The Public Utility Commission of Texas (commission) adopts new §25.172 relating to Goal for Natural Gas with changes to the proposed text as published in the September 24, 1999, issue of the *Texas Register* (24 TexReg 8008). This section is adopted under Project Number 21072.

The commission adopts this rule for the purpose of implementing the legislature's directive in Senate Bill 7 (SB 7), Act of May 27, 1999, 76th Legislature, Regular Session, chapter 405, 1999 Texas Session Law Service 2543 (Vernon) (to be codified as an amendment to the Public Utility Regulatory Act (PURA), at Texas Utilities Code Annotated §39.9044), that 50% of the generating capacity installed in this state after January 1, 2000, use natural gas. The commission, in response to the legislature's directive, and to the extent permitted by law, establishes a program to encourage utilities to comply with this section by using natural gas produced in this state as the preferred fuel. The program includes the establishment of a natural gas energy trading program.

On August 11, and 16, 1999, commission staff held workshops designed to solicit from interested parties issues critical to the development of a proposed rule. The rule reflects a collaborative effort on the part of staff and those parties. At an open meeting on September 9, 1999, the commission voted to publish a rule for comment in the *Texas Register*. On October 25, 1999, 11 parties filed comments on the proposed rule. On November 8, 1999, commission staff held a public hearing pursuant to §2001.029 of the

Administrative Procedure Act (APA). Thirteen parties attended the public hearing, of which nine provided comments that either addressed provisions set forth in the proposed rule, replied to written comments, or both. The following parties attended the public hearing: Railroad Commissioner Tony Garza (Commissioner Garza); Reliant Energy, Inc. (Reliant); Southwestern Public Service Company (SPS); El Paso Electric Company (El Paso); Pacific Gas and Electric Corporation (PG&E); Environmental Defense Fund (EDF); Central and Southwest Texas Operating Companies (CSW); Center for Energy and Economic Development (CEED); TXU Electric Company (TXU); Austin Energy; South Texas Electric Cooperative (STEC); Chevron; Cities of Denton, Garland and Greenville (Cities); East Texas Electric Cooperatives; and Texas Electric Cooperatives.

The following parties filed comments in response to the proposed rules published on September 24, 1999, in the *Texas Register*: Commissioner Garza; Reliant; SPS; El Paso; PG&E; EDF; CSW; CEED; TXU; Austin Energy; and STEC. The following parties provided oral comments at the November 8, 1999 APA public hearing: TXU; PG&E; Reliant; EDF; Austin; SPS; Chevron; Cities; and Karl Nalepa on behalf of Commissioner Garza.

***Comments on specific questions in the preamble to the proposed rule***

In the preamble, the commission sought comment on whether a natural gas energy credit (NGEC), issued for new gas-fired generating capacity placed in commercial operation

after January 1, 2000 (new gas-fired generating capacity), should be cancelled if the owner retires the plant.

CSW, SPS, STEC, and TXU agreed that if new gas-fired generating capacity is retired the NGECs associated with the plant should be cancelled. STEC suggested that all available credits must be tied to installed capacity that is available to meet the statutory goal. SPS argued that a generating plant or a unit within a plant that becomes inactive should retain its credits as long as that plant or unit within a plant can be returned to service.

CSW made an additional argument: Both new gas-fired and new non-gas-fired generating capacity (non-gas-fired capacity installed in this state after January 1, 2000) should be treated in the same manner for the purpose of establishing a NGEC trading program. Therefore, CSW recommended inclusion of language stating that the NGEC requirements for owners of non-gas-fired new generating capacity be reduced upon the retirement or mothballing of those plants.

Austin Energy, without elaboration, stated that it supports a credit in perpetuity for any power generation company, municipally owned utility or electric cooperative that installs gas-fired capacity after January 1, 2000.

The commission concludes that if new gas-fired generating capacity is retired its associated NGECs shall be revoked. If the NGECs associated with new gas-fired

generating capacity are not revoked when that capacity is retired the intent of PURA §39.9044 would be stymied. If credits remained valid after the retirement of the plant for which the credits were issued, the credits would not be an accurate reflection of the new generating capacity in operation. Moreover, PURA § 39.9044(c)(2)(A) requires new gas-fired generating capacity to meet certain reasonable performance standards to count against the requirement prescribed by PURA § 39.9044(a) – that 50% of the megawatts of generating capacity installed in this state after January 1, 2000, use natural gas. If the owner of new gas-fired generating capacity retires that capacity it can no longer meet reasonable performance standards, and therefore cannot count against the requirement prescribed by § 39.9044(a). The NGECs must be revoked in that event. The commission adopts the rule as proposed with respect to this subsection.

The commission agrees with CSW's recommendation that new gas-fired and new non-gas-fired generating capacity should be treated symmetrically for the purpose of the NGEC trading program. Therefore, if new non-gas-fired generating capacity is retired, the associated responsibility to hold NGECs shall terminate. It is inconsistent with the statute to require the owner of retired new non-gas-fired capacity to continue being responsible for NGECs that were required only because of the installation of that, now retired, new non-gas-fired capacity. The commission, therefore, amends proposed §25.172(d) consistent with this determination.

The commission recognizes the particular issues that arise if it must determine the obligations of the owner of plant that is "mothballed" (or currently inactive). In the case

of new gas-fired generating capacity, the plant would have its NGECs revoked if it were retired. In the case of new non-gas-fired generating capacity the owner's obligation to hold NGECs would terminate if the plant were retired. It is the commission's view that it is unlikely that, at least in the near term, new generating capacity will be mothballed. The commission concludes that it will address this issue when it activates the NGEC trading program.

Under proposed §25.172(e), the commission would activate the NGEC trading program if it determines that, within the following three years, new gas-fired generating capacity in Texas will fall below 60% of all new generating capacity in Texas. Sixty percent acts as a threshold or trigger, which signals the commission to activate the NGEC trading program. The commission asked parties whether the 60% trigger for activating the NGEC trading program was appropriate.

STEC and SPS concluded that the 60% trigger in the proposed rule is appropriate because it provides the commission ample time to activate the NGEC trading program and prevent new gas-fired generating capacity in Texas from falling below the statutorily mandated 50% of all new generating capacity. Austin Energy made two comments: (1) no trigger is required, because the data reporting required under this rule provides adequate time (three forward years) to make adjustments to new generating capacity; and (2) the tenor of workshop discussions was that the 60% trigger was solely a wake-up call in order to ensure that a subsequent rulemaking would take place to provide the specific

detail and structure to allow the program to be ready for trading credits when and if new gas-fired generating capacity falls below 50% of all new generating capacity in Texas.

Reliant suggested that because the trading program is activated when the threshold is as many as three years away, a lower threshold triggering activation of the trading program might be appropriate. TXU echoed Reliant's remarks and suggested that by reviewing three year forecasts of planned generating capacity to determine if the ratio of new gas-fired generating capacity in Texas to all new generating capacity may fall below 50%, the commission has three years to institute a program. TXU reasoned that by using a 60% trigger the commission will have added another three or four years lead time to activating the NGEC program. According to TXU the result is the initiation of the NGEC trading program six to seven years in advance of when necessary to assure compliance with the legislation. TXU recommended a trigger activating the NGEC trading program of 50%. CSW suggested that the commission may choose to accelerate or delay implementation of the individual NGEC requirements in the event such action is appropriate for implementation of sound public policy.

The commission determines that it is appropriate to set the trigger activating the NGEC trading program at 55%, and therefore, amends §25.172(e) accordingly. The commission finds that a trigger above 50% will provide sufficient lead time for activating the NGEC trading program and reduce the possibility that the ratio of new gas-fired generating to all new generating capacity will fall below 50%. A 50% trigger leaves little margin for forecast error and is therefore, inappropriate.

The commission is persuaded by CSW's argument the commission should have discretion when determining whether to implement the NGEC trading program. Furthermore, discretion in this regard is not inconsistent with the statute. Therefore, the commission amends §25.172(e) consistent with CSW's recommendation.

In the preamble to the proposed rule, the commission asked for comments regarding whether §25.172 should contain explicit enforcement mechanisms or whether the commission should amend the rule for the purpose of developing explicit enforcement mechanisms when it activates the NGEC trading program.

CSW, TXU, Austin Energy, Reliant, and STEC agreed that it is not appropriate for the rule to contain explicit enforcement mechanisms at this time. In general, these parties argued that it would be premature for the commission to develop explicit enforcement mechanisms now because at the time the NGEC trading program is activated circumstances may be far different than they are today. In addition, Reliant requested the commission make clear in the rule that no generator will be penalized in any way as long as the statewide ratio of new gas-fired capacity to all new-non-gas fired capacity is greater than or equal to 50%.

SPS and PG&E argued that §25.172 should contain explicit enforcement mechanisms prior to activating the NGEC-trading program. SPS reasoned that any power generation company, municipally owned utility, or electric cooperative that participates in the

NGEC trading program should know the penalties for non-compliance with the rule. In addition, SPS suggested that once the NGEC trading program is activated, the enforcement mechanism may be amended if necessary. PG&E stated that the establishment of effective mechanisms to enforce compliance with the NGEC trading program is essential to the development of an efficient market for trading credits. PG&E suggested that if the consequences of noncompliance are uncertain, market participants with available credits for sale will have inadequate information to assign an accurate value to each credit, and those entities with a minimum NGEC requirement may not respond with appropriate diligence to obtain their requirement or have adequate information to ascertain the fair market value of a credit. PG&E argued that §25.172 should contain a deadline for entities with a minimum requirement to meet its requirements, and that the consequences of noncompliance should be set forth in the rule now, and not left to be developed in a future rulemaking proceeding. Specifically, PG&E suggested that: (1) an entity that fails to comply with the minimum NGEC requirement should be prohibited from generating or purchasing more than 50% of its electric power from non gas-fueled capacity until such entity demonstrates compliance; and (2) the commission should have the discretion to assess administrative penalties to remove any economic benefit a noncompliant entity may have obtained by failing to comply. At the APA public hearing PG&E suggested that it would be acceptable, in lieu of the rule containing explicit enforcement mechanisms, if before activating the NGEC trading program the commission develops explicit enforcement mechanisms.

The commission concludes that it would be premature to adopt explicit enforcement mechanisms at this time. It is reasonable to institute a rulemaking for the purpose of adopting explicit enforcement mechanisms once the commission activates the NGEC trading program. Developing explicit mechanisms at the time the NGEC trading program is activated will provide the commission the appropriate context for adopting enforcement mechanisms. The commission can act quickly and decisively in adopting the appropriate enforcement mechanisms should the NGEC trading program be activated. The commission has, therefore, modified §25.172(e)(2) accordingly.

The commission declines to adopt Reliant's recommendation that the rule state that no generator will be penalized in any way as long as the statewide ratio of new gas-fired generating capacity to new non-gas-fired generating capacity is greater or equal to 50%. It is the intent of the Legislature that 50% of the megawatts of generating capacity installed in this state after January 1, 2000, use natural gas. Reliant's recommendation could cause the statewide ratio to dip below 50%. An important element of the NGEC trading program is that each producer is responsible for meeting the goal, either through constructing sufficient gas-fired generation facilities or buying credits. Reliant's proposal would undermine individual responsibility. Furthermore, Reliant's recommendation is likely to impede the development of a smoothly functioning NGEC trading program, which is a legislative tool for ensuring that the statutory goal is met.

The fourth issue the commission requested the parties address is whether and what type of safeguards are required to ensure that the electricity generated using natural gas is

"green" electricity, in accord with PURA §39.9044(d)(1). That provision of PURA states that the commission, with the assistance of the Railroad Commission of Texas, shall adopt rules allowing a retail electric provider (REP), municipally owned utility, or cooperative to label the electricity generated using natural gas produced in this state as "green" electricity.

Prior to determining what standards should govern marketing claims regarding "green" electricity, the parties explored what it means to claim that electricity is "green." EDF claimed that permitting a REP, municipally owned utility, or electric cooperative to market natural gas as the "cleanest burning fossil fuel," and natural gas-fired electricity as "green," when that electricity is not generated exclusively by natural gas, undermines PURA §39.9044 as well as policy statements of the National Association of Attorneys General addressing environmental marketing. EDF urged the commission to amend §25.172(g) to enable a retail provider to make these marketing claims only if the power is generated exclusively by natural gas. No party expressed opposition to EDF's recommendation.

In addition, during the APA public hearing in this proceeding, the parties and staff explored whether there should be any exceptions to the requirement, recommended by EDF, that "green" power be produced exclusively by natural gas. Parties generally agreed that the following are reasonable exceptions to the exclusivity standard proposed by EDF: (1) fuel oil used solely as an emergency backup fuel; (2) periodic testing of

such backup fuel; and (3) *de minimus* amounts of oil, serving as a lubricant, occasionally burned with natural gas.

The commission agrees, in principle, with EDF's recommendation that electricity generated exclusively with natural gas, and not with material additions of other fossil or biomass fuels, is qualified to be marketed as "green" electricity under this section. However, while PURA §39.9044 says a provider can "label the electricity generated using natural gas produced in this state as "green" electricity," it does not say that electricity from other sources – particularly renewable technologies – cannot be labeled as "green," nor in any way limit the use of the term "green". The commission finds that there are reasonable exceptions to the standard for marketing power as "green" as set out above. The commission concludes that a non-exhaustive list of exceptions should include those recommended by the parties. The commission, therefore, amends §25.172(g)(2) accordingly.

Regarding the establishment of safeguards governing the marketing of electricity as "green," Austin Energy commented that no explicit safeguards are necessary because proposed §25.172(g)(3) indicates that each power generation company, municipally owned utility, or electric cooperative shall provide sufficient proof upon request that its generation is "green." Austin Energy states that this gives the commission ample latitude to request relevant information at the time to verify that power marketed as "green" meets the requirements of PURA §39.9044(d). TXU expressed the view that the statute itself is unambiguous and that additional safeguards would be redundant. However, TXU

explained, if there is any question regarding this issue, the language in proposed §25.172(g)(3) is sufficient. STEC suggested that retail customers who purchase "green" power should be assured that they are paying for power that is generated exclusively from natural gas produced in this state. STEC also suggests that the commission could use information from the reports to be filed beginning in 2001 to determine whether a retail electric provider (REP), municipally owned utility, or electric cooperative owns or has purchased qualified capacity to meet the needs of the customers who have purchased "green" power. STEC recommended that §25.172(h)(1) be amended to require that such information be provided. Reliant concluded that no additional safeguards are necessary beyond those provided in §25.172(g)(3). SPS concluded that it will be difficult at best and perhaps impossible to prove that "green" electricity is electricity generated using natural gas produced in Texas.

Commissioner Garza commented that the Texas Legislature made clear that not all natural gas is the same when it recognized that natural gas produced in Texas is the cleanest burning fossil fuel, and is environmentally beneficial (PURA §39.9044(d)(1)). Commissioner Garza stated that Texas is currently a net exporter of natural gas and therefore it can be inferred that natural gas used to generate electricity in Texas, was, or could have been, produced in Texas. Therefore, according to Commissioner Garza, extensive safeguards to verify the fuel source for gas fired generation are unnecessary at this time. Commissioner Garza suggested that, because Texas could become a net importer of natural gas in the future, explicit language should be incorporated in this rule

to recognize this market dynamic and provide for further analysis in the event that the Texas natural gas supply and demand balance change appreciably.

The commission concludes that because Texas is currently a net exporter of natural gas it can be inferred that natural gas used to generate electricity in Texas, was, or could have been, produced in Texas. Therefore, extensive safeguards governing the marketing of electricity as "green", are unnecessary at this time. However, the commission recognizes that market conditions can change and agrees with the recommendations put forth by Commissioner Garza in that event. The commission amends §25.172(g) accordingly. The commission also concludes that a retail electric provider, municipally owned utility, or electric cooperative that has adopted customer choice must show that the natural gas-fired electricity it markets as "green" was generated exclusively from generating capacity using Texas natural gas. This is a reasonable standard and one which a retail electric provider, municipally owned utility, or electric cooperative that has adopted customer choice can meet, for example, by specifying in contracts with power generating companies that it is purchasing electricity generated exclusively from generating capacity using natural gas.

The commission, in the preamble to the proposed rule, requested parties to address how capacity additions to existing facilities, made after January 1, 2000, should be treated with respect to the NGEC trading program.

Reliant concurred with the definition of new generating capacity in proposed §25.172(c)(1), which exempts modifications to existing facilities which merely increase the efficiency of currently installed equipment. Reliant explained that such modifications are not likely to materially impact the attainment of the statutory goals, and the tracking and reporting of such modifications add unnecessary administrative burden to generators and commission staff.

According to TXU, modifications made for the purpose of increasing the efficiency of such facilities as well as modifications required for environmental purposes should not be considered new generating capacity. TXU reasoned that by not including these two types of capacity additions in the definition of new generating capacity, the commission can avoid having the rules serve as a disincentive to reduce emissions of nitrogen oxides and seek efficiency gains for the purpose of lowering the cost of electricity. Furthermore, TXU claimed it would be impossible to track such capacity additions if they were included in new generating capacity. According to TXU, by excluding these types of generation gains in the definition of new generating capacity the commission is merely recognizing that such generation capacity began commercial operation in this state prior to January 1, 2000, and is appropriately excluded.

SPS agreed with the commission's proposed definition of new generating capacity and suggested that modifications to generation facilities that merely increase efficiency of currently installed equipment should not be considered new generation. However, SPS suggested that there should be a provision for the inclusion of co-firing to existing coal or

lignite-fueled units in the definition of new capacity. SPS stated that co-firing of natural gas in the coal and lignite boilers directly reduces the amount of coal or lignite being burned. While acknowledging that co-firing does not add to the generating capacity of the unit, SPS noted that it does reduce emissions from coal and lignite generation, and increases the amount of natural gas used for the generation of electricity.

STEC stated that all capacity additions to existing facilities, made after Jan 1, 2000, should be included in the NGEC trading program. STEC argued that a municipal utility or electric cooperative may plan to make capacity additions over time for financial reasons and should not be penalized for doing so.

Austin Energy recommended that capacity additions to gas technology facilities installed after January 1, 2000, should be counted as part of nameplate generation capacity for purposes of the NGEC trading program as long as: (1) the capacity addition is ten megawatts or greater per generating unit; and (2) the capacity additions meet reasonable performance standards as defined in this rule. PG&E states that if modifications to existing generation facilities increase capacity by more than a *de minimis* amount (it suggested a 3.0% increase in capacity) and are undertaken for the purpose of increasing the efficiency and not solely as an environmental upgrade, such increased capacity should be counted as new generating capacity.

The commission concludes that capacity additions that merely increase the efficiency of, or reduce emissions from, previously installed capacity, do not qualify as new generating

capacity for the purpose of the NGEC trading program because: (1) such capacity additions do not materially increase or decrease the amount of natural gas used for the generation of electricity; (2) tracking such capacity additions creates a significant administrative burden; and (3) given the thousands of megawatts of new generating capacity being installed in Texas, including marginal additions to existing units it is unlikely to materially affect the NGEC trading program or a plant owner's compliance with an NGEC trading program. Therefore, the commission amends §25.172(c)(1) to reflect that determination.

Parties were encouraged to suggest ways to: (1) track new generating capacity as a result of the installation of new gas-fired distributed generation; and (2) monitor the performance of new gas-fired distributed generation facilities.

STEC suggested: (1) that the wires company is in the best position to track additions of natural gas-fired distributed generation and to monitor the performance of the facilities; and (2) new non-gas-fired distributed generation capacity should be exempt from this rule if a cooperative or municipally-owned utility or REP must purchase such capacity under state or federal law. CSW expressed the view that such reporting should be accomplished in another forum. CSW suggested that persons owning or operating distributed generating units could report information, perhaps through an abbreviated version of the reports filed under Public Utility Commission Substantive Rule §25.105, *Registration and Reporting of Power Marketers, Exempt Wholesale Generators, and Qualifying Facilities*. In addition, CSW suggested that the commission presently has

such a mechanism available to it, as part of the proposed unbundling rules currently under consideration in Project Number 21083, *Cost Unbundling and Separation of Utility Business Activities, Including Separation of Competitive Energy Services and Distributed Generation.*

TXU and Reliant suggested that the rule issuing from Project Number 21220, *Interconnection of Distributed Generation and Technical Requirements for Interconnection and Parallel Operation of On-site Distributed Generation,* will likely establish registration and reporting procedures that could facilitate the tracking of new distributed generation capacity.

The commission finds that the information necessary and adequate to track new generating capacity, including new distributed generating capacity, should be filed pursuant to proposed §25.172(h). That subsection requires each registered power generation company, municipally owned utility, and electric cooperative to file on an annual basis data necessary to track new generating capacity purchased or installed as well as a three-year forecast of new generating capacity. The commission is confident that all new generating capacity will meet those standards because competition will lead generating companies to maximize energy output consistent with industry standards widely accepted at the time of installation and for the technology employed.

The Center for Energy and Economic Development (CEED) filed comments in this proceeding in which it expressed concern that the implementation and enforcement of

rules designed to promote the use of Texas natural gas by means of market manipulation such as those proposed by §25.172(g), may be a violation of that portion of Article 1, Section 8 of the United States Constitution that relates to federal authority to regulate commerce among the states, commonly known as the commerce clause. Furthermore, CEED suggested that the language of PURA §39.9044 encouraging the use of "natural gas produced in this state" is not an exercise of the state' police powers related to the protection of the public health and welfare that would warrant imposing limitations on interstate commerce in fuels. CEED strongly urged the commission to give its first priority in this project to a review of these Constitutional issues. CEED recommends that the commission include in the first sentence of §25.172(b) the phrase that appears in PURA §39.9044, "to the extent permitted by law." According to CEED, the application of this rule should be subject to this limitation.

The commission concludes that the amendment recommended by CEED is appropriate and more clearly reflects the intent of the legislation. The commission amends §25.172(b) consistent with CEED's recommendation.

El Paso recommended that §25.172(a) be amended to clarify that this section does not apply to an electric utility not subject to PURA Chapter 39, §39.102(c), until the expiration of the freeze period.

The commission adopts El Paso's recommendation, and therefore, amends §25.172(a) accordingly.

The commission concludes that the word "qualifying" in §25.172(c)(2) is redundant. In that subsection "qualifying capacity" refers to capacity that meets the performance standards set forth in §25.172(c)(3). Therefore, the commission amends that subsection accordingly.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section the commission makes other minor modifications for the purpose of clarifying its intent.

This new section is adopted under the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §14.001 and §14.002, 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 §39.9044 Goal for Natural Gas, which sets forth the state's policy regarding a goal for natural gas-fired generating capacity installed after January 1, 2000.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002 and 39.9044.

## §25.172. Goal for Natural Gas.

(a) **Applicability**. This section applies to a power generation company, municipally owned utility, or electric cooperative that installs new generation capacity in this state after January 1, 2000. The provisions of subsection (g) of this section shall apply to a municipally owned utility or an electric cooperative only if it has adopted customer choice pursuant to the Public Utility Regulatory Act (PURA) §40.051(a) or §41.051(a) respectively. This section does not apply to an electric utility not subject to PURA Chapter 39, pursuant to §39.102(c), until the expiration of its freeze period.

(b) **Purpose**. The purpose of this section is to encourage, to the extent permitted by law, owners of new generating capacity, other than capacity from renewable energy technologies, to use natural gas as their primary fuel source. The commission shall institute a natural gas energy credits trading program to ensure that 50% of all new generating capacity except, capacity from renewable energy technologies, installed in this state after January 1, 2000, uses natural gas as its primary fuel.

(c) **Definitions.**

(1) **New generating capacity** — Nameplate generating capacity of a facility installed in this state after January 1, 2000, except capacity based on a renewable energy technology. This definition of new generating capacity

does not include modifications to previously installed generating facilities that merely increase the efficiency of, or reduce emissions from, such facilities. For the purposes of this section the phrase "new generating capacity purchased" refers to the purchase of all or part of an installed unit, and not to the purchase of capacity or energy from an installed unit.

(2) **Natural gas energy credit (NGEC)** — A NGEC shall be granted for each megawatt of new generating capacity fueled by natural gas. The commission shall issue NGECs to each power generation company, municipally owned utility, or electric cooperative that installs new, gas-fired generating capacity. Each credit shall be issued once and shall be valid so long as the plant meets reasonable performance standards; if a plant no longer meets reasonable performance standards or is retired, its associated NGECs shall be revoked.

(3) **Reasonable performance standards** — Those standards which, when applied to new natural gas-fired capacity, would reasonably be expected to maximize energy output consistent with industry standards widely accepted at the time of installation and for the technology employed.

(d) **Natural gas energy credit requirement.** Upon activation of the NGEC trading program the number of NGECs required to be owned or held by each power generation company, municipally owned utility, and electric cooperative in this state shall not be less than its new non-gas-fired generating capacity in

megawatts. Upon retirement of new non-gas-fired generating capacity, the NGEC requirement shall be reduced by the capacity of the facility that is retired.

(1) The requirements of this section may be satisfied by owning new generating capacity fired primarily by natural gas, for which NGECs have not been sold to a third party, or by holding NGECs acquired from third parties, either in connection with purchasing capacity or on a stand-alone basis, or by any combination thereof.

(2) A power generation company, municipally owned utility, or electric cooperative that does not own new generation capacity shall not be required to obtain any natural gas credits.

(e) **Program activation.** The commission shall activate the natural gas energy credits trading program if it determines that within three years from the date of the evaluation, new generating capacity in Texas that is fueled primarily by natural gas may fall below 55% of all new generating capacity. However, the commission may accelerate or delay implementation of individual NGEC requirements in the event the commission determines that such action is in the public interest. This analysis shall be based on the annual reports filed pursuant to subsection (h) of this section. If the commission activates the program, it shall:

(1) require power generators, municipally owned utilities, and electric cooperatives to demonstrate that for each megawatt of new non-gas fired generating capacity it owns or holds natural gas energy credits equal to that amount of capacity; and

(2) Within 240 days, adopt rules that will determine the conditions for compliance and penalties for noncompliance with this section for each power generator, municipally owned utility, and electric cooperative.

(f) **Natural gas energy credit trading.** The commission shall be responsible for issuing, tracking and assigning serial numbers to NGECs in accordance with this section. The total number of NGECs at any time shall equal the amount of new gas-fired generating capacity (MW) that uses natural gas as its primary fuel source, less any NGECs revoked to reflect plant retirements or poor performance relative to the standards referred to in subsection (c)(4) of this section. NGECs may be traded among power generators, municipally owned utilities, electric cooperatives, and other interested parties.

(g) **Environmental benefits and "green" electricity.** Each retail electric provider, municipally owned utility, or electric cooperative that has adopted customer choice:

(1) may emphasize that natural gas produced in this state is the cleanest burning fossil fuel;

(2) may market electricity generated using natural gas produced in this state as environmentally beneficial and may label such generation as "green" electricity under this section if such electricity is generated exclusively from generating capacity based on natural gas technologies that use natural gas produced in this state. The use of fuel oil in a generating

facility that otherwise relies on natural gas as its sole fuel shall not preclude labeling output from the facility as "green" if the fuel oil is used for:

(A) emergency backup;

(B) periodic testing; or

(C) a lubricant in *de minimus* amounts; and

(3) shall provide sufficient proof, upon request, that any marketing representation that it makes that its electricity is "green" are consistent with this section.

(h) **Annual reports.**

(1) Beginning in 2001, no later than February 14th of each year, each registered power generation company, municipally owned utility, and electric cooperative shall file with the commission on a form prescribed by the commission, the following information regarding new generating facilities it owns or operates in Texas:

(A) For each unit of new generating capacity:

(i) plant location and name;

(ii) nameplate capacity (in megawatts) of each unit;

(iii) ownership share of each unit;

(iv) primary fuel type of new generating capacity;

(v) Texas Natural Resource Conservation Commission turbine or boiler permit number and date; and

(vi) date that commercial operation began.

(B) Forecasted generation additions by fuel type for the next three calendar years (for the next five calendar years if the fuel type is coal, lignite, or nuclear):

(i) plant location and name;

(ii) nameplate capacity (MW) of each unit;

(iii) ownership share of each unit;

(iv) primary fuel type of new generating capacity;

(v) Texas Natural Resource Conservation Commission turbine or boiler permit number and date; and

(vi) date that commercial operation will begin.

(C) Data on holdings of natural energy gas credits:

(i) current holdings of credits by serial number; and

(ii) any purchase or sale of credits by serial number during the previous calendar year.

(2) Based on the annual reports, not later that April 15th of each year, the commission shall award NGECs for new-gas fired capacity installed in the previous year.

(3) Beginning in 2001, and no later than May 15th of each year, the commission shall publish, in aggregate form only, the information submitted in compliance with this rule, including calculations that show whether the prior year's generating capacity in Texas is in compliance with this section and whether capacity for the following three years is likely to

be in compliance with the natural gas usage goals, based on the forecast information submitted.

(i) **Texas natural gas – market conditions.** The commission shall consult with the Railroad Commission of Texas, which shall monitor the Texas natural gas industry and conduct appropriate market studies to determine whether an adequate supply of Texas natural gas for power generation exists. If necessary, the commission shall develop additional safeguards to ensure that natural gas produced in this state remains the preferred fuel for power generation.

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 §25.172 relating to Goal for Natural Gas is hereby adopted with changes to the text as proposed.

**ISSUED IN AUSTIN, TEXAS ON THE 6th DAY OF DECEMBER 1999.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**Chairman Pat Wood, III**

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**Commissioner Judy Walsh**

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**Commissioner Brett A. Perlman**