

## CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.

### Subchapter R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE.

#### §25.476. Renewable and Green Energy Verification.

- (a) **Purpose.** The purpose of this section is to establish the procedures by which retail electric providers (REPs) calculate and compose their renewable content pursuant to §25.475 of this title (relating to General Retail Electric Provider Requirements and Information Disclosures to Residential and Small Commercial Customers) and to establish guidelines and verification for claims of “green” products.
- (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 ensure the confidentiality of competitively sensitive information, reported to the commission or the registration agent under 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) **Default scorecard** -- The estimated fuel mix and environmental impact of all electricity in Texas that is not authenticated by retiring renewable energy credits (RECs).
  - (2) **Generation owner** -- 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.
  - (3) **Generator scorecard** -- The aggregated fuel mix and environmental impact of all generating facilities located in Texas that are owned by the same generation owner.
  - (4) **New product** -- An electricity product during the first year it is marketed to customers.
  - (5) **Renewable energy credit offset (REC offset)** -- A non-tradable allowance as defined and created by §25.173 of this title (relating to Goal for Renewable Energy). 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” if:
    - (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), include a footnote, parenthetical note, or other obvious disclaimer that “A ‘green’ product may include Texas natural gas and renewable energy.
  - (2) A REP may market an electricity product as “renewable” or label an electricity product on the EFL as “renewable” only if:
    - (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.

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**(e) Compilation of scorecard data.**

- (1) The registration agent shall create and maintain a database of generator scorecards reflecting each generation owner's company-wide fuel mix and environmental impact data based on generating facilities located in Texas.
- (2) Each generation owner'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) the percentage of MWhs generated from each of the following fuel sources: coal and lignite, natural gas, nuclear, renewable energy, and other sources; and
  - (B) the MWh-weighted average annual emissions rates in pounds per 1,000 kWh for the aggregate generation sources of the generation owner 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 generation owner 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 generation owner 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 generation owner does not submit pertinent data to the EPA or TCEQ. A generation owner 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 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 renewable generation and authenticating "green" claims.**

- (1) Not later than March 15 of each year, each REP shall report to the registration agent 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) 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 the fuel mix 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 shall submit a report to the registration agent for the specified

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generating facility no later than March 1 of each year that reports the facility's annual fuel mix.

- (3) For the purposes of EFL disclosures, the retirement of RECs shall be the only method of authenticating generation for which a REC has been issued under §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 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.
  - (4) In determining the renewable content percentages to be disclosed on the EFL for a product pursuant to §25.475 of this title, the REP shall rely upon the following sources of information: the Texas State Average Fuel Mix published by the registration agent under subsection (e) of this section; retired RECs; and actual energy production during the calendar year from resources that are awarded REC offsets by the REC program administrator. The REP may also rely on power purchased from sources outside of Texas, if it has a supply contract with the owner of a generating facility and submits a report to the registration agent concerning the fuel mix of the facility, in accordance with this section.
  - (5) If a REP offers multiple electricity products that differ with regard to renewable energy content the REP:
    - (A) may apply any supply contract to the calculation of any product EFL 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 EFL as long as:
      - (i) the number of RECs applied to all product EFLs 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 EFL 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:
$$\text{SRR} / \text{TS},$$
where
$$\text{SRR} = \text{the statewide REC requirement, in MWh, as calculated by the REC Trading Program Administrator for the compliance period coinciding with the EFL, and}$$
$$\text{TS} = \text{total MWh sales for all REPs to Texas customers during the compliance period coinciding with the EFL.}$$
  - (6) Any REP may anticipate the renewable content of a new product. The EFL shall state that the renewable content is an estimate that will be verified.
- (g) **Fuel Mix for Renewable Energy.**
- (1) The fuel mix percentage for renewable energy shall be disclosed on the EFL for the product pursuant to §25.475 of this title. The percentage used shall be rounded to the nearest whole number.
  - (2) **Renewable energy claims.** A REP may authenticate 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 retire a renewable energy credit for each megawatt-hour of renewable energy sold to its customers.

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- (h) **Annual update.** Each REP shall update its EFL for each of its currently offered products or products offered during the preceding calendar year no later than July 1 of each year, so that the EFL displays the renewable energy percentages determined pursuant to this section and reported to the registration agent for that product for generation purchased during the preceding calendar year.
- (i) **Compliance and enforcement.**
  - (1) Upon request from the commission staff, a REP shall provide a detailed explanation or accounting of the means by which it has authenticated any renewable or “green” energy claims in an EFL or any information used for marketing a product.
  - (2) 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.