otherwise provide.
- (1) **Identity and contact information.** The REP's certified name and business name (dba) (if applicable), mailing address, Internet address (if applicable), and a toll-free telephone number (with hours of operation and time-zone reference).
- (2) **Pricing disclosures.** Pricing information shall be disclosed by a REP in an EFL. The EFL shall state specifically whether the product is a guaranteed fixed price, limited fixed price, or variable price or indexed product.
- (A) The EFL shall provide the total average price for electric service reflecting all recurring charges to the customer.
- (B) The total average price for electric service shall be expressed in cents per kilowatt hour, rounded to the nearest one-tenth of one cent for the following usage levels:
- (i) For residential customers, 500, 1,500, and 2,500 kilowatt hours per month using the commission-approved load profile; and
- (ii) For small commercial customers, 1,500, 2,500, and 3,500 kilowatt hours per month.
- (C) If a REP combines the charges for retail electric service with charges for any other product, the REP shall:
- (i) If the electric product is sold separately from the other products, disclose the total price for electric service separately from other products; and
- (ii) If the REP does not permit a customer to purchase the electric product without purchasing the other products or services, state the total charges for all products as the price of the total electric service. If the product has a one-time cost up front, for the purposes of the average price calculation, the cost of the product

may be figured in over a 12-month period with 1/12 of the cost being attributed to a single month.

(D) For a guaranteed fixed price product or a limited fixed price product, the EFL shall include the total average price for electric service over the term of the plan and the pricing components (e.g., monthly service charge or charge for failing to meet or exceeding a specified kWh, if any, and per-kilowatt hour charges and a description of when such charges apply) included in the average pricing disclosure.

(E) For a variable price or indexed product, the REP shall estimate (or use actual values if known) the variables used to determine the variable price or the formula used to determine the indexed price for the period of the contract and shall calculate the price for each specified kWh usage over the term of the contract. The EFL shall state the average price per kWh that results from the calculation. If the REP offers a promotional rate, the REP may put the charges for the promotional period below the average charges and must clearly label the promotional rate and the time for which it is in effect. The REP shall notify the customer how much the price may change during the contract.

(3) **Fee Disclosures.**

(A) If customers may be subject to a special charge for underground service or any similar charge that applies only in a part of the TDU service area, the EFL shall include a statement in the Electricity price section that some customers will be subject to a special charge that is not included in the total average price for electric service and shall disclose how the customer can determine the price and applicability of the special charge.

(B) A listing of all fees that may be charged to the customer.

(4) **Term Disclosure.** EFL shall include disclosure of the length of term, minimum service term, if any, and early termination penalties, if any.

(5) **Renewable Energy disclosures.** The EFL shall include the percentage of renewable energy of the electricity product and the percentage of renewable energy of the statewide average generation mix.

(6) Format of Electricity Facts Label. REPs must use the following format for the EFL with the pricing chart and disclosure chart shown. The additional language is for illustrative purposes. It does not include all reporting requirements as outlined above. Such subsections should be referred to for determination of the required reporting items on the EFL. Each EFL shall be printed in type no smaller than ten points in size and shall be formatted as shown in this paragraph:

| <u>Electricity Facts Label (EFL)</u> | | | | |
|--|---|----------------------|------------------------|-------------------------|
| [Name of REP], [Name of Product], [Service area (if applicable)], | | | | |
| [Date] | | | | |
| <u>Electricity price</u> | <u>A</u> | | | |
| | <u>Average Monthly Use</u> | <u>500kWh</u> | <u>1,500kWh</u> | <u>2,500 kWh</u> |
| | <u>Average price per kWh</u> | [x.x]¢ | [x.x]¢ | [x.x]¢ |
| | <u>For POLR use: Minimum price per kilowatt-hour. For promotional pricing: Additional line permitted for pricing in an additional way.</u> | [x.x]¢ | [x.x]¢ | [x.x]¢ |
| <p><u>This price disclosure is an example based on [criteria used to construct the example] - your average price for electric service will vary according to [relevant variation].</u></p> <p><u>[If applicable] On-peak [season or time]:[xxx]</u></p> <p><u>[If applicable] Average on-peak price per kilowatt-hour: [x.x]¢</u></p> <p><u>[If applicable] Average off-peak price per kilowatt-hour: [x.x]¢</u></p> <p><u>[If applicable] Potential surcharges corresponding to the given electric service.</u></p> | | | | |
| <u>Other KeyTerms and questions</u> | <u>See Terms of Service statement for a full listing of fees, deposit policy, and other terms.</u> | | | |

| | | |
|---|--|--|
| <u>Disclosure Chart</u> | <u>Type of Product</u> | <u>(guaranteed fixed, limited fixed or variable)</u> |
| | <u>Term/Contract Period</u> | <u>(number of months)</u> |
| | <u>Do I have a cancellation fee or any fees associated with cancelling or terminating service?</u> | <u>(yes/no) (if yes, how much)</u> |
| | <u>Can my price change during contract period?</u> | <u>(yes/no)</u> |
| | <u>If my price can change, how will it change, and by how much?</u> | <u>(formula/description of the way the price will vary and how much it can change)</u> |
| | <u>What other fees may I be charged?</u> | <u>(List, or give direct location in TOS.)</u> |
| | <u>Is this a pre-pay or pay in advance product</u> | <u>(yes/no)</u> |
| | <u>Renewable Content</u> | <u>(This product is x% renewable)</u> |
| | <u>The statewide average for renewable content is</u> | <u>(% of statewide average for renewable content)</u> |
| <i>Additional information may be added below.</i> | | |

Type used in this format

Title: 12 point

Headings: 12 point boldface

Body: 10 point

- (7) **Version number.** A REP shall assign an identification number to each version of its EFL, and shall publish the number on the terms of service document.
- (i) **Your Rights as a Customer disclosure.** The information set out in this section shall be included in a REP’s “Your Rights as a Customer” document, to summarize the standard customer protections provided by this subchapter or additional protections provided by the REP.
 - (1) A YRAC document shall be consistent with the TOS for the retail product.
 - (2) The YRAC document shall inform the customer of the REP’s complaint resolution policy pursuant to §25.485 of this title (relating to Customer Access and Complaint Handling) and payment arrangements and deferred payment policies pursuant to §25.480 of this title (relating to Bill Payment and Adjustments).

- (3) The YRAC document shall inform the customer of the REP's procedures for reporting outages and the steps necessary to have service restored or reconnected after an involuntary suspension or disconnection.
- (4) The YRAC document shall inform the customer of the customer's right to have the meter tested pursuant to §25.124 of this title (relating to Meter Testing), or in accordance with the tariffs of a transmission and distribution utility, a municipally owned utility, or an electric cooperative, as applicable, and the REP's ability in all cases to make that request on behalf of the customer by a standard electronic market transaction, and the customer's right to be instructed on how to read the meter, if applicable.
- (5) The YRAC document shall inform the customer of the availability of:
- (A) financial and energy assistance programs for residential customers;
 - (B) any special services such as readers or notices in Braille or TTY;
 - (C) Special policies or programs available to residential customers with physical disabilities, including residential customers who have a critical need for electric service to maintain life support systems; and
 - (D) discounts for qualified low-income residential customers;
- (6) The YRAC document shall inform the customer of the following customer rights and protections:
- (A) Unauthorized switch protections applicable under §25.495 of this title (relating to Unauthorized Change of Retail Electric Provider);
 - (B) The customer's right to dispute unauthorized charges on the customer's bill as set forth in §25.481 of this title (relating to Unauthorized Charges);
 - (C) Protections relating to disconnection of service pursuant to §25.483 of this title;
 - (D) The right of a new customer to rescind service without fee or penalty of any kind within three federal business days after receiving the TOS;
 - (E) Non-English language requirements pursuant to §25.473 of this title (relating to Non-English Language Requirements);

- (F) Availability of a Do Not Call List pursuant to §25.484 of this title (relating to Electric No-Call List) and §26.37 of this title (relating to Texas No-Call List); and
- (G) Privacy rights regarding customer proprietary information as provided by §25.472 of this title (relating to Privacy of Customer Information).
- (7) **Identity and contact information.** The REP's certified name and business name (dba), certification number, mailing address, Internet address (if applicable), and a toll-free telephone number (with hours of operation and time-zone reference) at which the customer may obtain information concerning the product.
- (j) **Commercial Customer disclosure.** Notwithstanding §25.471(a)(3) of this title (relating to General Provisions of Customer Protection Rules), all commercial customers over 50 kW shall be given a copy of the list of rights they are waiving to enter into a contract not governed by the commission's customer protection rules and must affirmatively choose to waive those rights. Such disclosure shall also inform the customer that they have the right to choose a product from the REP (if applicable) and other REPs that do not require a waiver of these rights.
- (k) **Fuel mix and emissions disclosure.** A fuel mix and emissions disclosure pursuant to §25.476 of this title shall be available upon request.

§25.476. ~~Fuel Mix and Emissions Disclosure Labeling of Electricity with Respect to Fuel Mix and Environmental Impact.~~

(a) **Purpose.** The purpose of this section is to establish the procedures by which retail electric providers (REPs) calculate and compose their Fuel Mix and Emissions Disclosure (FMED) pursuant to this section, and their renewable content ~~disclose fuel mix and environmental impact information on the Electricity Facts Label~~ pursuant to §25.475 of this title (relating to General REP Requirements and Information Disclosures to Residential and Small Commercial Customers ~~Information Disclosures to Residential and Small Commercial Customers~~).

(b) **Application.**

- (1) This section applies to all REPs. Additionally, some of the reporting requirements established in this section apply to the registration agent and to all owners of generation assets as defined in subsection (c) of this section.
- (2) Nothing in this section shall be construed as protecting a REP against prosecution under deceptive trade practices statutes.
- (3) In accordance with the Public Utility Regulatory Act (PURA) §39.001(b)(4), the commission and the registration agent will protect the competitive process in a manner that ensures the confidentiality of competitively sensitive information, including without limitation information reported to the commission or the registration agent pursuant to subsections (e)(3)-(4) and (f)(1) of this section.

(c) **Definitions.** The definitions set forth in §25.471(d) of this title (relating to General Provisions of Customer Protection Rules) apply to this section. In addition, the following

words and terms, when used in this section, shall have the following meanings unless the context indicates otherwise:

- (1) **Authenticated generation** -- Generated electricity with quantity, fuel mix, and environmental attributes accounted for by a retired renewable energy credit (REC), or supply contract between a REP and an owner of generation assets, ~~to be used in calculating the retailer's Electricity Facts Label disclosures.~~
- (2) **Default scorecard** -- The estimated fuel mix and environmental impact of all electricity in Texas that is not authenticated as defined in paragraph (1) of this subsection.
- (3) **Environmental impact** -- The information that is to be reported on the ~~FMEDElectricity Facts Label~~ under the heading "Emissions and waste per 1,000 kWh generated," comprising indicators for carbon dioxide, nitrogen oxides, particulates, sulfur dioxide, and spent nuclear reactor fuel. For the purposes of this section, environmental impact refers specifically to emissions and waste from generating facilities located in Texas, except as provided in subsection (f)(3) of this section.
- (4) **Fuel mix** -- The information that is to be reported on the ~~FMEDElectricity Facts Label~~ under the heading "Sources of power generation." The fuel mix shall be the percentage of total MWh obtained from each of the following fuel categories: coal and lignite, natural gas, nuclear, renewable energy, and "other" sources, calculated as specified in this section. Renewable energy shall include power defined as renewable by PURA §39.904(d).

- (5) **Generator scorecard** -- The aggregated fuel mix and environmental impact of all generating facilities located in Texas that are owned by the same owner of generation assets.
 - (6) **New product** -- An electricity product during the first year it is marketed to customers.
 - (7) **Other generation sources** -- A competitive retailer's or affiliated REP's supply of generated electricity that is not accounted for by a direct supply contract with an owner of generation assets.
 - (8) **Owner of generation assets** -- A power generation company, river authority, municipally owned utility, electric cooperative, or any other entity that owns electric generating facilities in the state of Texas.
 - (9) **Renewable energy credit offset (REC offset)** -- A non-tradable allowance as defined by §25.173(c)(10) of this title (relating to Goal for Renewable Energy) and created by §25.173(i) of this title. For the purposes of this section, a REC offset authenticates the renewable attributes, but not the quantity, of generation produced by its associated facility.
- (d) **Marketing standards for “green” and “renewable” electricity products.**
- (1) A REP may market an electricity product as “green” only in the following instances:
 - (A) All of the product's fuel mix is renewable energy as defined in PURA §39.904(d), Texas natural gas as specified in PURA §39.904(d)(2), or a combination thereof, and

- (B) All statements representing the product as “green,” if not containing 100% renewable energy, as defined in PURA §39.904(d), shall include a footnote, parenthetical note, or other obvious disclaimer that “A ‘green’ product may include Texas natural gas and renewable energy. See the ~~Electricity Facts Label~~FMED for this product’s exact mix of renewable energy and Texas natural gas.”
- (2) A REP may market an electricity product as “renewable” only in the following instances:
- (A) All of the product’s fuel mix is renewable energy as defined in PURA §39.904(d); or
- (B) All statements representing the product as “renewable” use the format “x% renewable,” where “x” is the product’s renewable energy fuel mix percentage.
- (3) If a REP makes marketing claims about a product’s “green” content on the basis of its use of natural gas as a fuel, the REP must include with the report required under subsection (f)(1) of this section proof that the natural gas used to generate the electricity was produced in Texas.
- (e) **Compilation of scorecard data.**
- (1) The registration agent shall create and maintain a database of generator scorecards reflecting each owner of generation assets’ company-wide fuel mix and environmental impact data based on generating facilities located in Texas. These scorecards shall be used by REPs in determining the fuel and environmental attributes of electricity sold to retail customers.

- (2) Each generator's fuel mix and environmental impact data for the preceding calendar year shall be published on the registration agent's Internet web site by April 1 of each year and shall state:
- (A) percentage of MWh generated from each of the following fuel sources: coal and lignite, natural gas, nuclear, renewable energy, and other sources; and
 - (B) MWh-weighted average annual emissions rates in pounds per 1,000 kWh for the aggregate generation sources of the owner of generation assets for carbon dioxide, nitrogen oxides, particulates, sulfur dioxide, and spent nuclear fuel produced (with spent nuclear fuel annualized using standard industry conversion factors).
- (3) Not later than March 1 of each year, each owner of generation assets shall report to the registration agent the following data for the preceding calendar year: -net generation in MWh from each of its generating units in Texas; the type of fuel used by each of its generating units in Texas; and the MWh-weighted average annual emissions rate, on an aggregate basis for all of its generating units in Texas (in pounds per 1,000 kWh) for carbon dioxide, nitrogen oxides, particulates, sulfur dioxide, and nuclear waste. For purposes of calculating its average emissions rates, each owner of generation assets shall rely upon emissions data that it submits to the United States Environmental Protection Agency (EPA), the Texas Commission on Environmental Quality (TCEQ), or the best available data if the owner of generation assets does not submit pertinent data to the EPA or TCEQ. An owner of generation assets shall not be required to submit information

to the registration agent regarding the net generation of its generating units located within the Electric Reliability Council of Texas (ERCOT) region if, upon request, the registration agent advises the owner of generation assets that it already has such information available from its polled settlement meter data.

- (4) Not later than March 15 of each year, each REP shall report to the registration agent the total MWh of electricity it purchased during the preceding calendar year, specifying the quantity purchased from each owner of generation assets or from other generation sources during that calendar year.
 - (5) Not later than April 1 of each year, the registration agent shall calculate and publish on its Internet website a state average fuel mix, statewide system average emission rates for each type of emission, and a default scorecard to account for all electric generation in the state that is not authenticated as defined in subsection (c)(1) of this section.
 - (A) The default fuel mix shall be the percentage of total MWh of generation not authenticated that has been obtained from each fuel type.
 - (B) Default emission rates for each type of emission shall be calculated by dividing total pounds of emissions or waste by total MWh, using data only for generation not authenticated.
- (f) **Calculating fuel mix and environmental impact disclosures.**
- (1) Not later than March 15 of each year, each REP shall report to the registration agent the following information:
 - (A) MWh sold under each electricity product offered by the REP during the previous calendar year; and

- (B) attestations from power generators that the natural gas used to generate electricity supplied to the REP was produced in Texas, if during the preceding calendar year and the current calendar year the REP markets “green” electricity on the basis of that power.
- (2) Not later than May 1 of each year, each REP shall calculate and report to the registration agent its fuel mix and environmental impact for the preceding calendar year for each of its electricity products. The calculation methodology shall be as described in paragraphs (5) and (6) of this subsection.
- (3) For power purchased from sources outside of Texas, a supply contract between a REP and the owner of a generating facility may be used to authenticate fuel mix and environmental impact for electricity generated at that facility and sold at retail in Texas.
- (A) The contract must identify a specific generating facility from which the REP has obtained electricity that it sold to retail customers in Texas during the preceding calendar year.
- (B) A REP that intends to rely upon a supply contract with an out-of-state generator to authenticate fuel mix or environmental impact data shall submit a report to the registration agent for the specified generating facility no later than March 1 of each year that reports the facility’s annual fuel mix and emissions rates (in pounds per 1,000 kWh) for carbon dioxide, nitrogen oxides, particulates, sulfur dioxide, and nuclear waste.
- (4) For the purposes of disclosures on the ~~FMEDElectricity Facts Label~~, the retirement of RECs shall be the only method of authenticating generation for

which a REC has been issued in accordance with §25.173 of this title. The retirement of a REC shall be equivalent to one megawatt-hour of generation from renewable resources. The use of RECs to authenticate the use of renewable fuels on the ~~FMEDElectricity Facts Label~~ must be consistent with REC account information maintained by the Renewable Energy Credits Trading Program Administrator. A REC offset may be used to authenticate the renewable attributes of the current MWh output from its associated supply contract.

- (5) The fuel mix for a REP's electricity product shall be the MWh-weighted average of the fuel mixes reported for the sources of generation from which electricity was purchased for that product. In calculating the fuel mix, the REP shall rely upon the following sources of information to obtain the fuel mix of its sources of generation: the generator scorecard data published by the registration agent under subsection (e)(2)(A) of this section; the default scorecard published by the registration agent under subsection (e)(5)(A) of this section; any reports filed under paragraph (3)(B) of this subsection; retired RECs; and actual energy production during the calendar year from resources that are awarded REC offsets by the system administrator. MWh from generation sources not authenticated in accordance with this section shall be represented by the fuel mix of the default scorecard.
- (6) The emission rates for a REP's electricity product shall be the MWh-weighted average of the emission rates reported for the sources of generation from which electricity was purchased for that product. In calculating the emissions data, the REP shall rely upon the following sources of information to obtain the emissions

data of its sources of generation: the generator scorecard data published by the registration agent under subsection (e)(2)(B) of this section; the default scorecard published by the registration agent under subsection (e)(5)(B) of this section; and any reports filed under paragraph (3)(B) of this subsection; retired RECs; and actual energy production during the calendar year from resources that are awarded REC offsets by the system administrator. Emissions from generation sources not authenticated in accordance with this section shall be represented by the default scorecard. The weighted average of each category of environmental impact shall then be indexed by dividing it by the corresponding state average emission rate and multiplying the result by 100.

- (7) If a REP offers multiple electricity products that differ with regard to the fuel mix and environmental impact disclosures presented on the ~~FMEDElectricity Facts Label~~, the REP:
- (A) may apply any supply contract to the calculation of any product ~~FMEDlabel~~ as long as the sum of MWh applied does not exceed the MWh acquired under the contract; and
 - (B) may apply any number of RECs to the calculation of any product ~~FMEDlabel~~ as long as:
 - (i) the number of RECs applied to all product ~~FMEDslabels~~ is consistent with the number of RECs the retailer has retired with the REC Trading Program Administrator, and
 - (ii) the number of RECs applied to each product ~~FMEDlabel~~ results in a renewable energy content for each product that is equal to or

greater than a benchmark to be calculated from data maintained by the REC Trading Program Administrator. The benchmark shall be defined on an annual basis as:

SRR / TS,

where

SRR = the statewide REC requirement, in MWh, as calculated by the REC Trading Program Administrator for the compliance period coinciding with the ~~FMEDElectricity-Facts Label disclosure~~, and

TS = total MWh sales for all REPs to Texas customers during the compliance period coinciding with the ~~FMEDElectricity-Facts Label disclosure~~.

- (8) An affiliated REP shall use only one ~~FMEDfuel mix and environmental impact disclosure~~ for all price-to-beat products sold to residential and small commercial customers of its affiliated transmission and distribution utility, except that if the predecessor bundled utility had an approved renewable energy tariff in accordance with §25.251 of this title (relating to Renewable Energy Tariff) on file with the commission during the freeze on existing retail base rate tariffs established by PURA §39.052, the affiliated REP may sell a renewable price-to-beat product.
- (9) Any REP may anticipate the fuel mix and environmental impact of a new product.

- (A) On the fuel mix disclosure of a new product's ~~FMEDElectricity Facts Label~~, the heading "Sources of power generation" shall be replaced with "Projected sources of power generation."
- (B) On the environmental impact disclosure of a new product's ~~FMEDElectricity Facts Label~~, the heading "Emissions and waste per 1,000 kWh generated" shall be replaced with "Projected emissions and waste per 1,000 kWh generated."
- (C) A projected fuel mix may be used only for new products.

(g) **Fuel Mix and Emissions Disclosure.**

(1) **Fuel mix disclosures.** The FMED shall contain a table depicting, on a percentage basis, the fuel mix of the electricity product supplied by the REP in Texas. The table shall also contain a column depicting the statewide average fuel mix. The break-down for both columns shall provide percentages of net system power generated by the following categories of fuels: coal and lignite; natural gas; nuclear; renewable energy (comprising biomass power, hydropower, solar power and wind power); and other sources. Fuel mix information shall be based on generation data for the most recent calendar year. The fuel mix percentage for renewable energy shall also be disclosed on the EFL for the product pursuant to §25.475 of this title.

- (A) The percentage used shall be rounded to the nearest whole number. Values less than 0.5% and greater than zero may be shown as "<0.5%."
- (B) Any source of electricity that is not used shall be listed in the table and depicted as "0.0%."

- (2) **Emissions and waste disclosures.** The FMED shall contain a bar chart that depicts the amounts of carbon dioxide, nitrogen oxide, sulfur dioxide, particulate emissions and nuclear waste attributable to the aggregate known sources of electricity identified in paragraph (1) of this subsection. Emissions and waste disclosures shall be based on data for the most recent calendar year.
- (A) Emission rates for carbon dioxide, nitrogen oxide, sulfur dioxide and particulates shall be calculated in pounds per 1,000 kilowatt-hours (lbs/1,000 kWh), divided by the corresponding statewide system average emission rates, and multiplied by 100 to obtain indexed values.
- (B) Rates for nuclear waste shall be calculated in pounds of spent fuel per 1,000 kilowatt-hours, divided by the corresponding statewide system average rate, and multiplied by 100 to obtain indexed values.
- (C) The registration agent shall calculate the statewide system average rates to be used in accordance with this subsection.
- (3) **Renewable energy claims.** A REP may verify its sales of renewable energy by requesting that the program administrator of the renewable energy credits trading program established pursuant to §25.173(d) of this title (relating to Goal for Renewable Energy) retire a renewable energy credit for each megawatt-hour of renewable energy sold to its customers.
- (4) **Format of Fuel Mix and Emissions Disclosure.** Each FMED shall be printed in type no smaller than ten points in size and shall be formatted as shown in this paragraph:

| <u>Fuel Mix and Emissions Disclosure</u> <u>[Name of REP], [Name of Product] [Service area (if applicable)]</u> <u>[Date]</u> | | | | | | | | | | | | | | | | | | | | | | | |
|--|---|-----------------------------------|----------------|---|-----------------------------------|------------------|---|-------|--------------|---|-------|----------------|--|-------|------------------|---|-------|--|-------|-------|-------|------|------|
| <u>Sources of power generation</u> | <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 40%;"></th> <th style="width: 30%; text-align: center; border-bottom: 1px solid black;"><i>This product</i></th> <th style="width: 30%; text-align: center; border-bottom: 1px solid black;"><i>Texas (for comparison)</i></th> </tr> </thead> <tbody> <tr> <td style="border-bottom: 1px solid black;">Coal and lignite</td> <td style="text-align: center; border-bottom: 1px solid black;">[xx]%</td> <td style="text-align: center; border-bottom: 1px solid black;">[xx]%</td> </tr> <tr> <td style="border-bottom: 1px solid black;">Natural gas</td> <td style="text-align: center; border-bottom: 1px solid black;">[xx]%</td> <td style="text-align: center; border-bottom: 1px solid black;">[xx]%</td> </tr> <tr> <td style="border-bottom: 1px solid black;">Nuclear</td> <td style="text-align: center; border-bottom: 1px solid black;">[xx]%</td> <td style="text-align: center; border-bottom: 1px solid black;">[xx]%</td> </tr> <tr> <td style="border-bottom: 1px solid black;">Renewable energy</td> <td style="text-align: center; border-bottom: 1px solid black;">[xx]%</td> <td style="text-align: center; border-bottom: 1px solid black;">[xx]%</td> </tr> <tr> <td style="border-bottom: 1px solid black;">Other</td> <td style="text-align: center; border-bottom: 1px solid black;">[xx]%</td> <td style="text-align: center; border-bottom: 1px solid black;">[xx]%</td> </tr> <tr> <td style="border-bottom: 1px solid black;">Total</td> <td style="text-align: center; border-bottom: 1px solid black;">100%</td> <td style="text-align: center; border-bottom: 1px solid black;">100%</td> </tr> </tbody> </table> | | | <i>This product</i> | <i>Texas (for comparison)</i> | Coal and lignite | [xx]% | [xx]% | Natural gas | [xx]% | [xx]% | Nuclear | [xx]% | [xx]% | Renewable energy | [xx]% | [xx]% | Other | [xx]% | [xx]% | Total | 100% | 100% |
| | <i>This product</i> | <i>Texas (for comparison)</i> | | | | | | | | | | | | | | | | | | | | | |
| Coal and lignite | [xx]% | [xx]% | | | | | | | | | | | | | | | | | | | | | |
| Natural gas | [xx]% | [xx]% | | | | | | | | | | | | | | | | | | | | | |
| Nuclear | [xx]% | [xx]% | | | | | | | | | | | | | | | | | | | | | |
| Renewable energy | [xx]% | [xx]% | | | | | | | | | | | | | | | | | | | | | |
| Other | [xx]% | [xx]% | | | | | | | | | | | | | | | | | | | | | |
| Total | 100% | 100% | | | | | | | | | | | | | | | | | | | | | |
| <u>Emissions and waste per 1,000 kWh generated</u> | <table border="1" style="width: 100%; border-collapse: collapse;"> <tbody> <tr> <td style="width: 30%;">Carbon dioxide</td> <td style="width: 40%; text-align: center;">  </td> <td style="width: 30%; text-align: right;">89</td> </tr> <tr> <td>Nitrogen oxides</td> <td style="text-align: center;">  </td> <td style="text-align: right;">112</td> </tr> <tr> <td>Particulates</td> <td style="text-align: center;">  </td> <td style="text-align: right;">56</td> </tr> <tr> <td>Sulfur dioxide</td> <td style="text-align: center;">  </td> <td style="text-align: right;">23</td> </tr> <tr> <td>Nuclear waste</td> <td style="text-align: center;">  </td> <td style="text-align: right;">10</td> </tr> <tr> <td colspan="2" style="text-align: center; padding-top: 5px;"> <div style="display: flex; justify-content: space-around; width: 100%;"> <i>Better than Texas average</i> <i>Worse than Texas average</i> </div> </td> <td></td> </tr> </tbody> </table> <p style="text-align: center; margin-top: 5px;"><u>(Indexed values; 100=Texas average)</u></p> | | Carbon dioxide |  | 89 | Nitrogen oxides |  | 112 | Particulates |  | 56 | Sulfur dioxide |  | 23 | Nuclear waste |  | 10 | <div style="display: flex; justify-content: space-around; width: 100%;"> <i>Better than Texas average</i> <i>Worse than Texas average</i> </div> | | | | | |
| Carbon dioxide |  | 89 | | | | | | | | | | | | | | | | | | | | | |
| Nitrogen oxides |  | 112 | | | | | | | | | | | | | | | | | | | | | |
| Particulates |  | 56 | | | | | | | | | | | | | | | | | | | | | |
| Sulfur dioxide |  | 23 | | | | | | | | | | | | | | | | | | | | | |
| Nuclear waste |  | 10 | | | | | | | | | | | | | | | | | | | | | |
| <div style="display: flex; justify-content: space-around; width: 100%;"> <i>Better than Texas average</i> <i>Worse than Texas average</i> </div> | | | | | | | | | | | | | | | | | | | | | | | |
| <u>Optional: Sources of Renewable Generation</u> | <p style="text-align: center;"><u>Optional: REP may use this section to disclose and explain specific sources of renewable generation.</u></p> | | | | | | | | | | | | | | | | | | | | | | |

Type used in this format
Title: 12 point
Headings: 12 point boldface
Body: 10 point

(5) Distribution of FMED. Upon request, a REP shall provide the FMED for one or more products to a customer, applicant, commission staff or the program administrator of the renewable energy credits trading program.

~~(h)(g)~~ **Annual update of FMEDElectricity Facts Label.** Each REP shall update its FMEDElectricity Facts Label for each of its products no later than July 1 of each year, so that the FMEDElectricity Facts Label displays the fuel mix and emissions data calculated pursuant to this section and reported to the registration agent for that product under subsection (f)(2) of this section for generation purchased during the preceding calendar year. ~~The commission shall make available on the “power to choose” Internet website the fuel mix and emissions data published by each REP on its Electricity Facts Labels for each product marketed to residential customers.~~

~~(i)(h)~~ **Compliance and enforcement.**

- (1) ~~If the commission finds that a REP, other than a municipally owned utility or an electric cooperative, is in violation of this section, the commission may take remedial action consistent with PURA §§39.101(e), 39.356, or 39.357, and the REP may be subject to administrative penalties pursuant to PURA §15.023 and §15.024. If the commission finds that an electric cooperative or a municipally owned utility is in violation, it shall inform the cooperative’s board of directors and general manager, or the municipal utility’s general manager and city council.~~
- (2) ~~If the commission finds that a REP, other than a municipally owned utility or an electric cooperative, repeatedly violates this section, and if consistent with the~~

~~public interest, the commission may suspend, restrict, deny, or revoke the registration or certificate, including an amended certificate, of the REP, thereby denying the REP the right to provide service in this state.~~

~~(3)~~ The commission shall coordinate its enforcement efforts regarding the prosecution of fraudulent, misleading, deceptive, and anticompetitive business practices with the Office of the Attorney General, Consumer Protection Division in order to ensure consistent treatment of specific alleged violations.

~~(4)~~ ~~The commission may inspect and obtain copies of the papers, books, accounts, documents, and other business records of each REP to the extent necessary to verify the accuracy of the REP's Electricity Facts Label~~FMED.

~~(5)~~ ~~The commission may inspect and obtain copies of the papers, books, accounts, documents, and other business records of each owner of generation assets to the extent necessary to verify the accuracy of the owner of generation assets' fuel mix and emissions data reported under subsection (e)(3) of this section.~~

~~(6)~~ ~~In exercising any enforcement authority, inspection, audit, or other action under this section, the commission will ensure the confidentiality of competitively sensitive information.~~

~~(i)~~ ~~This section is effective June 1, 2004.~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 14TH DAY OF AUGUST 2008 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**

q:\cadm\txr-rules management\rules\rulemaking projects\electric\35768\35768pub.doc