

§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.**
- (1) 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.
 - (2) Nothing in this section shall be construed as protecting a competitive retailer or affiliated REP against prosecution under deceptive trade practices statutes.
 - (3) In accordance with PURA §39.001(b)(4), the commission will protect the competitive process in a manner that ensures the confidentiality of competitively sensitive information during the transition to a competitive market and after the commencement of customer choice.
- (c) **Definitions.** The definitions set forth in §25.471(d) of this title 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 competitive retailer or affiliated 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) **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.
- (4) **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.
- (5) **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 (f)(3) of this section.
- (6) **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).

- (7) **Generator scorecard** — The aggregated fuel mix and environmental impact of all generating facilities located in Texas that are held by the same owner of generation assets.
- (8) **New product** — An electricity product during the first year it is marketed to customers.
- (9) **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.
- (10) **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.
- (11) **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).
- (12) **Renewable energy credit offset (REC offset)** — A non-tradable allowance as defined by §25.173(c)(10) of this title 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 competitive retailer or affiliated 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 §39.9044(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 for this product's exact mix of renewable energy and Texas natural gas."
- (2) A competitive retailer or affiliated 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 competitive retailer or affiliated REP makes marketing claims about a product's "green" content on the basis of its use of natural gas as a fuel, the competitive retailer or affiliated 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 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) Initial generator scorecards based on the best available data will be published on the commission's internet web site and shall state:
 - (A) MWh obtained from each fuel source (coal and lignite, natural gas, nuclear, renewable energy, and other sources), and the corresponding percentages of total MWh;
 - (B) tons of carbon dioxide, nitrogen oxides, particulates, sulfur dioxide, and spent nuclear fuel produced (with spent nuclear fuel annualized using standard industry conversion factors), and the corresponding emission rates in tons per MWh; and
 - (C) sources from which data were obtained, including year of publication and year of generation.
- (3) Each generator will have one month to review its initial scorecard data prior to publication on the commission's web site. The commission will accept changes

reflecting retirement of facilities, the addition of new facilities, the sale or purchase of facilities, verified changes in a facility's emission rates and fuel use, and the correction of administrative errors.

- (4) Not later than March 1 and September 1 of each year, the commission will adjust all generator scorecards to deduct the MWh and associated attributes of:
 - (A) power for which a REC has been issued; and
 - (B) power from facilities that have been designated by the commission as REC offset generators.
- (5) Not later than March 1 and September 1 of each year, the commission will calculate a combined scorecard for all generating units whose capacity will be auctioned under §25.381(e)(1)(A) of this title (relating to Capacity Auctions), and a combined scorecard for all generating units whose capacity will be auctioned under §25.381(e)(1)(B)-(D) of this title.
- (6) Not later than March 1 and September 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.
- (7) The commission will include the adjusted generator scorecards, capacity auction scorecards and the default scorecard on the reporting forms to be used by

competitive retailers and affiliated REPs to calculate their Electricity Facts label disclosures. The adjusted generator scorecard shall include a statement that the data may differ from the unadjusted scorecard and shall include a reference to the commission's web site for additional information.

(f) **Calculating fuel mix and environmental impact disclosures.**

- (1) Not later than February 1 and August 1 of each year, each competitive retailer and affiliated REP shall report to the commission the following information for the previous six-month period ending December 31 or June 30:
 - (A) all owners of generation assets, other entities and capacity auctions 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) attestations from power generators that the natural gas used to generate electricity supplied to the competitive retailer or affiliated REP was produced in Texas, if the competitive retailer or affiliated REP intends to market "green" electricity on the basis of that power.
- (2) Not later than April 1 and October 1 of each year, each competitive retailer and affiliated REP shall calculate its fuel mix and environmental impact for the

previous six-month period ending December 31 or June 30. 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 previous six-month period ending December 31 or June 30, 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 the current MWh output from 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 the adjusted scorecards of its suppliers, scorecards for successfully bid capacity auctions, out-of-state supply contracts, retired RECs, REC offsets 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 the adjusted scorecards of its suppliers, scorecards for successfully bid capacity auctions, out-of-state supply contracts, retired RECs, REC offsets 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, the retailer:

- (A) may apply any supply contract to the calculation of any product label 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 label as long as:
- (i) the number of RECs applied to all product labels 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 label 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 Electricity Facts label disclosure, and

$TS =$ total MWh sales for all competitive retailers to Texas customers during the compliance period

coinciding with the Electricity Facts label disclosure.

- (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, 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) 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) A projected fuel mix may be used only for new products, and the projections may not change during the year except as provided in subparagraph (E) of this paragraph.
 - (E) At the end of the first six months that a new product is offered, a retailer may choose to authenticate the product's fuel mix and environmental impact according to the provisions of this section and delete the word "projected" from the Electricity Facts label.
- (g) **Special provisions for the first year of competition.** Each competitive retailer and affiliated REP shall estimate the fuel mix and environmental impact of its electricity products offered to customers during the first year of competition, and shall exercise due diligence in its power acquisitions throughout the year so that the fuel mix verified at the end of the year is at least as favorable as what was projected.
- (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 in order to ensure consistent treatment of specific alleged violations.

This agency hereby certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that rule §25.476 relating to Labeling of Electricity with Respect to Fuel Mix and Environmental Impact is hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 24th DAY OF SEPTEMBER 2001.

PUBLIC UTILITY COMMISSION OF TEXAS

MAX YZAGUIRRE, CHAIRMAN

BRETT A. PERLMAN, COMMISSIONER

REBECCA KLEIN, COMMISSIONER