

PROJECT NO. 22816

RULEMAKING PROCEEDING TO	§	PUBLIC UTILITY COMMISSION
DEVELOP STANDARDS FOR THE	§	
LABELING OF ELECTRICITY WITH	§	OF TEXAS
RESPECT TO FUEL MIX AND AIR	§	
EMISSIONS	§	

PROPOSAL FOR PUBLICATION OF NEW §25.476

The Public Utility Commission of Texas (commission) proposes new §25.476, relating to Labeling of Electricity with Respect to Fuel Mix and Environmental Impact. The proposed new rule supplements §25.475, relating to Information Disclosures to Residential and Small Commercial Customers, and the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §39.101, Customer Safeguards. Project Number 22816 is assigned to this proceeding.

This proposal revises a previously published version of proposed §25.476, changing references to "power generating companies" to "owners of generation assets," adds definitions for "generator scorecard" and "owner of generation assets" and deletes the definition "PGC scorecard." Five additional questions are also asked in this preamble. The previous version of the proposed rule, which has been withdrawn, was published in the Texas Register on February 2, 2001 (26 TexReg 1051). **All previously filed comments on the proposed rule as published February 2, 2001, are considered part of the record for §25.476 as republished and do not need to be re-submitted.**

This rulemaking was initiated on July 21, 2000, in the context of Project Number 22255, *Rulemaking Proceeding for Customer Protection Rules for Electric Restructuring Implementing SB 7 and SB 86*. After conducting several fact-gathering workshops, commission staff prepared a strawman rule for discussion at a workshop that was held on November 14, 2000, at the commission's offices in Austin, Texas. Following the workshop, interested parties submitted informal written comments. On March 26, 2001, staff conducted a workshop on the rule in conjunction with a pre-hearing conference in P.U.C. Docket Number 23802, *Proceeding to Consider Section 14 of the ERCOT Protocols (Severed from Docket Number 22320)*.

When commenting on specific subsections of the proposed rule, 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 only interested 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.

In addition to comments on specific subsections of the proposed rule, the commission requests that parties specifically address the following issues:

1. Should owners of renewable energy generation assets have the option to split a plant's output between a certificate of generation and a renewable energy credit (REC) offset?

If so, what procedure would ensure that the output is not double-counted?

2. How should the optional certificates program accommodate generation from federally owned hydroelectric facilities whose output must be sold to municipally owned utilities and electric co-operatives?

3. To simplify and streamline the reporting and calculation process, the commission has developed forms, spreadsheets, and templates, residing on the agency web-page, for data reporting from power generation companies (PGCs) and calculation of the generator scorecard. Prototype scorecards with supporting data can be found at <http://www.puc.state.tx.us/rules/rulemake/22816/22816.cfm>. The commission has also developed forms, spreadsheets and templates for retail electric provider (REP) calculation of fuel mix and emissions impacts, using the generator scorecards. These will be used for web-based reporting and automated data compilation, to minimize compliance effort and cost for the parties and the commission. Parties are welcome to comment on these forms and spreadsheets, which will be adopted after comment as part of final rule adoption.

4. Should the PGC generation scorecards and the REP fuel mix label be updated only once per year, or would there be value to the market to develop updates at more frequent intervals once the competitive retail market has stabilized? For instance, would it be appropriate to use the same set of scorecards and fuel mixes for all of 2002, but change the reporting and update schedule to quarterly editions beginning in 2003? Given the availability of standardized, web-based, automated reporting and calculation of these informational tools, what would be the costs and benefits of more frequent updates, and what would be the appropriate timing and preparation schedule?

5. As new generators enter the market and existing generators' portfolios change, what updating process should be developed to reflect these changes in the generator scorecards? Is it necessary to develop some verification process as well, to assure that no erroneous or fraudulent reporting occurs?

David Hurlbut, Senior Economic Analyst, Policy Development Division, has determined that for each year of the first five-year period the proposed section is in effect the fiscal implications for state government as a result of enforcing or administering the section will be minimal, as new costs will be offset by transaction fees assessed on optional activities created by this proposed section. Mr. Hurlbut has determined that there will be no fiscal implications for local government as a result of enforcing or administering the section, except in the case of a municipally owned utility that has opted into competition, is operating outside its certificated

service area, and chooses to use some of the optional provisions created by this proposed section.

Mr. Hurlbut has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be an orderly, fair, and efficient market for retail electric services that promotes competition and ensures that customers have adequate information to make informed choices. There are no anticipated adverse effects on small businesses or micro-businesses as a result of enforcing this section. There are no anticipated additional economic costs to persons who comply with the minimum requirements of this section as proposed; optional provisions of this section simultaneously introduce potential costs and potential benefits that are left to the market to resolve.

Mr. Hurlbut has also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

The commission staff will conduct a public hearing on this rulemaking under Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on June 21, 2001, at 9:30 a.m.

Comments on the proposed new section (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, within 30 days after publication. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 22816.

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2001) (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; and specifically, PURA §39.101 which grants the commission authority to establish various specific protections for retail customers, including entitling customers to have information concerning the environmental impact of certain production facilities, and information sufficient to make an informed choice of electric service provider; §39.9044 which grants the commission authority to establish rules allowing and encouraging competitive retailers to market electricity generated using natural gas produced in this state as environmentally beneficial; and PURA Chapter 17, Subchapter A, which authorizes the commission to adopt rules to protect retail customers and requires the commission to promote public awareness of changes in the electric utility market.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 39.101, 39.9044, and
Chapter 17, Subchapter A.

§25.476. 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 competitive retailers calculate and disclose information on the Electricity Facts label pursuant to §25.475 of this title (relating to Information Disclosures to Residential and Small Commercial Customers).
- (b) **Application.** This section applies to all competitive retailers and affiliated retail electric providers (affiliated REPs) as defined in §25.471(d) of this title (relating to General Provisions of Customer Protection Rules). Additionally, some of the reporting requirements established in this section apply to all owners of generation assets as defined in subsection (c) of this section.
- (c) **Definitions.** 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 certificate of generation, retired renewable energy credit (REC), or supply contract between a competitive retailer or affiliated REP and an owner of generation assets.

- (2) **Certificate of generation** – A tradable instrument issued by an owner of generation assets designating the megawatt-hours (MWh), fuel and environmental attributes of a specific quantity of production from a specific electricity generating facility.
- (3) **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.
- (4) **Electricity Facts label** – A standardized format, as described in §25.475(e) of this title, for disclosure information and contract terms made available to customers to help them choose a provider and an electricity product.
- (5) **Electricity product** – A product offered by a competitive retailer or affiliated REP to a customer for the provision of retail electric service under specific terms and conditions, and marketed under a specific Electricity Facts label.
- (6) **Environmental impact** – The information that is to be reported on the Electricity Facts label under the heading "emissions and waste per 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 (g)(3) of this section.

- (7) **Fuel mix** – The information that is to be reported on the Electricity 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 known sources. Renewable energy shall include power defined as renewable by the Public Utility Regulatory Act (PURA) §39.904(d).
- (8) **Generator scorecard** – The aggregated fuel mix and environmental impact of all an owner of generation asset's generating facilities located in Texas, adjusted by subtracting any generation for which a REC has been issued or a certificate of generation has been retired.
- (9) **New product** – An electricity product during the first year it is marketed to customers.
- (10) **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.
- (11) **Owner of generation assets** – A power generation company, river authority, municipally owned utility, electric cooperative, or any other entity that owns or controls generating facilities in the state of Texas.
- (12) **Renewable energy credit (REC)** – A tradable instrument representing the generation attributes of one MWh of electricity from renewable energy sources,

as authorized by PURA §39.904 and implemented under §25.173 of this title (relating to the Goal for Renewable Energy).

- (13) **Renewable energy credit offset (REC offset)** – A REC offset represents one MWh of renewable energy that may be used in place of a REC, according to the provisions of §25.173 of this title.
- (d) **Marketing standards for "green" and "renewable" electricity products.**
- (1) Any marketing statement made by a competitive retailer or affiliated REP describing an electricity product as "green" must prominently include the product's combined natural gas and renewable fuel mix percentage consistent with its Electricity Facts label. A product may not be marketed as "green" without reference to a fuel mix percentage.
- (2) Any marketing statement made by a competitive retailer or affiliated REP describing an electricity product as "renewable" must prominently include the product's renewable fuel mix percentage as shown on its Electricity Facts label and may not include the product's natural gas fuel mix percentage. A product may be marketed as "renewable" without reference to a fuel mix percentage only if the product's authenticated fuel mix is 100% renewable.
- (e) **Compilation of scorecard data.**

- (1) The commission will 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 competitive retailers and affiliated REPs in determining the fuel and environmental attributes of electricity sold to retail customers.
- (2) Generator scorecards will be published on the commission's internet web site beginning July 1, 2001, and shall state:
 - (A) MWh obtained from each fuel source (coal and lignite, natural gas, nuclear, renewable energy, and other sources), excluding generation for which a REC has been issued, and the corresponding percentages of total MWh;
 - (B) tons of carbon dioxide, nitrogen oxides, particulates, sulfur dioxide, and spent nuclear fuel produced, excluding emissions from generation for which a REC has been issued, and the corresponding emission rates in tons per MWh; and
 - (C) sources from which data were obtained.
- (3) Not later than March 1 of each year, the commission will update all generator scorecards to reflect:
 - (A) changes in generation facilities' emission rates and fuel use;

- (B) new plants in operation and the retirement of plants previously in operation; and
 - (C) certificates of generation issued for the previous calendar year by the owner of generation assets that a competitive retailer or affiliated REP intends to retire to authenticate fuel mix and environmental impact disclosures.
- (4) Not later than March 1 of each year, the commission will calculate 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 environmental criterion shall be calculated by dividing total tons of emissions or waste by total MWh, using data only for generation not authenticated.
 - (C) The default scorecard shall be published on the commission's internet web site beginning July 1, 2001.
- (f) **Certificates of generation.** At its option, an owner of generation assets may issue and sell certificates of generation representing the fuel mix and environmental attributes of a specific generating facility that it operates in Texas. Certificates of generation may be traded by competitive retailers, affiliated REPs, power marketers, or any other party,

and may be retired by competitive retailers and affiliated REPs to authenticate the fuel mix and environmental attributes of electricity sold to retail customers.

- (1) The commission shall appoint a program administrator who shall:
 - (A) establish a registry of certificates issued by owners of generation assets;
 - (B) maintain public information on its website that provides trading program information to interested buyers and sellers of certificates;
 - (C) create an exchange procedure where persons may purchase and sell certificates anonymously;
 - (D) perform audits of generators participating in the certificates program to verify the accuracy of production data reported on registered certificates;
 - (E) inform participating owners of generation assets of the certificates that have been submitted for retirement by competitive retailers and affiliated REPs;
 - (F) collect user fees sufficient for the program to be self-sustaining; and
 - (G) submit an annual report to the commission describing the number and characteristics of certificates issued by owners of generation assets, number and characteristics of certificates retired by competitive retailers, and other pertinent information regarding the operation of the certificates program.

- (2) A certificate shall be based on electricity generated prior to the certificate issue date. A certificate may cover any length of time within a single calendar year. Certificates for electricity generated during a given calendar year must be issued before February 8 of the following year.
- (3) A certificate shall account for all of the facility's electricity output for the period covered by the certificate.
- (4) No quantity of generation may be included in more than one certificate.
- (5) Certificates shall not represent electricity output associated with a REC or a REC offset.
- (6) Certificates may be sold as independent instruments or in conjunction with supply contracts between the issuing owner of generation assets and a competitive retailer. If an owner of generation assets sells certificates to a retailer in conjunction with a supply contract, and the retailer chooses to resell the certificates to another party while retaining the electricity, the retailer shall use the owner of generation assets' company scorecard to describe the attributes of the retained electricity.
- (7) Each certificate must include the following information specific to the generation for which it has been issued:
 - (A) name of the issuing owner;
 - (B) unique identification for the generating facility, including meter identification number;

- (C) date of issue;
 - (D) time and date of the beginning of the period covered by the certificate;
 - (E) time and date of the end of the period covered by the certificate;
 - (F) MWh metered during the period covered by the certificate;
 - (G) types of fuel used during the period covered by the certificate;
 - (H) the amount (in tons) of carbon dioxide, nitrogen oxides, sulfur dioxide, particulates, and spent nuclear fuel produced by the facility as a result of generating the MWh represented by the certificate; and
 - (I) an affidavit that the information contained in the certificate is true and accurate.
- (8) An owner of generation assets shall register each of its certificates of generation with the program administrator. Certificates not registered by February 8 following the reporting year shall be invalid.
- (9) For the purposes of calculating its fuel and environmental impact disclosures for its Electricity Facts labels, a competitive retailer or affiliated REP may purchase and retire certificates of generation to account for other generation sources as defined in subsection (c)(10) of this section. If all of a competitive retailer's or affiliated REP's other generation sources are represented by certificates, the retailer may retire additional certificates to represent power obtained under a supply contract with any owner of generation assets that otherwise would have been represented by the owner's scorecard. All certificates that a competitive

retailer or affiliated REP intends to use to authenticate its disclosures must be included in the supply report required under subsection (g)(1) of this section.

(10) Not later than February 15 of each year, the program administrator shall inform participating owners of generation assets of the certificates that competitive retailers and affiliated REPs intend to retire. Not later than March 1 of each year, each owner of generation assets that has issued certificates shall provide the commission with an adjusted generator scorecard. The adjusted scorecard shall be based on the same data used by the commission in determining the owner of generation assets' unadjusted scorecard and shall exclude:

(A) all certificated generation that a competitive retailer or affiliated REP intends to retire; and

(B) generation represented by a REC or a REC offset.

(11) A certificate is not valid if the issuing owner of generation assets has failed to register the certificate or has failed to provide the commission with an adjusted scorecard as stipulated in paragraphs (8) and (10) of this subsection.

(g) Calculating fuel mix and environmental impact disclosures.

(1) Not later than February 8 of each year, each competitive retailer and affiliated REP shall report to the commission:

(A) all owners of generation assets and other entities from which the competitive retailer or affiliated REP purchased electricity for delivery to

customers during the previous calendar year and the MWh obtained from each supplier, with sources that together supplied less than 5.0% of the competitive retailer's electricity combined and treated as other generation sources;

- (B) MWh sold under each electricity product offered by the competitive retailer or affiliated REP during the previous calendar year; and
 - (C) all certificates of generation that the competitive retailer or affiliated REP intends to retire to authenticate fuel mix and environmental impact disclosures for the previous calendar year.
- (2) Not later than April 1 of each year, each competitive retailer and affiliated REP shall calculate its fuel mix and environmental impact for the previous calendar year, concurrent with settlement period established in §25.173(l) of this title. Calculations shall include a disclosure that aggregates all electricity products offered by the competitive retailer, and specific disclosures for each electricity product. Disclosures provided on an Electricity Facts label shall describe a specific electricity product sold to customers during the calendar year preceding the settlement period, except as provided in paragraph (9) of this subsection.
- (3) For power purchased from sources outside of Texas, a supply contract between a competitive retailer or affiliated REP and the owner of a generating facility may be used to authenticate fuel mix and environmental impact claims.

- (A) The contract must identify a specific generating facility from which the competitive retailer or affiliated REP is to obtain electricity.
 - (B) The competitive retailer or affiliated REP shall include fuel mix and environmental impact information for the specified generating facility in its report to the commission pursuant to paragraph (1) of this subsection. Data shall come from the same sources used by the commission as reported pursuant to subsection (e)(2)(C) of this section. If the generating facility is not included in any database used by the commission, the retailer and the generating facility owner may provide other comparable public data that have been reported to a federal or state agency for the specified facility.
- (4) For the purposes of disclosures on the Electricity 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 Electricity 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 its associated supply contract.

- (5) A competitive retailer's or affiliated REP's company fuel mix shall be the MWh-weighted average of the fuel mixes represented by its generator scorecards, retired certificates of generation, out-of-state supply contracts, retired RECs, and the default scorecard. MWh from generation sources not authenticated in accordance with this section shall be represented by the fuel mix of the default scorecard.
- (6) A competitive retailer's or affiliated REP's company environmental impact shall be the MWh-weighted average of the emission rates represented by its generator scorecards, retired certificates of generation, out-of-state supply contracts, retired RECs, and the default scorecard. Emissions of MWh 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 competitive retailer or affiliated REP offers multiple electricity products that differ with regard to the fuel mix and environmental impact disclosures presented on the Electricity Facts labels:

 - (A) the retailer shall apportion its company fuel mix and emission rates consistent with the product-specific MWh sales reported under paragraph (1)(B) of this subsection; and

- (B) each label shall reflect the number of RECs that the competitive retailer or affiliated REP has retired to satisfy the requirements of §25.173(h) of this title, relating to the allocation of REC purchase requirement to competitive retailers; additional RECs that are retired voluntarily may be applied to any electricity product offered by the company, except as limited by paragraph (8) of this subsection.
- (8) An affiliated REP shall use only one fuel 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.
- (9) A competitive retailer or affiliated REP may anticipate the fuel mix and environmental impact of a new product and adjust the disclosures for its existing products to account for the new product's projected sales.
 - (A) On the fuel mix disclosure of a new product's Electricity 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 Electricity Facts label, the heading "Emissions and waste per kWh generated" shall be replaced with "Projected emissions and waste per kWh generated."
 - (C) The competitive retailer or affiliated REP shall exercise due diligence in its acquisition of purchased power throughout the year so that the fuel

mix and environmental impact authenticated at the end of the year is at least as favorable as what the retailer projected.

(D) Nothing in this subsection shall be construed as protecting a competitive retailer or affiliated REP against prosecution under deceptive trade practices statutes.

(E) A projected fuel mix may be used only for new products.

(h) **Special provisions for the first year of competition.** Each competitive retailer and affiliated REP during the first year of competition, beginning January 1, 2002, and ending December 31, 2002, shall estimate the fuel mix and environmental impact of its electricity products offered as follows:

- (1) affiliated REPs shall estimate their fuel mixes and environmental impacts by using the company fuel mixes and emission rates of their affiliated PGCs; and
- (2) all other competitive retailers shall project the fuel mix and environmental impacts of products they offer during 2002, and shall exercise due diligence in their acquisition of purchased power throughout the year so that the fuel mix verified at the end of the year is at least as favorable as what was projected.

(i) **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 shall order the

REP to take corrective action as necessary, 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, and may issue an advisory to local news media.

- (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 in order to ensure consistent treatment of specific alleged violations.

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

**ISSUED IN AUSTIN, TEXAS ON THE 1st DAY OF MAY 2001 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
RHONDA G. DEMPSEY**