The Public Utility Commission of Texas (commission) proposes new §25.172 relating to Goal for Natural Gas. The proposed new rule implements a provision of Senate Bill 7, 76th Legislature, Regular Session (1999) that will be codified as Texas Utilities Code, §39.9044. The proposed new rule establishes a natural gas energy credit (NGEC) trading program to meet the legislative goal that 50% of the electric generating capacity installed in this state after January 1, 2000, use natural gas. Project Number 21072 has been assigned to this proceeding. Copies of this proposed rule may be obtained in Central Records and on the commission's web page at http://www.puc.state.tx.us/rules/rulemake/21072/21072.cfm.

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.

Gary M. Torrent, Ph.D., Economic Analyst, Office of Policy Development, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Dr. Torrent has determined that for each year of the first five years the proposed section is in effect the public will benefit from the promotion of the use of natural gas produced in Texas. There will be no effect on small businesses or micro-businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Dr. Torrent also has 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. The hearing will be conducted on November 8, 1999, at 9:30 a.m. in the Commissioner's Hearing Room.

The commission staff held a workshop in this project on August 11, 1999, to discuss the contents of the proposed rule. Stakeholders in the industry and commission staff held a task force meeting on August 16, 1999, to prepare a first draft of the proposed rule. In preparing the proposed rule, the commission staff considered the draft rule developed by the taskforce and comments from workshop participants.

The commission encourages interested parties to provide comments on relevant issues related to the proposed rule. In addition, as a result of the discussions at the workshop and the task force meeting, the commission requests that interested parties address the following issues: First, whether a credit for installed gas-fired capacity placed in commercial operation after January 1, 2000, should be cancelled if the owner retires the plant; second, whether the threshold designed to trigger the activation of the natural gas energy trading program proposed in subsection (e) is appropriate. If not, please suggest an alternative threshold and a rationale for the recommendation; third, whether §25.172 should contain explicit enforcement mechanisms or whether the commission should amend the rule when it activates the credit trading program; fourth, whether and what type of safeguards are required to ensure that the electricity generated using natural gas is "green" electricity as enunciated in PURA §39.9044(d); fifth, how should capacity additions to existing facilities, made after January 1, 2000, be treated with respect to the NGEC trading program. Finally, parties may suggest ways to track additions to capacity supplied by natural-gas fired distributed generation and monitor the performance of those distributed generation facilities.

Comments on the proposed new rule (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 21072.

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.001 and §14.002 (Vernon 1998) (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 §39.9044 Goal for Natural Gas, which sets forth the state's policy regarding a goal for natural gas-fired capacity installed after January 1, 2000.

Cross Reference to Statutes: PURA §§14.001, 14.002 and 39.9044.

§25.172. Goal for Natural Gas.

(a) **Applicability**. This section shall apply 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) and §40.052(a) respectively.

(b) **Purpose**. The purpose of this section is to encourage owners of new generating capacity, other than capacity from renewable energy technologies, to use natural gas as the primary fuel source. The commission shall institute a natural gas energy credits trading program to ensure that at least 50% of all new generation capacity excepting 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 generation capacity placed in commercial operation in this state after January 1, 2000, excepting capacity based on renewable energy technologies. This does not include modifications to generation facilities that merely increase efficiency of currently installed equipment. 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 right to purchase capacity or energy from an installed unit.

(2) **Natural gas energy credit (NGEC)** — A NGEC shall be granted for each megawatt (MW) of new generating capacity fueled by natural gas installed after January 1, 2000. The commission shall issue NGECs to each power generation company, municipally owned utility, or electric cooperative that installs new, qualifying 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) **RATIO** — All natural gas-fired capacity qualifying for NGECs (MWs) as a percentage of all new generating capacity (MW). RATIO is calculated by dividing all existing NGECs (MW equivalent) by all new generating capacity (MW) and multiplying the result by 100.

(4) **Reasonable performance standards** — Those standards which, when applied to natural gas-fueled capacity installed after January 1, 2000, would reasonably be expected to maximize energy output consistent with industry standards widely accepted at that time for the type of facility installed.

(d) **Natural gas energy credit requirement** After the commission activates 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 equal its new non-gas-fired generating capacity additions (MW), other than capacity from renewable energy technologies, installed in this state after January 1, 2000.

(1) The requirements of this section may be satisfied by owning new generation capacity fueled primarily by natural gas, for which NGECs have not been sold to a third party, or by holding NGECs through contracts with 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, implemented on January 1, 2000, if either of the following events occurs: The commission deems that activating the trading program is in the public interest or determines that within the next three years, new generating capacity in Texas that is fueled primarily by natural gas may fall below 60% of all new generating capacity. Sixty-percent is the RATIO triggering the trading program. 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 MW of new generating capacity, excluding capacity using natural gas as a primary fuel or renewable energy technologies, it owns or holds natural gas energy credits equal to that amount of capacity.

(2) For each power generator, municipally owned utility, and electric cooperative deemed out of compliance, the commission shall determine and enforce an

appropriate penalty pursuant to PURA, CHAPTER 15, Subchapter B, Enforcement and Penalties.

(f) **Natural gas energy credit trading.** The commission shall be responsible for assigning and tracking NGECs. The total number of NGECs at any time shall equal the total new generating capacity (MW) installed since January 1, 2000 that uses natural gas as its primary fuel less any NGECs revoked to reflect plant retirements or poor performance relative to the standards referred to in subsection (c)(4) of this section. The commission will be responsible for assigning a serial number to each NGEC. NGECs may be traded among power generators, municipally-owned utilities, electric cooperatives, and other interested parties.

(g) **Environmental benefits.** 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; and

(3) shall provide sufficient proof upon request, that its "green" electricity is generated using natural gas produced in this state.

(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 generation facilities it owns or operates in Texas:

(A) For each unit of new generating capacity purchased or installed since January 1, 2000:

(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 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 or lignite):

(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 the intent of this section and whether the next three years are likely to be in compliance with the natural gas usage goals based on the forecast information submitted.

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 10th DAY OF SEPTEMBER 1999 BY THE PUBLIC UTILITY COMMISSION OF TEXAS RHONDA G. DEMPSEY