

PROJECT NO. 34888

RULEMAKING RELATING TO	§	PUBLIC UTILITY COMMISSION
NUCLEAR DECOMMISSIONING COSTS	§	
AND REQUIREMENTS FOR CERTAIN	§	OF TEXAS
UNITS CONSTRUCTED BY A POWER	§	
GENERATION COMPANY	§	

**PROPOSAL FOR PUBLICATION OF NEW §25.304
AS APPROVED AT THE DECEMBER 19, 2007 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes new §25.304, regarding the funding of nuclear decommissioning trusts and the related requirements to be met by power generation companies (PGCs) operating in Texas. The proposed new rule is intended to implement the requirements of Public Utility Regulatory Act (PURA) §39.206, Texas Utilities Code Annotated (Vernon 2007), as added by the 80th Texas Legislature. The proposed new rule will establish the minimum financial assurance standard for PGCs interested in constructing nuclear generation power plants as well as the funding, administration, and monitoring requirements for nuclear decommissioning trust funds. This rule is a competition rule subject to judicial review as specified in PURA §39.001(e). Project Number 34888 is assigned to this proceeding.

Mr. Richard Lain, Financial Analyst, Rate Regulation Division, Financial Review Section, 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.

Mr. Lain 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 the assurance that PGCs are financially capable of decommissioning nuclear power plants once they have been removed from public service. This development will assist the State of Texas in achieving its goal of fostering a competitive market for the purchase and sale of electricity. The commission currently has rules applicable to nuclear decommissioning trusts for nuclear generating plants constructed by the previously bundled electric utilities in Texas. PURA §39.206 requires the commission to develop similar rules for new nuclear generating plants that may be constructed by PGCs operating in Texas, as a means of encouraging the development of nuclear power in the state. The construction of such plants may provide benefits to the public interest by diversifying the fuel mix of generating plants in Texas and making Texas less dependent upon existing fossil fuel sources. The proposed new section provides a structure for funding of nuclear decommissioning trusts that places the funding obligation on owners of the plants, with ratepayers only providing a guarantee for funding. The proposed new section also specifies the information required to establish the funding mechanism and the reporting requirements to enable the commission to monitor and enforce the requirements for nuclear decommissioning trusts. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section.

Mr. Lain 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 (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Friday, February 1, 2008, at 9:30 a.m. The request for a public hearing must be received within 21 days after publication.

Comments on the proposed new section may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 21 days after publication. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the implementation of the proposed section. All comments should refer to Project Number 34888.

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007) (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; PURA §39.206, which requires the commission to adopt rules governing the establishment and operation of nuclear decommissioning trusts established for new nuclear generating units.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §39.206.

§25.304. Nuclear Decommissioning Funding and Requirements for Power Generation Companies.

- (a) **Purpose.** The purpose of this section is to establish the terms for power generation companies (PGCs) for using a PGC decommissioning trust to satisfy the financial assurance requirements for decommissioning a nuclear generating unit and to delineate the rights and obligations of PGCs electing to use a commission-approved method for providing funds from Texas customers for decommissioning a nuclear generating unit, as a means of complying with nuclear decommissioning financial assurance requirements.
- (1) A PGC is not required to use the methods set out in this section and may discontinue the use of the methods set out in this section, if it chooses to satisfy the financial assurance requirements of the federal Nuclear Regulatory Commission by using other methods acceptable to the Nuclear Regulatory Commission.
- (2) A PGC decommissioning trust established in accordance with this section is separate from a Nuclear Decommissioning Trust created under §25.303 of this title (relating to Nuclear Decommissioning Following the Transfer of Texas Jurisdictional Nuclear Generating Plant Assets).
- (b) **Applicability.** A PGC owning all or a portion of a qualifying nuclear generating unit may use a PGC decommissioning trust as an external sinking fund in compliance with this section provided that the use of the methods of financial assurance set out in this section shall be available only to the first six nuclear generating units under construction

after January 1, 2007 and before January 15, 2015, that elect to use a PGC decommissioning trust.

(c) **Definitions.**

- (1) Decommissioning—includes the safe decommissioning and decontamination of a nuclear generating unit, equipment, and materials consistent with federal Nuclear Regulatory Commission requirements.
- (2) External sinking fund—A fund established and maintained by setting aside funds periodically in an account segregated from the PGC's assets and outside the PGC's administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities.
- (3) PGC decommissioning trust—Funds that are contained in one or more external and irrevocable trusts created for the purpose of protecting and holding revenue collected from a PGC to cover the costs of decommissioning a Texas jurisdictional nuclear generating plant at the end of its useful life.
- (4) Retail electric customer—A retail electric customer in a geographic area of Texas in which retail customer choice has been implemented, or a retail electric customer of a municipally-owned utility or electric cooperative that has an agreement to purchase power from a nuclear generating unit.

- (d) **Application.** If a PGC elects to use a PGC decommissioning trust, the PGC shall submit an application to the commission for an order establishing the amount of annual decommissioning funding and approving trust agreements. A PGC may combine

applications for more than one qualifying nuclear generating unit. An application must contain the following information:

- (1) Identification of each nuclear generating unit included in the application;
 - (2) Quantification of the PGC's percentage of ownership of each unit;
 - (3) Decommissioning cost study using the most currently available information on the cost of decommissioning each unit as set out in subsection (h)(2) of this section;
 - (4) Funding analysis identifying the expected amount of annual decommissioning funding determined as set out in subsection (i) of this section;
 - (5) Description of the method to be used to satisfy the state assurance obligation set forth in subsection (k) of this section, including any guarantee agreements, support agreements, credit agreements, or letters of credit or surety bonds;
 - (6) Agreements with an institutional trustee and investment manager to manage the PGC decommissioning trust that are consistent with this section and the terms and conditions required by the federal Nuclear Regulatory Commission; and
 - (7) Projected date for beginning funding of the PGC decommissioning trust, which must be prior to the commencement of initial fuel load and commercial operation of the nuclear generating unit.
- (e) **Commission Review.**
- (1) The commission staff will endeavor to recommend approval, amendment, or disapproval of an application setting annual decommissioning funding and

financial agreements to implement the trust requirements within 120 days of receipt of a sufficient application, unless a hearing on the application is required.

- (2) A request for hearing shall be filed by the date specified by the presiding officer which shall be no more than 60 days after the filing of the application. If a hearing is scheduled, the commission will endeavor to issue a final order within 180 days after the filing of a request for hearing.
- (3) If no hearing is requested, the commission staff concludes that the application setting annual decommissioning funding and the trust agreements meet all requirements of this section, and the commission staff recommends approval, the application may be approved administratively or informally pursuant to §22.35 of this title (relating to Informal Disposition).
- (4) If the commission staff recommends an amendment to the funding or trust agreements, within 14 days after filing of staff's recommendation, the PGC shall either file an amended application incorporating the staff's proposed amendments or request a hearing.
- (5) If no hearing is requested and the PGC files an amended application that meets all requirements of this section and incorporates the staff recommendations, the application may be approved administratively or informally pursuant to §22.35 of this title.
- (6) If the commission staff recommends denial and the PGC requests a hearing, or if the PGC does not file an amended application incorporating staff's

recommendations within 14 days, the request shall be docketed as a contested case proceeding to approve, modify, or reject the application.

- (f) **Order.** An order approving the application shall establish the amount of annual funding necessary to meet the decommissioning obligations for the nuclear generating unit over the unit's operating license period as established by the federal Nuclear Regulatory Commission or over a shorter period of time at the election of the PGC.
- (g) **Annual Reports.** On or before May 1 of each year, each PGC for which the commission has approved a funding amount and trust agreements under this section shall file an annual report for the prior year that provides the status of its PGC decommissioning trusts and any changes in the administration of the trusts, and an update of its ability to fund the PGC decommissioning trust. The report shall be on a form approved by the commission.
- (h) **Periodic Commission Review.** At least once every three years the PGC shall file a decommissioning cost study and funding analysis or updates of previous studies using the most current information reasonably available to the PGC.
 - (1) The commission shall review the studies submitted by a PGC and other currently available information using the procedure provided in subsection (e) of this section.
 - (2) During the initial and each periodic review of decommissioning costs, the following information shall be provided:
 - (A) The decommissioning cost study and funding analysis accompanied by a report and testimony supporting the analysis and the requested annual

funding amount. The funding analysis shall be based on the most current information reasonably available concerning the cost of decommissioning, an allowance for contingencies of not more than 10% of the cost of decommissioning, the balance of funds in the decommissioning trusts, anticipated escalation rates, the anticipated after-tax return on the funds in the trust, and other relevant factors. In no event will the cost estimate for basic radiological decommissioning be less than the minimum amount required by the federal Nuclear Regulatory Commission. The funding analysis shall be accompanied by a description of the assumptions used in the analysis and shall calculate the required annual funding amount necessary to ensure sufficient funds to decommission the nuclear generating plant at the end of its useful life.

- (B) A demonstration that the decommissioning funds are being or will be invested prudently and in compliance with the investment guidelines in subsection (o) of this section.
- (C) A demonstration of efforts to achieve optimum tax efficiency as defined in subsection (o)(2)(C) of this section, including, as applicable, maintenance of tax-exempt status or efforts to achieve “qualified” status in accordance with Internal Revenue Code §468A (or any successor thereto) with respect to the PGC’s taxable PGC decommissioning trusts.

- (D) Confirmation that the federal Nuclear Regulatory Commission either has made, or will make, a finding that there is reasonable assurance of the financial qualifications of the PGC, as required by federal regulations.
 - (E) Compliance with the state funding assurance obligation set forth in subsection (k) of this section.
- (3) The commission shall ensure that the amount of annual decommissioning funding is consistent with the most recent decommissioning cost study and funding analysis, and that the PGC decommissioning trust is adequately funded. The PGC shall update its state assurance obligation to reflect changes in the annual decommissioning funding amount.
- (i) **Annual Decommissioning Funding Amount.** The amount of annual decommissioning funding for a PGC decommissioning trust shall be an amount that, based on such factors as the balance of funds in the decommissioning trust, anticipated escalation rates, and anticipated after-tax return on funds in the decommissioning trust, will cover the cost of decommissioning a nuclear generating unit at the end of its operating license period. The amount shall be calculated based on the most current reasonably available information, consistent with the most recent decommissioning cost study, and divided by the remaining years of the license or a shorter period of time at the election of the PGC. The decommissioning cost study and funding analysis shall include the information required by subsection (h)(2)(A) of this section. The commission, on its own motion or on the motion of the commission staff, may initiate a proceeding to review the PGC's trust

balances or the annual funding amount. The PGC shall provide any information required to conduct the review in accordance with the commission's procedural rules.

(j) **Creditworthiness of PGC.** For the purposes of the initial application under this section, creditworthiness of the PGC will be established primarily through satisfying the State Assurance Obligation as provided for in subsection (k) of this section.

(k) **State Assurance Obligation.** A PGC using a commission approved PGC decommissioning trust shall provide additional financial assurances that funds will be available to satisfy 16 years of annual decommissioning funding, based on the most recent annual decommissioning funding amount approved by the commission (the state assurance obligation amount). If the remaining funding contribution period is less than 16 years, the state assurance obligation will be based on the remaining number of years of annual decommissioning funding. The state assurance obligation amount will be the discounted value of annual decommissioning funding for the relevant period up to 16 years. Any arrangement for satisfying the state assurance obligation shall permit the trustee of a decommissioning trust to demand payment by any company holding funds or providing an assurance and require the company holding funds or providing an assurance to remit funds to the trust, in accordance with this section. The PGC shall include in its annual report a demonstration of compliance with the requirements of this subsection. The state assurance may be used to provide assurance required by state or federal law for other similar purposes relating to the operation of the facility, such as assurance for the funding to cover estimated operation costs, provided that adequate terms are included to replenish the amounts available under the assurance mechanism if funds are withdrawn for any such other purpose. The state assurance obligation may be accomplished by

using one or more of the following methods at the election of the PGC, in the form approved by the commission:

- (1) A PGC may satisfy the state assurance obligation by depositing the required amount of funds into an escrow account, a government fund, a nuclear decommissioning trust subject to the commission's investment standards set out in this title, or other type of acceptable agreement with an entity whose operations are regulated and examined by a federal or State agency.
- (2) A PGC may satisfy the state assurance obligation by obtaining a written guarantee or financial support agreement from a direct or higher-tier parent corporation or a corporation with a substantial business relationship with the PGC. The guarantee or financial support agreement must be payable to the PGC decommissioning trust. The parent or supporting corporation must meet one of the following standards:
 - (A) The parent or supporting corporation must have:
 - (i) Tangible net worth of at least 10 times the state assurance amount, excluding the net book value of the nuclear units subject to the state assurance obligation;
 - (ii) Tangible net worth of at least \$500 million;
 - (iii) Net working capital of at least 10 times the annual decommissioning funding amount; and

- (iv) Assets located in the United States amounting to at least 90% of the total assets or at least 10 times the state assurance amount.
 - (B) The parent or supporting corporation must be otherwise financially qualified, based upon a finding by the commission that there is reasonable assurance that the parent or supporting corporation will be able to meet its obligations under the guarantee or other agreement.
- (3) A PGC may satisfy the state assurance obligation by providing an adequate surety, insurance, or other guarantee method that meets the following minimum requirements:
 - (A) A guarantee that the state assurance obligation will be paid to the PGC decommissioning trust upon any default by the PGC in satisfying its annual funding obligation.
 - (B) A surety method may be in the form of a surety bond, letter of credit, or line of credit. Any surety method or insurance used to satisfy the state assurance obligation must contain the following conditions:
 - (i) The surety method or insurance must be open-ended, or, if written for a specified term, such as five years, must be renewed automatically, unless 90 days or more prior to the renewal day the issuer notifies the commission and the PGC of its intention not to renew. The surety or insurance must also provide that the full face amount will be paid to the PGC decommissioning trust automatically prior to the expiration without proof of forfeiture if

the PGC fails to provide a replacement acceptable to the commission within 30 days after receipt of notification of cancellation.

(ii) The issuer must have a minimum rating of A- by Standard and Poor's Corporation, A3 by Moody's Investor's Service or the equivalent rating from A.M. Best.

(iii) The surety or insurance must be payable to the PGC decommissioning trust.

(4) A PGC may satisfy the state assurance obligation using any other method acceptable to the commission considering the relative risk factors and creditworthiness attributes of the applicant's financial characteristics to minimize exposure of retail electric customers to default by power generation companies.

(1) **Annual Funding Obligation.** A PGC using a PGC decommissioning trust shall remit annually to the fund the most recent annual decommissioning funding amount approved by the commission. A PGC shall make periodic payments according to a schedule submitted to the commission and shall notify the trustee of the decommissioning trust and the commission within 10 days of the date of any failure to make a scheduled payment. The commission shall not consider a PGC to be in default of its annual funding obligation unless it fails to remit the necessary amounts within 60 days of notice of potential default. If a PGC is in default of its annual funding obligation, it shall notify the trustee of the decommissioning trust and the commission within 10 days of the date of the default. If the PGC fails to cure its failure to make scheduled payment within 60 days of the

commission notice, the commission may direct the trustee to request that any entity providing state assurance remit annually to the fund the most recent annual decommissioning funding amount approved by the commission in accordance with the schedule approved by the commission, including any payments that the PGC has failed to make, until the PGC is not in default or until the assurance is depleted.

(m) **Funding Shortfall and Unspent Funds.**

- (1) If the PGC fails to meet its annual funding requirements and if the state assurance obligations are insufficient to meet the annual funding obligations or are otherwise not honored, the commission shall determine the manner in which any shortfall in the cost of decommissioning a nuclear generating unit shall be recovered from retail electric customers in the state. For retail electric customers of a municipally-owned utility or an electric cooperative that has an agreement to purchase power from a nuclear generating unit, the amount of the shortfall in the cost of decommissioning the nuclear generating unit that the customers are responsible for is limited to a portion of that shortfall that bears the same proportion to the total shortfall as the amount of electric power generated by the nuclear generating unit and purchased by the municipally-owned utility or electric cooperative bears to the total amount of power generated by the nuclear generating unit.
- (2) Decommissioning funds that remain unspent after decommissioning of the nuclear generating unit is complete shall be returned to the PGC and the retail

electric customers based on the proportionate amount, in real terms, that the PGC and retail electric customers paid into the fund.

(n) **Administration of the PGC Decommissioning Trust Funds.**

- (1) The PGC shall assure that the PGC decommissioning trust is managed so that the funds are secure and earn a reasonable return; and that the funds provided from the PGC's operating revenues, plus the amounts earned from investment of the funds, will be available at the time of decommissioning.
- (2) The PGC shall appoint an institutional trustee and may appoint one or more investment managers. Unless otherwise specified in this section, the Texas Trust Code controls the administration and management of the PGC decommissioning trusts, except that the appointed trustees need not be qualified to exercise trust powers in Texas.
- (3) The PGC shall retain the right to replace the trustee with or without cause. In appointing a trustee, the PGC shall have the following duties, which will be of a continuing nature:
 - (A) A duty to determine whether the trustee's fee schedule for administering the trust is reasonable, when compared to other institutional trustees rendering similar services, and meets the requirement of this section;
 - (B) A duty to investigate and determine whether the past administration of trusts by the trustee has been reasonable;

- (C) A duty to investigate and determine whether the financial stability and strength of the trustee is adequate;
 - (D) A duty to investigate and determine whether the trustee has complied with the trust agreement and this section as it relates to trustees; and
 - (E) A duty to investigate any other factors that may bear on whether the trustee is suitable.
- (4) The PGC shall retain the right to replace the investment manager with or without cause. In appointing an investment manager, the PGC shall have the following duties, which will be of a continuing nature:
- (A) A duty to determine whether the investment manager's fee schedule for investment management services is reasonable, when compared to other such managers, and meets the requirement of this section;
 - (B) A duty to investigate and determine whether the past performance of the investment manager in managing investments has been reasonable;
 - (C) A duty to investigate and determine whether the financial stability and strength of the investment manager is adequate for purposes of liability;
 - (D) A duty to investigate and determine whether the investment manager has complied with the investment management agreement and this section as it relates to investments; and
 - (E) A duty to investigate any other factors which may bear on whether the investment manager is suitable.

- (5) The PGC shall execute an agreement with the institutional trustee. The agreement shall be consistent with this section and may include additional restrictions on the trustee. A PGC shall not grant the trustee powers that are greater than those provided to trustees under the Texas Trust Code or that are inconsistent with the limitations of this section. The agreement shall include the restrictions set forth in this section and may include additional restrictions on the trustee.
- (A) The interest or other earnings of the trust become part of the trust corpus.
- (B) A trustee owes the same duties with regard to the interest and other earnings of the trust as are owed with regard to the corpus of the trust.
- (C) A trustee shall have a continuing duty to review the trust portfolio for compliance with investment guidelines and governing regulations.
- (D) A trustee shall not lend funds from the PGC decommissioning trust to itself, its officers, or its directors.
- (E) A trustee shall not invest or reinvest PGC decommissioning trusts in instruments issued by the trustee, except for time deposits, demand deposits, or money market accounts of the trustee. However, investments of a PGC decommissioning trust may include mutual funds that contain securities issued by the trustee if the securities of the trustee constitute no more than 5% of the fair market value of the assets of such mutual funds at the time of the investment.

- (F) The agreement shall comply with all applicable requirements of the federal Nuclear Regulatory Commission.
- (6) The PGC shall execute an agreement with the investment manager. If the trustee performs investment management functions, the contractual provisions governing those functions must be included in either the trust agreement or a separate investment management agreement. A PGC shall not grant the manager powers that are greater than those provided to trustees under the Texas Trust Code or that are inconsistent with the limitations of this section. The agreement shall include the restrictions set forth in this section and may include additional restrictions on the manager.
- (A) An investment manager shall, in investing and reinvesting the funds in the trust, comply with this section.
- (B) The interest and other earnings of the trust become part of the trust corpus.
- (C) An investment manager owes the same duties with regard to the interest and other earnings of the trust as are owed with regard to the corpus of the trust.
- (D) An investment manager shall have a continuing duty to review the trust portfolio to determine the appropriateness of the investments.
- (E) An investment manager shall not invest funds from the PGC decommissioning trust with itself, its officers, or its directors.

- (F) The agreement shall comply with all applicable requirements of the federal Nuclear Regulatory Commission.
 - (7) Prior to executing an amended agreement with the institutional trustee or investment managers, the proposed amended agreement shall be filed at the commission for review along with a redlined version showing all changes made since the document was reviewed by the commission, and copies shall be provided to the commission's Legal Division and Rate Regulation Division or successor divisions.
 - (8) A copy of the trust agreement, any investment management agreement, and any amendments shall be filed with the commission within 30 days after the execution or modification of the agreement, and copies shall be provided to appropriate commission staff and the Office of Public Utility Counsel.
- (o) **Trust investments.**
- (1) The funds in a PGC decommissioning trust should be invested consistent with the following goals. The PGC may apply additional prudent investment goals to the funds so long as they are not inconsistent with the stated goals of this subsection.
 - (A) The funds should be invested with a goal of earning a reasonable return commensurate with the need to preserve the value of the assets of the trusts.
 - (B) In keeping with prudent investment practices, the portfolio of securities held in the PGC decommissioning trust shall be diversified to the extent reasonably feasible given the size of the trust.

- (C) Asset allocation and the acceptable risk level of the portfolio should take into account market conditions, the time horizon remaining before the commencement and completion of decommissioning, and the funding status of the trust. While maintaining an acceptable risk level consistent with the goal in this section, the investment emphasis when the remaining life of the liability exceeds five years should be to maximize net long-term earnings. The investment emphasis in the remaining investment period of the trust should be on current income and the preservation of the fund's assets.
 - (D) In selecting investments, the impact of the investment on the portfolio's volatility and expected return net of fees, commissions, expenses and taxes should be considered.
- (2) The following requirements shall apply to all PGC decommissioning trusts under this section. Where a PGC has multiple trusts for a single generating unit, the restrictions contained in this subsection apply to all trusts in the aggregate for that generating unit. For purposes of this section, a commingled fund is defined as a professionally managed investment fund of fixed-income or equity securities established by an investment company regulated by the Securities Exchange Commission or a bank regulated by the Office of the Comptroller of the Currency.
- (A) The total trustee and investment manager fees paid on an annual basis by the PGC for the entire portfolio including commingled funds shall not exceed 0.7% of the entire portfolio's average annual balance.

- (B) For the purpose of this subsection, a commingled or mutual fund is not considered a security; rather, the diversification standard applies to all securities, including the individual securities held in commingled or mutual funds. Once the portfolio of securities (including commingled funds) held in the PGC decommissioning trusts contains securities with an aggregate value in excess of \$20 million, it shall be diversified such that:
- (i) no more than 5.0% of the securities held may be issued by one entity, with the exception of the federal government, its agencies and instrumentalities, and
 - (ii) the portfolio shall contain at least 20 different issues of securities. Municipal securities and real estate investments shall be diversified as to geographic region.
- (C) The PGC may invest the decommissioning funds by means of qualified or unqualified PGC decommissioning trusts; however, the PGC shall, to the extent permitted by the Internal Revenue Service, invest its decommissioning funds in “qualified” PGC decommissioning trusts, in accordance with the Internal Revenue Service Code §468A. The PGC shall avoid, whenever possible, the investment of taxable decommissioning funds in “unqualified” PGC decommissioning trusts.
- (D) The use of derivative securities in the trust is limited to those whose purpose is to enhance returns of the trust without a corresponding increase in risk or to reduce risk of the portfolio. Derivatives may not be used to

increase the value of the portfolio by any amount greater than the value of the underlying securities. Prohibited derivative securities include, but are not limited to, mortgage strips; inverse floating rate securities; leveraged investments or internally leveraged securities; residual and support tranches of Collateralized Mortgage Obligations; tiered index bonds or other structured notes whose return characteristics are tied to non-market events; uncovered call/put options; large counter-party risk through over-the-counter options, forwards and swaps; and instruments with similar high-risk characteristics.

- (E) The use of leverage (borrowing) to purchase securities or the purchase of securities on margin for the trust is prohibited.
- (F) The following investment limits shall apply to the percentage of the aggregate market value of all non-fixed income investments relative to the total portfolio market value.
 - (i) Except as noted in clause (ii) of this paragraph, when the weighted average remaining life of the liability exceeds five years, the equity cap is 60%;
 - (ii) When the weighted average remaining life of the liability ranges between five years and 2.5 years, the equity cap shall be 30%.;
 - (iii) When the weighted average remaining life of the liability is less than 2.5 years, the equity cap shall be 0%. Additionally, during all

years in which expenditures for decommissioning the nuclear units occur, the equity cap shall also be 0%;

- (iv) For purposes of this subsection, the weighted average remaining life in any given year is defined as the weighted average of years between the given year and the years of each decommissioning outlay, where the weights are based on each year's expected decommissioning expenditures divided by the amount of the remaining liability in that year; and
- (v) Should the market value of non-fixed income investments, measured monthly, exceed the appropriate cap due to market fluctuations, the PGC shall, as soon as practicable, reduce the market value of the non-fixed income investments below the cap. Such reductions may be accomplished by investing all future contributions to the fund in debt securities as is necessary to reduce the market value of the non-fixed income investments below the cap, or if prudent, by the sale of equity securities.
- (vi) A PGC decommissioning trust shall not invest in securities issued by the PGC collecting the funds or any of its affiliates or any company providing security for the state assurance obligation; however, investments of a PGC decommissioning trust may include commingled funds that contain securities issued by the PGC if the securities of the PGC constitute no more than 5.0% of

the fair market value of the assets of such commingled funds at the time of the investment.

- (3) The following restrictions shall apply to all PGC decommissioning trusts. Where a PGC has multiple trusts for a single generating unit, the restrictions contained in this subsection apply to all trusts in the aggregate for that generating unit.
- (A) A PGC decommissioning trust shall not invest trust funds in corporate or municipal debt securities that have a bond rating below investment grade (below “BBB-” by Standard and Poor’s Corporation or “Baa3” by Moody’s Investor’s Service) at the time that the securities are purchased and shall reexamine the appropriateness of continuing to hold a particular debt security if the debt rating of the company in question falls below investment grade at any time after the debt security has been purchased. Commingled funds may contain some below investment grade bonds; however, the overall portfolio of debt instruments shall have a quality level, measured quarterly, that is not below a “AA” grade by Standard and Poor’s Corporation or “Aa2” by Moody’s Investor’s Service. In calculating the quality of the overall portfolio, debt securities issued by the federal government shall be considered as having a “AAA” rating.
- (B) At least 70% of the aggregate market value of the equity portfolio, including the individual securities in commingled funds, shall have a quality ranking from a major rating service such as the earnings and dividend ranking for common stock by Standard and Poor’s or the quality

rating of Ford Investor Services. Further, the overall portfolio of ranked equities shall have a weighted average quality rating equivalent to the composite rating of the Standard and Poor's 500 index, assuming equal weighting of each ranked security in the index. If the quality rating, measured quarterly, falls below the minimum quality standard, the PGC shall as soon as practicable and prudent to do so, increase the quality level of the equity portfolio to the required level. A PGC decommissioning trust shall not invest in equity securities where the issuer has a capitalization of less than \$100 million.

- (C) The following guidelines shall apply to the investments made through commingled funds. Examples of commingled funds appropriate for investment by PGC decommissioning trusts include equity-indexed funds, actively managed equity funds, balanced funds, bond funds, and real estate investment trusts.
- (i) The commingled funds should be selected consistent with the goals and of this section.
 - (ii) In evaluating the appropriateness of a particular commingled fund, the PGC has the following duties, which shall be of a continuing nature:
 - (I) A duty to determine whether the fund manager's fee schedule for managing the fund is reasonable, when compared to fee schedules of other such managers;

- (II) A duty to investigate and determine whether the past performance of the investment manager in managing the commingled fund has been reasonable relative to prudent investment and PGC decommissioning trust practices and standards; and
 - (III) A duty to investigate the reasonableness of the net after-tax return and risk of the fund relative to similar funds, and the appropriateness of the fund within the entire PGC decommissioning trust investment portfolio.
- (iii) The payment of load fees shall be avoided.
 - (iv) Commingled funds focused on specific foreign countries, industries, or market sectors or concentrated in a few holdings shall be used only as necessary to balance the trust's overall investment portfolio mix.

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

**ISSUED IN AUSTIN, TEXAS ON THE 19th DAY OF DECEMBER 2007 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**