ORDER NO. 18 422

ENTERED OCT 29 2018

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

AR 593

In the Matter of Rulemaking Regarding Power Purchases by Public Utilities from Small Qualifying Facilities.	ORDER

DISPOSITION RULE MODIFICATIONS ADOPTED

I. SUMMARY

In this order, we adopt modifications to rules regarding power purchases by public utilities from small qualifying facilities (QFs). The modifications include the repeal of one rule, the adoption of five new rules, and the amendment of nine existing rules. These modifications are intended to memorialize in rule previously adopted Commission policies regarding utility pricing and contracting with QFs.

II. BACKGROUND

In Order No. 16-056, we granted in part Obsidian Renewables, LLC's, petition for rulemaking, but denied its request to adopt and amend the rules it proposed. We delayed this rulemaking, however, until certain QF-related decisions we made in dockets UM 1794, UM 1802, and UM 1610. We officially began this rulemaking at the January 17, 2018 Public Meeting, where we approved Staff's recommendation to begin stakeholder engagement activities and to develop proposed rules for our consideration.

At the June 19, 2018 Public Meeting, we clarified that we anticipated that the proposed rules would capture a baseline, status quo on the implementation of PURPA in Oregon. We anticipated that the rules would be an accurate reflection of where we are today, and that the rules could be amended in the near future as we further investigate our implementation of PURPA. We approved Staff's request to move to formal rulemaking at the July 17, 2018 Public Meeting.

On July 26, 2018, we filed a Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact for this rulemaking with the Secretary of State, and we provided notice to all interested persons on the service lists established under OAR 860-001-0030(1)(b) and to legislators specified in ORS 183.335(1)(d). Notice of the rulemaking was published in the August 2018 Oregon Bulletin, setting a hearing date of August 23, 2018, and a comment deadline of September 5, 2018. Staff held a workshop on August 15, 2018; and on August 21, 2018, Staff filed revised proposed rules to reflect discussion from that workshop. Prior to the hearing, written comments on Staff's proposed rules were filed by the Community Renewable Energy Association (CREA) and the Renewable Energy Coalition (the Coalition), (collectively the Joint QFs); and by Idaho Power Company, PacifiCorp, dba Pacific Power, and Portland General Electric Company (PGE); (collectively the Joint Utilities).

The rulemaking hearing was held August 23, 2018. At the rulemaking hearing, Staff, the Joint QFs, and the Joint Utilities offered comments on the proposed rules. On September 5, 2018, Staff, the Joint QFs, and the Joint Utilities filed final comments.

III. DISCUSSION

Below, we address significant issues we considered in adopting these rules. In this discussion, we summarize comments from stakeholders and Staff. We provide our decision and, where appropriate, issue clarification on some of the implications of the adopted rules. In the adopted rules, we act to incorporate settled policy from existing rule, guideline, or order, and do not include issues not currently reflected in rule, guideline, or order.

A. Avoided Cost Definition: OAR 860-029-0010(1).

1. Discussion

The proposed definition of "avoided costs" in OAR 860-029-0010(1) specifically includes the costs of interconnection associated with the proxy resource. The Joint Utilities request removal of the reference to interconnection, arguing that including it is not consistent with federal rules and Oregon statutes, and could be confusing. Staff argues that in Oregon the calculation of avoided costs does include costs to interconnect the proxy resource; accordingly Staff recommends retaining language in rule that makes this clear. "Staff is concerned that removing the reference to interconnection costs could have unintended consequences because removal may suggest that the Commission has changed its position on the inclusion of avoided interconnection costs in the calculation of avoided costs."[1] The Joint QFs support Staff's proposal, asserting that current rule reflects settled policy.

[1] Staff Final Comments at 4 (Sept 5, 2018).

2. Resolution

We make no changes to Staff's proposal. Staff's definition reflects our long-standing policy to include the interconnection costs associated with a proxy resource in the calculation of avoided cost prices, and we believe that changing the rule could imply a change in that policy that we do not intend.

B. Firm Energy: OAR 860-029-0010(15).

1. Discussion

The Joint QFs request that new language be added to the definition section of the rules clarifying that "firm energy" includes energy from intermittent resources, which has recently come into question in some jurisdictions. The Joint Utilities argue that the Joint QFs request to clarify that firm energy will include energy from intermittent resources introduces a novel and unsettled issue into the draft rules. Staff does not agree with the Joint QFs' effort to clarify the firm energy issue, stating, "The Joint QF's proposal is not within the scope of this rulemaking because it does not codify a Commission order."[2]

2. Resolution

We decline to make the changes suggested by the Joint QFs because they do not codify a Commission order. We clarify, however, that in Oregon, intermittent resources have always been afforded the full opportunity to participate in our PURPA regime, and we have never questioned their firm resource status.

C. Nameplate Capacity: OAR 860-029-0010.

1. Discussion

The Joint QFs argue that the rules should include the definition outlined for nameplate capacity in Order No. 07-360, and that nameplate capacity should be measured in alternating current (AC). The Joint Utilities oppose the AC measurement recommendation and note, "The Commission has not yet considered whether nameplate capacity must be measured in AC, and therefore it would be inappropriate to include such a requirement in the rules at this time. Instead, the Joint QFs may raise this issue in the upcoming generic docket."[3] Staff agrees with the Joint QFs' proposal to adopt the definition of nameplate capacity approved by the Commission in Order No. 07-360.

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[2] Id. at 12.

[3] Joint Utilities' Final Comments at 3-4 (Sept 5, 2018).

2. Resolution

We agree with Staff and the Joint QFs that the appropriate definition of nameplate capacity should be that which we approved in Order No. 07-360. We agree with the Joint Utilities that it is premature at this time to designate that nameplate capacity be measured in AC. Accordingly, these rules adopt a definition for nameplate capacity consistent with Order No. 07-360.

D. Requirement to Offer Renewable Avoided Cost Rates: OAR 860-029-0040(6), 860-029-0043(2), & 860-029-0085(2).

1. Discussion

Staff's proposed rules OAR 860-029-0040(6), 860-029-0043(2), and 860-029-0085(2) require that electric companies complying with Oregon's renewable portfolio standard (RPS) offer renewable avoided cost rates. The Joint QFs argue that our current policies look to the utility's acknowledged Integrated Resource Plan (IRP) to determine if the electric company is renewable resource deficient. The Joint Utilities expressed their understanding in comments that Staff's proposed rules are meant to codify the Commission's renewable avoided price requirement expressed in Order No. 11-505.

2. Resolution

We make no changes to Staff's proposal, and we clarify here that the determinative factor in the application of a renewable avoided cost value has been the IRP, which must contain information about the status and plans for RPS compliance. Through the IRP, the electric company must explain how it plans to meet RPS standards, when the electric company has an RPS compliance deficiency, and how the electric company plans to meet the identified need. The electric company should derive its renewable deficiency date from information outlined in the IRP. When an electric company takes or plans action to comply with the renewable portfolio standard, then the deficiency date and renewable avoided cost offer should be updated accordingly.

E. Jurisdiction: OAR 860-029-0020(1)(a).

1. Discussion

Staff's proposed rule OAR 860-029-0020(1)(a) contains language that clarifies the jurisdictional role of the Commission in the resolutions of electric company and QF disputes. The Joint QFs oppose the inclusion of this language, arguing that it is the subject of appeal and ongoing

controversy. The Joint Utilities and Staff assert that the rule is appropriate, and that it reflects recent Commission orders.

2. Resolution

We decline to remove the rule language speaking to jurisdictional issues for two reasons. First, this language is consistent with our settled standards and decisions, as reflected in Order No. 18-025. Though there are those who disagree with these determinations, to this Commission, they are settled issues that were reviewed, litigated, and for which clear decisions were issued.

Second, the proposed rule language is, by our reading, innocuous and can be interpreted consistent with the Commission's current determination, or with any potential or prospective reversal of the that determination that may occur as a result of an appeal of our decision. If our jurisdictional rulings currently under appeal are overturned, the proposed language would still be applicable as it recognizes that "This agreement is subject to the jurisdiction of those governmental agencies and courts having control over either party or this agreement."[4] The Commission's "control" over "either party" may be clarified by a higher court on appeal. If that "control" is constrained, then the proposed rule under a plain reading would appropriately incorporate that constraint.

F. Resource Type: OAR 860-029-0043(4).

1. Discussion

Proposed rule OAR 860-029-0043(4) allows electric companies to set avoided cost rates according to specific resource performance profiles. The Joint QFs and Staff request that the Commission clarify that the rule language allowing QF price differentiation based on different resource types is not meant to require a specific rate be established for each type of facility. The Joint Utilities believe that any clarification should also make clear that current policy permits utilities to offer a standard avoided cost rate specific to any type of resource for which the capacity contribution is known and based on inputs from an acknowledged IRP.

2. Resolution

We adopt Staff's proposed rule, and clarify through this order that OAR 860-029-0043(4) does not require that a specific rate be established for each type of facility. We make no changes to the current standards used to derive capacity contribution values. We clarify that electric

[4] Staff's Proposed AR 593 Rules with Additional Proposed Revisions at 12 (OAR 860-029-0020(2)(a)) (Aug 21, 2018).

companies are not required by our standards to establish rates for every type of generating facility, and that generating facility rates may be offered based on inputs from an acknowledged IRP.

G. Avoided Cost Updates: OAR 860-029-0080(7)(b) and OAR 860-029-0085(5)(c)

1. Discussion

Avoided cost updates in Oregon occur in four potential ways. First, every year on May 1 electric companies must file an update that reflects updated natural gas prices, on-and-off peak forward-looking electricity market prices, and changes to the status of the Production Tax Credit. Second, if an IRP update has been acknowledged since the previous year's May 1 filing, any other action or change consistent with that IRP update can be incorporated in the May 1 update following IRP update acknowledgement. Third, at any time upon a request or on its own motion the Commission may consider updates to avoided cost rates to reflect significant changes in circumstances, such as the acquisition of a major block of resources or the completion of a competitive bid process. Fourth, an electric company must update avoided cost values 30 days after the acknowledgement of an IRP. The Commission waived the May 1 update when an IRP was acknowledged within 60 days.[5] OAR 860-029-0080(7) currently states that out-of-cycle avoided cost updates are made effective 90 days after filing.

a. Proposed OAR 860-029-0080(7)(b)

Staff offers two proposals to reflect in rule the Commission's determination that May 1 updates may be waived in certain circumstances. The first proposal reflected in Staff's comments reads:

> (b) In the event a utility's integrated resource plan is acknowledged within 60 days of May 1 in a particular year, the Commission may direct the utility to waive its 30-day post-IRP update.

Staff's second proposal reads:

> (b) In the event a utility's integrated resource plan is acknowledged within 60 days of May 1 in a particular year, the Commission may direct the utility to waive the requirement the utility file an annual update on May 1.

Staff notes that the first option mirrors the language of Order No. 14-058, which established the requirement for an annual update to avoided cost prices on May 1. The second option, in the

[5] *In the Matter of PacifiCorp, dba Pacific Power, Application to Update Schedule 37 Qualifying Facility Information,* Docket No. UM 1729, PacifiCorp's Annual Avoided Cost Filing Update (May 1, 2018).

opinion of Staff, reflects current practice. The Joint Utilities supported the second alternative in initial comments, but in final comments advocated that neither option be adopted or reflected in rules. The Joint Utilities point out that the Commission already has the authority to waive any rule.

Staff's final comments observe that:

> At the hearing on August 23, 2018, REC and CREA recommended a third alternative – a rule that authorizes the utility to seek a waiver of either the May 1 update or the post IRP-acknowledgement filing***Staff supports the third alternative offered by the Joint QFs for the reasons discussed in their comments at the August 23, 2018 hearing.[6]

b. OAR 860-029-0085(5)(c)

Existing language in OAR 860-029-0080(7) requires that out-of-cycle avoided cost prices become effective 90 days after filing. In its proposed rule revisions, Staff eliminates that requirement. Staff explains that, "the Commission has not adhered to the 90-day effective date rule with respect to out-of-cycle avoided cost prices."[7] Staff argues that in the absence of a specific Commission order applying the 90-day period to out-of-cycle prices, the requirement should be eliminated. The Joint Utilities propose to add the qualifier "within" to existing rules referencing 90 days. The Joint QFs oppose the elimination of the 90-day effective date rule, asserting that retention of the rule would create more clarity and certainty for all parties.

The Joint QFs point out that in Order No. 14-058 we stated that "in light of our decision here to require annual updates in addition to updates following IRP acknowledgement, we caution stakeholders that the 'significant change' required to warrant an out-of-cycle update will be very high." The Joint QFs propose to capture this qualitative standard in rule. They argue that the rule should be changed to include the language noting the high burden for justifying an out-of-cycle update we discussed in Order No. 14-058.

Both Staff and the Joint Utilities reject the Joint QF proposal to set a high bar for out-of-cycle updates in the rules. They argue that this type of qualitative statement is not appropriate for rules, and that the Commission can apply the review standard it deems appropriate when confronted with an out-of-cycle update.

[6] Staff Final Comments at 6 (Sept 5, 2018).
[7] Staff Proposed AR 593 Rules with Additional Proposed Revisions at 26 (Aug 21, 2018).

2. Resolution

a. OAR 860-029-0080(7)(b)

We adopt the proposal of the Joint QFs, supported by Staff, and expressed at the August 23 hearing. This option provides maximum flexibility to all parties and the Commission. Though the Joint Utilities are correct in their observation that the Commission retains the authority to waive the rule without an explicit waiver provision, we find that inclusion of the waiver provision clarifies that waivers to the rule are an expected component of its application. This is particularly important to readers of our rules unfamiliar with past practices or orders. Additionally, we replicate the language we adopt in OAR 860-029-0080(7)(b) in OAR 860-029-0085(3)(b), finding that the rationale for adopting this provision for cost data updates applies equally to standard avoid cost rate updates.

b. OAR 860-029-0085 (5)(c)

We adopt the Joint Utilities' proposal to include the qualifier "within" to the 90-day effective date provision. The Joint QFs correctly observe that our current rule provides for a 90-day effective date, but that has never been consistently applied; accordingly, the current rule does not reflect current practice. The Joint Utilities' proposal reflects current practice.

c. Out-of-Cycle Burden

We do not adopt the Joint QFs proposal to include in rule qualitative language describing the burden to meet an out-of-cycle update. We believe rule language should reflect, to the extent possible, clear and objective standards. In the past, we approved out-of-cycle updates based on a showing of extraordinary circumstances, and allowed updates where it was demonstrated that values were significantly out of sync with market indicators, as demonstrated by a major resource acquisition or competitive bid.

H. Dispute Resolution: OAR 860-029-0100.

1. Discussion

The Joint QFs assert that the current and proposed Alternative Dispute Resolution Process rules are unused and irrelevant, and they should ultimately be eliminated. The Joint Utilities agree that the dispute resolution process deserves a review, but do not support any significant changes to the process in this rulemaking.

2. Resolution

We do not make changes to eliminate or change the dispute resolution provisions. However, we request that Staff include the Alternative Dispute Resolution Process in its scope for additional issues to address in our further investigation of PURPA implementation. Additionally, we encourage the use of dispute resolution processes.

I. Commercial On-line Date: OAR 860-029-0120 and OAR 860-029-0130

1. Discussion

a. OAR 860-029-0120

Proposed OAR 860-029-0120(4) operates to require a power purchase agreement (PPA) to specify a commercial on-line date that is either anytime within three years of the date of the agreement execution or anytime later than three years after the agreement execution if reasonable and agreed to by the electric company for standard contracts. In its August 21, 2018 Revised Proposed Rules, Staff makes changes to section (4) of OAR 860-029-0120 that achieve two objectives. First, Staff eliminates references to a "contract" and instead references the "power purchase agreement." Second, in response to previously expressed Joint Utilities' concerns, Staff adds the qualifier "consistent with the following" to the provision, to clarify that the electric company does not have to include the exact language in the rule in its PPA.

The Joint Utilities do not object to Staff's edits but request an additional change to address their concern that PPAs not require the precise language of the rule. The Joint Utilities propose to eliminate "The power purchase agreement must specify that" from the beginning of section (4) and beginning it with "A qualifying facility may * * *."

The Joint Utilities also request additional clarification:

> The Joint Utilities seek clarification that this Proposed Rule applies only to new, not existing, QFs. The Joint Utilities ask for this clarification because whether an existing QF should be entitled to select a commercial on-line date up to three years from the date of contract execution does not appear to be a settled issue."[8]

[8] Joint Utilities' Final Comments at 11 (Sept 5, 2018).

b. OAR 860-029-0130

The language in section (3) of OAR 860-029-0130 mirrors that of OAR 860-029-0120(4), requiring the same options for QFs. Originally, both Staff and QFs supported this language. The Joint Utilities oppose the inclusion; they characterize it as "not supported by Commission precedent and would represent a new, substantive policy."[9] In final comments, Staff notes that:

> The Second Revised Draft includes the provision regarding the QF's right to scheduled commercial on-line date anytime within three years of contract execution in the rule relating to nonstandard power purchase agreements, OAR 860-029-0130. The Joint Utilities point out that there is no Commission order specifying that QFs entering into nonstandard power purchase agreements have this right. The Joint Utilities are correct.[10]

The Joint QFs and the Joint Utilities highlight Order No. 15-130 in which we adopted this standard. In that order, we approved the following stipulation language:

> Scheduled Commercial Online Date (COD): Currently, no Commission order specifies a minimum or maximum amount of lead time a QF should be allowed for scheduled COD in a standard contract. The stipulating parties agree that QFs can select a scheduled COD anytime within three years of contract execution, and that a QF can elect a scheduled COD that is more than three years from contract execution if the QF can establish that a period in excess of three years is reasonable and necessary and the utility agrees to the scheduled COD. The stipulating parties agree that utilities will not unreasonably withhold their consent.[11]

The Joint QFs point out that the Commission's order adopting the stipulation makes no reference to standard or non-standard contracts. They argue that the stipulation itself makes no reference to project size. Though the stipulation references the term "standard contract," the Joint QFs contend that this reference "refers to burden to establish reasonable delay, which is the QF's for a standard contract."[12] The Joint Utilities observe that, "It appears that part of the rationale in agreeing on this three-year timeframe was to

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[9] Id. p.12.
[10] Staff Final Comments at7 (Sept 7, 2018).
[11] *In the Matter of Staff Investigation Into Qualifying Facility Contracting and Pricing*, Docket No. UM 1610, Order No. 15-130, Appendix A at 2 (Apr 16, 2015).
[12] Renewable Energy Coalition and Community Renewable Energy Association's Response Comments, at 6 (Sept 5, 2018).

balance the need to protect customers by limiting the ability of a QF to enter into speculative contracts against a QF's need to obtain financing to build its project."[13]

2. Resolution

We retain Staff's proposed language for OAR 860-029-0120(4) and OAR 860-029-0130(3) with additional edits proposed by the Joint Utilities, and clarify that the scheduled commercial online date requirements described in Order No. 15-130 should be applicable to all PPAs. It is not clear to us that the language of the stipulation in Order No. 15-130 was intended to be limited to only a subset of PURPA contracts. The rationale for this provision, that a three-year period is necessary to prevent QF speculation, is applicable to both standard and non-standard contracts.

We also clarify that our adoption of OAR 860-029-0120(4) and OAR 860-029-0130(3) does not represent an interpretation of previously signed contacts. Contracts signed before the effective date of the rules we adopt here should be interpreted by their own terms, and according to the context of the rules and standards in place at the time of their creation. We do not speak in this order to the interpretation of contracts signed prior to the effective date of these rules. Finally, we note that these provisions have implications regarding the impacts of speculation in a falling price market, which brings up broader questions regarding our overall implementation of PURPA, which we expect to address in further proceedings to investigate PURPA implementation in Oregon.

J. Order 07-360 Appendix A Guidelines.

1. Discussion

The Joint QFs advocate for including all of the guidelines in Appendix A to Order No. 07-360 in the Proposed Rules. The Joint Utilities strongly oppose the inclusion of these guidelines in rules, arguing that they are outdated and that they may have been superseded by subsequent Commission orders.

Staff argues that the guidelines are largely incorporated in one way or another, and that the only guideline not included contains standards that are no longer operative. "Staff does not think it is appropriate at this point to include these specific provisions that address some but not all of the elements of nonstandard rates."[14]

[13] Joint Utilities' Final Comments at 12 (Sept 5, 2018).
[14] Staff Final Comments at 11 (Sept 5, 2018).

The Joint QFs disagree. They state, "the Commission should adopt every aspect of these obligations, unless it can be demonstrated that the Commission no longer follows that policy or that an intervening court or agency order has rendered the policy unlawful."[15]

2. Resolution

We decline to adopt the request of the Joint QFs. We reviewed each of the non-standard contract negotiation guidelines outlined in Order No. 07-360. We find that some of the language used to express concepts in these guidelines is outdated, and that each of the concepts should be reviewed in the context of the body of orders and Commission determinations that were issued since their adoption over 10 years ago. Though we decline to incorporate these guidelines in rule, we expect the guidelines to be examined in further proceedings.

IV. ORDER

IT IS ORDERED that:

1. The modifications to OAR 860-029-0005 through 860-029-0130 are adopted as set forth in Appendix A to this order.

[15] Renewable Energy Coalition and Community Renewable Energy Association's Response Comments at 7 (Sept 5, 2018).

2. The rule changes become effective upon filing with the Secretary of State.

Made, entered, and effective OCT 29 2018.

Megan W. Decker
Chair

Stephen M. Bloom
Commissioner

Letha Tawney
Commissioner

A person may petition the Public Utility Commission of Oregon for the amendment or repeal of a rule under ORS 183.390. A person may petition the Oregon Court of Appeals to determine the validity of a rule under ORS 183.400.

860-029-0005
Applicability of Rules

(1) ~~**Except as otherwise provided, t**~~**T**hese rules ~~**shall**~~ apply to all interconnection**, purchase, and sale** arrangements between a ~~"~~public utility~~"~~ ~~**as defined by ORS 758.505**~~ and facilities ~~**which**~~**that** are qualifying facilities as defined herein. Provisions of these rules ~~**shall**~~**do** not supersede contracts existing before the effective date of this rule. At the expiration of such an existing contract between a public utility and a cogenerator or small power producer, any contract extension or new contract ~~**shall**~~**must** comply with these rules.

(2) Nothing in these rules limits the authority of a public utility or a qualifying facility to agree to a rate, terms, or conditions relating to any purchase, which differ from the rate or terms or conditions ~~**which**~~**that** would otherwise be provided by these rules, provided such rate, terms, or conditions do not burden the public utility's customers.

(3) Within 30 days following the initial contact between a prospective qualifying facility and a public utility, the public utility ~~**shall**~~**must** submit informational documents, approved by the Commission, to the qualifying facility which state:

(a) The public utility's internal procedural requirements and information needs;

(b) Any contract offered by the public utility is subject to negotiation;

(c) Avoided costs are subject to change pursuant to OAR 860-029-0080(3); and

(d) ~~**That the a**~~**A**voided costs actually paid to a qualifying facility ~~**will**~~ depend on the quality and quantity of power to be delivered to the public utility. The avoided costs may be recalculated to reflect stream flows, generating unit availability, loads, seasons, or other conditions.

(4) Upon request or its own motion, the Commission may waive any of the division 029 rules for good cause shown. A request for waiver must be made in writing, unless otherwise allowed by the Commission.

STATUTORY/OTHER AUTHORITY: ORS 183, 756, 757, 758
STATUTES/OTHER IMPLEMENTED: ORS 756.040, 758.505-785.555
HIST.: PUC 9-1981, f. & ef. 10-29-81 (Order No. 81-755); PUC 7-1982, f. & ef. 7-21-82 (Order No. 82-514); PUC 21-1984, f. & ef. 9-25-84 (Order No. 84-742); PUC 5-1986, f. & ef. 5-15-87 (Order No. 86-488); PUC 14-1987, f. & ef. 11-19-87 (Order No. 87-1154); PUC 8-1995, f. & ef. 8-30-95 (Order No. 95-858); PUC 1-1998, f. & ef. 1-12-98 (Order No. 98-016); PUC 6-2011, f. & cert. ef. 9-14-11, (Order No. 11-346)

860-029-0010
Definitions for ~~Electric Interconnection~~ Division 029 Rules

(1) "Avoided costs" means the electric utility's incremental costs of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, the electric utility would generate itself or purchase from another source**,** ~~**and shall**~~ includ**eing** any costs of interconnection of such resource to the system.

(2) "Back-up power" and "stand-by power" mean electric energy or capacity supplied by a public utility to replace energy ordinarily generated by a qualifying facility's own generation equipment during an unscheduled outage of the facility.

(3) "Capacity" means the average output in kilowatts (kW) committed by a qualifying facility to an electric utility during a specific period.

(4) "Capacity costs" mean the costs associated with supplying capacity; they are an allocated component of the fixed costs associated with providing the capability to deliver energy.

(5) "Cogeneration" means the sequential generation of electric energy and useful heat from the same primary energy source or fuel for industrial, commercial, heating, or cooling purposes.

(6) "Cogeneration facility" means a facility that produces electric energy and steam or other forms of useful energy (such as heat) by cogeneration ~~**which**~~**that** are used for industrial, commercial,

heating, or cooling purposes. ~~Such a facility must be at least 50 percent owned by a person who is not an electric utility, an electric holding company, an affiliated interest, or any combination thereof.~~

(7) "Commercial operation date" means the date after start-up testing is complete and the qualifying facility is fully operational and capable of delivering output.

(~~7~~8) "Commission" means the Public Utility Commission of Oregon.

(~~8~~9) "Costs of interconnection" means the reasonable costs of connection, switching, dispatching, metering, transmission, distribution, equipment necessary for system protection, safety provisions, and administrative costs incurred by an electric utility directly related to installing and maintaining the physical facilities necessary to permit purchases from a qualifying facility.

(~~9~~10) "Demand" means the average rate in kilowatts at which electric energy is delivered during a set period, to be determined by mutual agreement between the electric utility and the customer.

(11) " Effective date" means the date on which a power purchase agreement is executed by both the qualifying facility and public utility.

(~~10~~12) "Electric utility" means a nonregulated utility or a public utility as defined in ORS 758.505.

(~~11~~13) "Energy" means electric energy, measured in kilowatt-hours (kWh).

(~~12~~14) "Energy costs" means:

(a) For nonfirm energy, the incremental costs associated with the production or purchase of electric energy by the electric utility, which include the cost of fuel and variable operation and maintenance expenses, or the cost of purchased energy;

(b) For firm energy, the combined allocated fixed costs and associated variable costs applicable to a displaced generating unit or to a purchase.

(~~13~~15) "Firm energy" means a specified quantity of energy committed by a qualifying facility to an electric utility.

(16) "Fixed rate term" means for qualifying facilities electing to sell firm energy or firm capacity or both, the period of a power purchase agreement during which the public utility pays the qualifying facility avoided cost rates determined either at the time of contracting or at the time of delivery.

(~~14~~17) "Index rate" means the lowest avoided cost approved by the Commission for a generating utility for the purchase of energy or energy and capacity of similar characteristics including on-line date, duration of obligation, and quality and degree of reliability.

(~~15~~18) "Interruptible power" means electric energy or capacity supplied by a public utility to a qualifying facility subject to interruption by the electric utility under certain specified conditions.

~~(16) "Nonfirm energy" means:~~

~~(a) Energy to be delivered by a qualifying facility to an electric utility on an "as available" basis; or~~

~~(b) Energy delivered by a qualifying facility in excess of its firm energy commitment.~~

~~NOTE: The rate for nonfirm energy may contain an element representing the value of aggregate capacity of nonfirm sources.~~

(~~17~~19) "Maintenance power" means electric energy or capacity supplied by a public utility during scheduled outages of a qualifying facility.

(20) "Nameplate capacity" means the full-load electrical quantities assigned by the designer to a generator and its prime mover or other piece of electrical equipment, such as transformers and circuit breakers, under standardized conditions, expressed in amperes, kilovoltamperes, kilowatts, volts, or other appropriate units. Nameplate capacity is usually indicated on a nameplate attached to the individual machine or device.

(21) "Nonfirm energy" means energy to be delivered by a qualifying facility to an electric utility on an "as available" basis; or energy delivered by a qualifying facility in excess of its firm energy commitment. The rate for nonfirm energy may contain an element representing the value of aggregate capacity of nonfirm sources.

(~~18~~22) "Nonregulated utility" means an entity providing retail electric utility service to Oregon customers that is a people's utility district organized under ORS Chapter 261, a municipal utility operating under ORS Chapter 225, or an electric cooperative organized under ORS Chapter 62.

(~~19~~23) "Primary energy source" means the fuel or fuels used for the generation of electric energy. The term does not include minimum amounts of fuel required for ignition, start-up, testing, flame stabilization, and control uses; the term does not include minimum amounts of fuel required to alleviate or prevent unanticipated equipment outages and emergencies which directly affect the public health, safety, or welfare.

(~~20~~24) "Purchase" means the purchase of electric energy or capacity or both from a qualifying facility by an electric utility.

(~~21~~25) "Public utility" means a utility regulated by the Commission under ORS Chapter 757, that provides electric power to customers.

(26) "Purchase term" means the period of a power purchase agreement during which the qualifying facility is selling its output to the public utility.

(~~22~~27) "Qualifying facility" means a cogeneration facility or a small power production facility as defined by these rules.

(~~23~~28) "Rate" means any price, charge, or classification made, demanded, observed, or received with respect to the sale or purchase of electric energy or capacity or any rule, regulation, or practice respecting any such price, charge, or classification.

(29) "Renewable Portfolio Standard" is the standard for large electric utilities in ORS 469A.052(1) or the standard for small electric utilities in ORS 469A.055 in effect as of October 23, 2018.

(30) "RPS attributes" means all attributes related to the net output generated by the qualifying facility that are required to provide the public utility with "qualifying electricity" as that term is defined in Oregon's Renewable Portfolio Standard Act, ORS 469A.010, in effect as of October 23, 2018. RPS attributes do not include environmental attributes that are greenhouse gas offsets from methane capture not associated with the generation of electricity.

(~~24~~31) "Sale" means the sale of electric energy or capacity or both by a public utility to a qualifying facility.

(32) "Scheduled commercial operation date" means the date selected by the qualifying facility on which the qualifying facility intends to be fully operational and reliable and able to commence the sale of energy or energy and capacity to the public utility.

(~~25~~33) "Small power production facility" means a facility which produces electric energy using as a primary energy source biomass, waste, solar energy, wind power, water power, geothermal energy, or any combination thereof. ~~**Such facility must be at least 50 percent owned by a person who is not an electric utility, an electric utility holding company, an affiliated interest, or any combination thereof.**~~ Only small power production facilities which, with any other facilities located at the same site, have power production capacities of 80 megawatts or less, are covered by these rules.

(~~26~~34) "Supplementary power" means electric energy or capacity supplied by a public utility, regularly used by a qualifying facility in addition to that which the facility generates itself.

(~~27~~35) "System emergency" means a condition on a public utility's system which is likely to result in imminent, significant disruption of service to customers, in imminent danger of life or property, or both.

(~~28~~36) "Time of delivery" means:

(a) In the case of capacity, when the generation is first on line and capable of meeting the capacity commitment of the qualifying facility to the electric utility under the terms of its contract or other legally enforceable obligation.

(b) In the case of firm energy and depending upon the contract between the parties, either:

(A) When the first kilowatt-hour of energy is able to be delivered under the commitment of the qualifying facility; or

(B) When each kilowatt-hour is delivered under the commitment of the qualifying facility.

(~~29~~37) "Time the obligation to purchase the energy capacity or energy and capacity is incurred" means the earlier of:

(a) The date on which a binding, written obligation is entered into between a qualifying facility and a public utility to deliver energy, capacity, or energy and capacity; or

(b) The date **determined by the Commission.** ~~**agreed to, in writing, by the qualifying facility and the electric utility as the date the obligation is incurred for the purposes of calculating the applicable rate.**~~

STATUTORY/OTHER AUTHORITY: ORS 183, 756, 757, 758
STATUTES/OTHER IMPLEMENTED: ORS 756.040, 758.505-758.555
HIST: PUC 9-1981, f. & ef. 10-29-81 (Order No. 81-755); PUC 7-1982, f. & ef. 7-21-82 (Order No. 82-514); PUC 21-1984, f. & ef. 9-25-84 (Order No. 84-742); PUC 5-1986, f. & ef. 5-15-86 (Order 86-488); PUC 14-1987, f. & ef. 11-19-87 (Order 87-1154); PUC 1-1998, f. & ef. 1-12-98 (Order No. 98-016); PUC 9-2001, f. & cert. ef. 3-21-01 (Order No. 01-248)

860-029-0020
Obligations of Qualifying Facilities to the Electric Utility

The conditions listed in this rule ~~**shall**~~ apply to all qualifying facilities that sell electricity to a public utility under this division:

(1) The owner or operator of a qualifying facility purchasing or selling electricity under these rules ~~**shall**~~**must** execute a written agreement with the public utility. ~~**The public utility shall file a true copy or summary of the terms of the executed agreement with the Commission within 30 days of the execution of the agreement. If a summary is filed, the summary shall identify the quantity and quality of the power and the price being paid. A true copy of the executed contract shall be available upon request for Commission staff review.**~~

(2) Contracts:

(a) All contracts between a qualifying facility and a public utility for energy, or energy and capacity ~~**shall**~~**must** include language which substantially conforms to the following:

This agreement is subject to the jurisdiction of those governmental agencies and courts having control over either party or this agreement. The public utility's compliance with the terms of this contract is conditioned on the qualifying facility submitting to the public utility and to the Public Utility Commission of Oregon, before the date of initial operation, certified copies of all local, state, and federal licenses, permits, and other approvals required by law.

(b) Under subsection (2)(a) of this rule, the public utility bears no obligation to identify which approvals are required by law, or to verify the approvals were properly obtained, or that the project is maintained pursuant to the terms of the approvals.

(3) To ensure system safety and reliability of interconnected operations, all interconnected qualifying facilities ~~**shall**~~**must** be constructed and operated in accordance with all applicable federal, state, and local laws and regulations.

(4) The qualifying facility ~~**shall**~~**must** furnish, install, operate, and maintain in good order and repair, and without cost to the public utility, switching equipment, relays, locks and seals, breakers, automatic synchronizers, and other control and protective apparatus as shown by the public utility to be reasonably necessary to operate the qualifying facility in parallel with the public utility's system, or may contract for the public utility to do so at the expense of the qualifying facility. Delivery ~~**shall**~~**must** be at a voltage, phase, power factor, and frequency as specified by the public utility.

(5) Switching equipment capable of isolating the qualifying facility from the public utility's system ~~**shall**~~**must** be accessible to the public utility at all times.

(6) **The qualifying facility must allow**~~**At its option,**~~ the public utility ~~**may choose to operate**~~**the option of operating** the switching equipment, described in section (4) of this rule if, in the sole

opinion of the public utility, continued operation of the qualifying facility in connection with the public utility's system may create or contribute to a system emergency. Such a decision by the public utility is subject to the Commission's verification under OAR 860-029-0070. The public utility ~~shall~~**must** endeavor to minimize any adverse effects on the qualifying facility of the operation of the switching equipment.

(7) Any agreement between a qualifying facility and a public utility ~~shall~~**must** provide for the degree to which the qualifying facility ~~will~~**must** assume responsibility for the safe operation of the interconnection facilities.

(8) At its option, the public utility may require a qualifying facility to report periodically the amount of deliveries and scheduled deliveries to the public utility, as shown to be reasonably necessary for the public utility's system operations and reporting.

STATUTORY/OTHER AUTHORITY: ORS 183, 756, 757, 758
STATUTES/OTHER IMPLEMENTED: ORS 756.040, 758.505 - 758.555
HIST: PUC 9-1981, f. & ef. 10-29-81 (Order No. 81-755); PUC 7-1982, f. & ef. 7-21-82 (Order No. 82-514); PUC 21-1984, f. & ef. 9-25-84 (Order No. 84-742); PUC 2-1985, f. & ef. 2-15-85 (Order No. 85-099); PUC 1-1998, f. & ef. 1-12-98 (Order No. 98-016)

860-029-0030
Obligations of the Public Utility to Qualifying Facilities

(1) Obligations to purchase from qualifying facilities: Each public utility ~~shall~~**must** purchase, in accordance with OAR 860-029-0040, any energy and capacity in excess of station service (power necessary to produce generation) and amounts attributable to conversion losses~~, which~~**that** is made available from a qualifying facility:

(a) Directly from a qualifying facility in its service territory; or

(b) Indirectly from a qualifying facility in accordance with section (4) of this rule.

(2) Obligation to sell to qualifying facilities: Each public utility ~~shall~~**must** sell to any qualifying facility, in accordance with OAR 860-029-0050, any energy and capacity requested by the qualifying facility on the same basis as available to other customers of the public utility in the same class who do not generate electricity.

(3) Obligation to interconnect: Each public utility ~~shall make such~~**must** interconnect~~ions~~ with any qualifying facility as may be necessary to accomplish purchases or sales under this division. The obligation to pay for any interconnection costs shall be determined ~~in accordance with~~**under** OAR 860-029-0060.

(4) Option to wheel power to other electric utilities or to the Bonneville Power Administration: At the request of a qualifying facility, a public utility (which would otherwise be obliged to purchase energy or capacity from such qualifying facility) may transmit (wheel) energy or capacity to any other electric utility or to the Bonneville Power Administration, at the expense of the qualifying facility. Use of a public utility's transmission facilities must be on a cost-related basis.

(5) Parallel operation: Each public utility ~~shall~~**must** offer to operate in parallel with a qualifying facility, provided that the qualifying facility complies with the standards established in accordance with OAR 860-029-0020.

(6) When the generating portion of the qualifying facility consumes more electric energy than it produces, the public utility shall cease purchases.

(7) Within 30 days of the execution of any purchase agreement with a qualifying facility, the public utility must file with the Commission a true copy or summary of the terms of the executed agreement. If a summary is filed, the summary must identify the quantity and quality of the power and the price being paid. A true copy of the executed contract must be made available upon request for Commission staff review.

STATUTORY/OTHER AUTHORITY: ORS 183, 756, 757, 758
STATUTES/OTHER IMPLEMENTED: ORS 756.040, 758.505 - 758.555
HIST: PUC 9-1981, f. & ef. 10-29-81 (Order No. 81-755); PUC 7-1982, f. & ef. 7-21-82 (Order No. 82-514); PUC 21-1984, f. & ef. 9-25-84 (Order No. 84-742); PUC 1-1998, f. & ef. 1-12-98 (Order No. 98-016)

860-029-0040
Rates for Purchases

(1) Rates for purchases by public utilities ~~**shall**~~**must**:

(a) Be just and reasonable to the public utility's customers and in the public interest; and

(b) Be in accordance with this rule, regardless of whether the public utility making such purchases is simultaneously making sales to the qualifying facility.

(2) Establishing rates:

(a) Except for qualifying facilities in existence before November 8, 1978, and except when a public utility fails to make a good faith effort to comply with the request from a qualifying facility to wheel, a purchase rate satisfies the requirements of section (1) of this rule if the rate equals the avoided costs after consideration of the factors set forth in section (5) of this rule.

(b) If a public utility fails to make a good faith effort to comply with the request from a qualifying facility to wheel, the public utility ~~**shall**~~**must** purchase at a rate which is the public utility's avoided cost or the index rate, whichever is higher. A good faith effort ~~**shall**~~**will** be demonstrated by the public utility's publication of a generally applicable reasonable policy of the public utility to use the public utility's transmission facilities on a cost-related basis.

(c) When the purchase rates are based upon estimates of avoided costs over a specific term of the contract or other legally enforceable obligation, the rates do not violate these rules if any payment under the obligation differs from avoided costs.

(d) Nothing in these rules ~~**shall**~~**will** be construed as requiring payment of avoided-cost prices to qualifying facilities in existence before November 1978, provided, however, that prices for such purchases must be sufficient to encourage continued power production.

(3) Rates for purchases — time of calculation: ~~**Except for the purchases made under section (4) of this rule (standard rates), e**~~**E**ach qualifying facility ~~**shall have**~~**has** the option to:

(a) Provide nonfirm energy as the qualifying facility determines such energy to be available for such purchases, in which case the rates for such purchases ~~**shall**~~**must** be based on the purchasing public utility's nonfirm energy avoided cost or if subsection (2)(b) of this rule is applicable, in effect when the energy is delivered; or

(b) Provide firm energy and capacity pursuant to a legally enforceable obligation for the delivery of energy and/or capacity over a specified term, in which case the rates for purchases ~~**shall**~~**must** be based on:

(A) The avoided costs calculated at the time of delivery, or, if subsection (2)(b) of this rule is applicable, the index rate in effect at the time of delivery; or

(B) At the election of the qualifying facility, exercised at the time the obligation is incurred, the avoided costs, or the index rate then in effect if subsection (2)(b) of this rule is applicable, projected over the life of the obligation and calculated at the time the obligation is incurred.

(4) Standard rates for purchases shall be implemented as follows:

(a) In the same manner as rates are published for electricity sales, each public utility shall file with the Commission, within 30 days of Commission acknowledgement of its ~~**least-cost**~~**integrated resource** plan ~~**pursuant to Order No. 89-507**~~, standard rates for purchases from **eligible** qualifying facilities ~~**with a nameplate capacity of one megawatt or less,**~~ to become effective 30 days after filing. The publication shall contain all the terms and conditions of the purchase. ~~**Except when a public utility fails to make a good faith effort to comply with the request of a qualifying facility to wheel, the public utility's standard rate shall apply to purchases from qualifying facilities with**~~

~~a nameplate capacity of one megawatt or less.~~

(b) If a public utility fails to make a good faith effort to comply with the request from a qualifying facility to wheel, the public utility shall purchase at a rate which is the public utility's standard rate or the index standard rate, whichever is higher. A good faith effort shall be demonstrated by the public utility's publication of its generally accepted reasonable policy to use the public utility's transmission facilities on a cost-related basis.

(c) The public utility's standard rate may differentiate among qualifying facilities using various technologies on the basis of the supply characteristics of the different technologies.

(5) Factors affecting rates for purchases: In determining avoided costs and for determining the index rate the following factors ~~shall~~**will**, to the extent practicable, be taken into account:

(a) The data provided pursuant to OAR 860-029-0080(3) and the Commission's evaluation of the data; and

(b) The availability of energy or capacity from a qualifying facility during the system daily and seasonal peak periods, including:

(A) The ability of the public utility to dispatch output of the qualifying facility;

(B) The expected or demonstrated reliability of the qualifying facility;

(C) The terms of any contract or other legally enforceable obligation;

(D) The extent to which scheduled outages of the qualifying facility can be usefully coordinated with scheduled outages of the public utility's facilities;

(E) The usefulness of energy and/or capacity supplied from a qualifying facility during system emergencies, including its ability to separate its load from its generation;

(F) The individual and aggregate value of energy and capacity from qualifying facilities on the public utility's system; and

(G) The smaller capacity increments and the shorter lead times available, if any, with additions of capacity from qualifying facilities.

(c) The relationship of the availability of energy and/or capacity from the qualifying facility as derived in subsection (5)(b) of this rule, to the ability of the public utility to avoid costs, including the deferral of capacity additions and the reduction of fossil fuel use; and

(d) The costs or savings resulting from variations in line losses from those that would have existed in the absence of purchases from a qualifying facility if the purchasing public utility generated an equivalent amount of energy itself or purchased an equivalent amount of energy and/or capacity.

(6) Each public utility that is currently complying with Oregon's renewable portfolio standard must offer renewable and non-renewable avoided cost rates to eligible qualifying facilities.

STATUTORY/OTHER AUTHORITY: ORS 183, 756, 757, 758
STATUTES/OTHER IMPLEMENTED: ORS 756.040, 758.505 - 758.555
HIST.: PUC 9-1981, f. & ef. 10-29-81 (Order No. 81-755); PUC 7-1982, f. & ef. 7-21-82 (Order No. 82-514); PUC 21-1984, f. & ef. 9-25-84 (Order No. 84-742); PUC 5-1986, f. & ef. 5-15-86 (Order No. 86-488); PUC 14-1987, f. & ef. 11-19-87 (Order No. 87-1154); PUC 10-1991, f. & ef. 12-5-91 (Order No. 91-1605); PUC 2-1993, f. & ef. 1-8-93 (Order Nos. 92-1793 & 93-035); PUC 1-1998, f. & ef. 1-12-98 (Order No. 98-016)

860-029-0043
Standard Rates for Purchase

(1) Each public utility must offer standard non-renewable avoided cost rates to eligible qualifying facilities.

(2) Each public utility that acts to comply with Oregon's renewable portfolio standard must offer standard renewable avoided cost rates to eligible qualifying facilities.

(3) Unless the Commission adopts a higher threshold, all qualifying facilities with a

nameplate capacity of 100 kW and less are eligible for standard avoided cost rates.

(4) Each public utility must file standard avoided cost rates that differentiate between qualifying facilities of different resource types by taking into account the contributions to meeting the utility's peak capacity of the different resource types.

(5) Each public utility must update its standard avoided costs in accordance with 860-029-0085.

STATUTORY/OTHER AUTHORITY: ORS 183, 756, 757, 758
STATUTES/OTHER IMPLEMENTED: ORS 756.040, 758.505 - 758.555
HIST.: NEW

860-029-0046
Integration Charges

(1) Each public utility may assess Commission-approved integration charges on wind and solar qualifying facilities that are located within the public utility's Balancing Authority Area.

(2) The public utility bears the burden to establish the proposed integration charge or charges reflecting the costs of integrating the type of resource that will be subject to the charges.

(3) To the extent they are to be imposed by the public utility, any integration charges must be included in the public utility's avoided cost schedules.

STATUTORY/OTHER AUTHORITY: ORS 183, 756, 757, 758
STATUTES/OTHER IMPLEMENTED: ORS 756.040, 758.505-758.555
HIST.: NEW

860-029-0050
Rates for Sales

(1) Rates for sales by public utilities ~~**shall**~~**must**:

(a) Be just and reasonable and in the public interest; and

(b) Not discriminate against qualifying facilities.

(2) Rates for sales that are based on accurate data and consistent, system-wide costing principles ~~**shall**~~**will** be considered not to discriminate against any qualifying facility to the extent that such rates apply to the public utility's other customers with similar load or other cost-related characteristics.

(3) The following additional services ~~**shall**~~**must** be provided by a public utility to a qualifying facility at its request:

(a) Supplementary power;

(b) Back-up power;

(c) Maintenance power; and

(d) Interruptible power.

(4) When a waiver request is filed under OAR 860-029-0005(4), the Commission may waive any requirement of section (3) of this rule if, after notice in the area served by the public utility and after opportunity for public comment, the public utility demonstrates and the Commission finds that compliance with such requirement will:

(a) Impair the public utility's ability to render adequate service to its other customers; or

(b) Place an undue burden on the public utility.

(5) The rate for sale of back-up power or maintenance power:

(a) ~~**Shall**~~**May** not be based upon an assumption (unless supported by factual data) that forced outages or other reductions in electric output by all qualifying facilities on a public utility's system will occur simultaneously, during the system peak, or both; and

(b) ~~**Shall**~~**Must** take into account the extent to which scheduled outages of the qualifying facilities can be coordinated usefully with the scheduled outages of the public utility's facilities.

STATUTORY/OTHER AUTHORITY: ORS 183, 756, 757, 758
STATUTES/OTHER IMPLEMENTED: ORS 756.040, 758.505 - 758.555
HIST.: PUC 9-1981, f. & ef. 10-29-81 (Order No. 81-755); PUC 7-1982, f. & ef. 7-21-82 (Order No. 82-514); PUC 21-1984, f. & ef. 9-25-84 (Order No. 84-742); PUC 1-1998, f. & ef. 1-12-98 (Order No. 98-016); PUC 6-2011, f. & cert. ef. 9-14-11 (Order No. 11-346)

860-029-0060
Obligation to Pay and Reimbursement of Interconnection Costs

(1) ~~**Obligation to pay:**~~ Interconnection costs ~~**shall be**~~**are** the responsibility of the owner or operator of the qualifying facility. Interconnection costs ~~**which**~~**that** may reasonably be incurred by the public utility ~~**shall**~~**will** be assessed against a qualifying facility on a nondiscriminatory basis with respect to other customers with similar load or other cost-related characteristics.

(2) ~~**Reimbursement of interconnection costs:**~~ The public utility ~~**shall**~~**will** be reimbursed by the qualifying facility for any reasonable interconnection costs including costs of financing at an interest rate no greater than the effective rate of the public utility's last senior securities issuance at the time of the contract with the qualifying facility. Such reimbursement may be over any agreed period not greater than one-half the length of any contract between the public utility and the qualifying facility when the contract is for a period greater than two years; otherwise, reimbursement ~~**shall**~~**will** be made over a one-year period. At the public utility's option and with the Commission's approval, a public utility may guarantee a loan to a qualifying facility for interconnection costs rather than finance such costs from the public utility's own funds.

STATUTORY/OTHER AUTHORITY: ORS 183, 756, 757, 758
STATUTES/OTHER IMPLEMENTED: ORS 756.040, 758.505 - 758.555
HIST.: PUC 9-1981, f. & ef. 10-29-81 (Order No. 81-755); PUC 7-1982, f. & ef. 7-21-82 (Order No. 82-514); PUC 21-1984, f. & ef. 9-25-84 (Order No. 84-742); PUC 1-1998, f. & ef. 1-12-98 (Order No. 98-016)

860-029-0070
System Emergencies

(1) Qualifying facility's obligation to provide power during system emergencies: A qualifying facility ~~**shall be**~~**is** required to provide energy and capacity to a public utility during a system emergency only to the extent:

(a) Provided by agreement between such qualifying facility and public utility; or

(b) Ordered under section 202(c) of the Federal Power Act.

(2) During any system emergency, a public utility may curtail:

(a) Purchases from a qualifying facility if such purchases would contribute to such emergency (including net output requirement); and

(b) Sales to a qualifying facility, as qualified by section (3) of this rule, provided that such curtailment is on a nondiscriminatory basis.

(3) Except in cases of practical impossibility, sales to a qualifying facility ~~**which**~~**that** is generating 50 percent or more of its load, ~~**shall**~~**may** not be curtailed during a system emergency, or under mandatory curtailments established by Order No. 78-823, until all other customers in its class have been fully curtailed.

(4) A qualifying facility ~~**which**~~**that** is unable to deliver power to a public utility owing to curtailment by the public utility ~~**shall**~~**will** be relieved of any obligation to sell to the public utility during the curtailment period.

STATUTORY/OTHER AUTHORITY: ORS 183, 756, 757, 758

STATUTES/OTHER IMPLEMENTED: ORS 756.040, 758.505 - 758.555
HIST.: PUC 9-1981, f. & ef. 10-29-81 (Order No. 81-755); PUC 7-1982, f. & ef. 7-21-82 (Order No. 82-514); PUC 21-1984, f. & ef. 9-25-84 (Order No. 84-742); PUC 1-1998, f. & ef. 1-12-98 (Order No. 98-016)

860-029-0080
Electric Utility System Cost Data

(1) Each public utility ~~**shall**~~**must** provide sufficient data concerning its avoided costs and costs of interconnection to allow the owner or operator of a qualifying facility to estimate, with reasonable accuracy, the payment it could receive from the utility if the qualifying facility went into operation under any of the purchase agreements provided for in these rules.

(2) By January 1 of each odd-numbered year, each nonregulated utility ~~**shall**~~**must** prepare and file with the Commission a schedule of avoided costs equaling the nonregulated utility's forecasted incremental cost of resources over at least the next 20 years.

(3) Each public utility ~~**shall**~~**must** file with the Commission draft avoided-cost information ~~**with its least-cost plan pursuant to Order No. 89-507**~~**at the time it files its integrated resource plan** and file final avoided-cost information within 30 days of a Commission ~~**acknowledgment of the least-cost plan**~~ **decision of acknowledgment of the integrated resource plan** to be effective 30 days after filing. The information submitted ~~**shall**~~**will** be maintained for public inspection and include the following data for calculating avoided costs:

(a) The estimated avoided costs on its system, solely with respect to the energy component, for expected levels of purchases from qualifying facilities. The levels of purchases ~~**shall**~~**will** be stated in blocks of not more than 100 megawatts for systems with peak demand of 1,000 megawatts or more and in blocks equivalent to not more than 10 percent of the system peak demand for systems of less than 1,000 megawatts. The avoided costs ~~**shall**~~**will** be stated on a cents-per-kWh basis, during peak and off-peak periods, by year, for the current calendar year and each of the next five years; and

(b) The public utility's estimated capacity costs at completion of the planned capacity additions and planned capacity firm purchases, on the basis of dollars per kW, and the associated energy costs of each addition or purchase, expressed in cents per kWh. These costs ~~**shall**~~**will** be expressed in terms of individual generating resources and of individual, planned firm purchases.

(4) Each public utility contracting to purchase nonfirm energy from a qualifying facility under OAR 860-029-0040(3)(a) ~~**shall**~~**must** file with the Commission each quarter its nonfirm energy avoided cost.

(5) Nothing in these rules shall preclude the determination of avoided costs:

(a) As the average avoided costs over an appropriate period of time; or

(b) To reflect variations in avoided costs due to changes in stream flows, generating unit availability, loads, seasons, or other conditions.

(6) State review: Any data submitted by a public utility under this rule shall be subject to review and approval by the Commission. In any such review, the public utility has the burden of supporting and justifying its data. ~~**Any standard rates filed under OAR 860-029-0040 shall be subject to suspension and modification by the Commission.**~~

(7)(a)On May 1 of each year, a public utility must file with the Commission updates to the avoided cost information filed under section (2) of this rule to be effective within 60 days of filing to reflect:

(A) Updated natural gas prices;

(B) On- and off-peak forward-looking electricity market prices;

(C) Changes to the status of Production Tax Credit; and

(D) Any other action or change including changes to the capital costs of a proxy resource in an acknowledged IRP update that is relevant to the calculation of avoided costs.

(b) In the event a utility's integrated resource plan is acknowledged within 60 days of May 1

in a particular year, the utility may seek a waiver of either the May 1 update or the post IRP-acknowledgement filing.

(~~7~~**8**) A public utility may propose or the Commission may require a public utility to file the avoided cost information described in OAR 860-029-0080(3) **anytime** during the two-year period between filing ~~**least-cost plans pursuant to Order No. 89-507**~~ **integrated resource plans** to reflect significant changes in circumstances, ~~**such as**~~**including, but not limited to,** the acquisition of a major block of resources or the completion of a competitive bid. Such a revision will become effective 90 days after filing.

(**89**) At least every two years, the public utility must file with the Commission the data described in OAR 860-029-0040(4) and 860-029-0080(3).

STATUTORY/OTHER AUTHORITY: ORS 183, 756, 757, 758
STATUTES/OTHER IMPLEMENTED: ORS 756.040, 758.505 - 758.555
HIST.: PUC 9-1981, f. & ef. 10-29-81 (Order No. 81-755); PUC 7-1982, f. & ef. 7-21-82 (Order No. 82-514); PUC 21-1984, f. & ef. 9-25-84 (Order No. 84-742); PUC 2-1993, f. & ef. 1-8-93 (Order Nos. 92-1793 & 93-035); PUC 1-1998, f. & ef. 1-12-98 (Order No. 98-016)

860-029-0085
Requirements for Standard Avoided Cost Rates

(1) Each public utility must file with the Commission standard avoided cost rates within 30 days of a Commission decision regarding acknowledgment of the public utility's integrated resource plan.

(2) Each public utility currently complying with Oregon's renewable portfolio standard must file both "renewable" and "non-renewable" standard avoided cost rates.

(3) The standard avoided cost rates filed by a public utility under sections (1) and (2) of this rule are subject to review and approval as well as modification by the Commission. The Commission may suspend the standard avoided cost rates during review. In any such review, the public utility has the burden of supporting and justifying its standard avoided cost rates. The standard avoided cost rates will be effective 30 days after filing unless otherwise determined by the Commission.

(4)(a) On May 1 of each year, a public utility must file with the Commission updates to its standard avoided cost rates under sections (1) and (2) of this rule to reflect:

(A) Updated natural gas prices;

(B) On- and off-peak forward-looking electricity market prices;

(C) Changes to the status of Production Tax Credit; and

(D) Any other actions or changes that are acknowledged by the Commission upon review of and IRP Update and that are relevant to the calculation of avoided costs.

(b) In the event a utility's integrated resource plan is acknowledged within 60 days of May 1 in a particular year, the utility may seek a waiver of either the May 1 update or the post IRP-acknowledgement filing.

(c) Updates filed under this section are subject to review and approval as well as modification by the Commission. The Commission may set the effective date of the standard avoided cost rates during review. In any such review, the public utility has the burden of supporting and justifying its standard avoided cost rates. Standard avoided costs rates filed under this section will be effective within 60 days of filing.

(5)(a) Upon request or its own motion, the Commission may consider updates to avoided cost rates to reflect significant changes in circumstances including, but not limited to, the acquisition of a major block of resources or the completion of a competitive bid process.

(b) An update under this section may be considered at any time.

(c) Updates to avoided cost rates under this section are subject to review and approval by the

Commission and will become effective within 90 days after filing.

STATUTORY/OTHER AUTHORITY: ORS 183, 756, 757, 758
STATUTES/OTHER IMPLEMENTED: ORS 756.040, 758.505 - 758.555
HIST.: NEW

~~**860-029-0090**~~
~~**Qualifying Cogeneration and Small Power Production Facilities**~~
~~**18 Code of Federal Regulations (CFR), Part 292, Subpart B, in effect on April 1, 1983, is adopted and prescribed by the Commission as minimum criteria that a cogeneration facility or small power production facility must meet to qualify as a qualifying facility.**~~

~~**[Publications: Publications referenced are available from the Agency.]**~~

~~STATUTORY/OTHER AUTHORITY: ORS 183, 756, 757, 758~~
~~STATUTES/OTHER IMPLEMENTED: ORS 756.040, 758.505 - 758.555~~
~~Hist.: **PUC 9-1981, f. & ef. 10-29-81 (Order No. 81-755); PUC 7-1982, f. & ef. 7-21-82 (Order No. 82-514); PUC 21-1984, f. & ef. 9-25-84 (Order No. 84-742); PUC 2-1993, f. & ef. 1-8-93 (Order Nos. 92-1793 & 93-035); PUC 1-1998, f. & ef. 1-12-98 (Order No. 98-016)**~~

860-029-0100
Resolution of Disputes for Proposed Negotiated Power Purchase Agreements

(1) This rule applies to a complaint, filed pursuant to ORS 756.500, regarding the negotiation of a Qualifying Facility power purchase agreement for facilities with a capacity greater than ~~**10 MWs**~~**the eligibility threshold for a standard contract for the Qualifying Facility's resource group**. These provisions supplement the generally applicable filing and contested case procedures contained in OAR chapter 860, division 001.

(2) Before a complaint is filed with the Commission, the Qualifying Facility must have followed the procedures set forth in the applicable public utility's tariff regarding negotiated power purchase agreements.

(3) At any time after 60 calendar days from the date a Qualifying Facility has provided written comments to the public utility regarding the public utility's draft power purchase agreement, the Qualifying Facility may file a complaint with the Commission asking for adjudication of any unresolved terms and conditions of its proposed agreement with the public utility.

(4) A Qualifying Facility filing a complaint under this rule is the "complainant." The public utility against whom the complaint is filed is the "respondent."

(5) The complaint must contain each of the following, as described by the complainant:

(a) A statement that the Qualifying Facility provided written comments to the utility on the draft power purchase agreement at least 60 calendar days before the filing of the complaint.

(b) A statement of the attempts at negotiation or other methods of informal dispute resolution undertaken by the negotiating parties.

(c) A statement of the specific unresolved terms and conditions.

(d) A description of each party's position on the unresolved provisions.

(e) A proposed agreement encompassing all matters, including those on which the parties have reached agreement and those that are in dispute.

(6) Along with the complaint, the Qualifying Facility must submit written direct testimony that includes all information upon which the complainant bases its claims.

(7) The Commission will serve a copy of the complaint upon the respondent. Service may be made by electronic mail if the Commission verifies the respondent's electronic mail address to service of the complaint and a delivery receipt is maintained in the official file. Within 10 calendar days of service of

the complaint, the respondent must file its response with the Commission, addressing in detail each claim raised in the complaint and a description of the respondent's position on the unresolved provisions. The respondent may also identify and present any additional issues for which the respondent seeks resolution.

(8) Along with its response the respondent must submit written direct testimony that includes all information upon which the respondent relies to support its position.

(9) An assigned Administrative Law Judge (ALJ) will conduct a conference with the parties to identify disputed issues, to establish a procedural schedule and to adopt procedures for the complaint proceeding. To accommodate the need for flexibility and to implement the intent of this streamlined complaint process, the ALJ retains the discretion to adopt appropriate procedures provided such procedures are fair, treat the parties equitably, and substantially comply with this rule. Such procedures may include, but are not limited to, hosting a technical workshop, holding a hearing, or submitting written comments.

(10) Only the counterparties to the agreement will have full party status. The ALJ may confer with members of the Commission Staff for technical assistance.

(11) After the hearing, or other procedures set forth in section (9), if the Commission determines that a term or provision of the proposed agreement is not just, fair, and reasonable, it may reject the proposed term or provision and may prescribe a just and reasonable term or provision. The Commission's review is limited to the open issues identified in the complaint and in the response.

(12) Within 15 business days after the Commission issues its final order, the public utility must prepare a final version of the power purchase agreement complying with the Commission decision and serve it upon the Qualifying Facility. Within 10 days of service of the final power purchase agreement, the Qualifying Facility and the public utility may sign and file the agreement with the Commission, may request clarification whether the agreement terms comply with the Commission order, or may apply for rehearing or reconsideration of the order. The terms and conditions in the power purchase agreement will not be final and binding until the agreement is executed by both parties.

(13) The provisions of any power purchase agreement approved pursuant to this rule apply only to the parties to the agreement and are not to be considered as precedent for any other power purchase agreement negotiation or adjudication.

STATUTORY/OTHER AUTHORITY: ORS 183, 756
STATUTES/OTHER IMPLEMENTED: ORS 756.040, 756.500 - 756.575
HIST.: PUC 3-2008, f. &cert. ef. 7-8-08 (Order No. 08-355); PUC 1-2015, f. & cert. ef. 3-3-15 (Order No. 14-434)

860-029-0120
Standard Power Purchase Agreements

(1) Each public utility must offer standard power purchase agreements to eligible qualifying facilities.

(2) Each public utility must file with the Commission a schedule outlining the process for acquiring a standard power purchase agreement that is consistent with the provisions of OAR 860 division 029 and Commission policy and that satisfies the requirements of this rule.

(3) Qualifying facilities have the unilateral right to select a purchase term of up to 20 years for a power purchase agreement. Qualifying facilities electing to sell firm output fixed-prices have the unilateral right to a fixed-price term of up to 15 years.

(4) A qualifying facility may specify a scheduled commercial on-line date consistent with the following:

(a) Anytime within three years from the date of agreement execution;

(b) Anytime later than three years after the date of agreement execution if the qualifying facility establishes to the utility that a later scheduled commercial on-line date is reasonable and

necessary and the utility agrees.

(5) Unless otherwise excused under the power purchase agreement, the utility is authorized to issue a Notice of Default if the qualifying facility does not meet the scheduled commercial on-line date in the standard power purchase agreement. If a Notice of Default is issued for failure to meet the scheduled commercial on-line date in the power purchase agreement, the qualifying facility has one year in which to cure the default for failure to me the scheduled commercial on-line date, during which the public utility may collect damages for failure to deliver. Damages are equal to the positive difference between the utility's replacement power costs less the prices in the standard power purchase agreement during the period of default, plus costs reasonably incurred by the utility to purchase replacement power and additional transmission charges, if any, incurred by the utility to deliver replacement energy to the point of delivery.

(6) Subject to the one-year cure period in section (5) above, a utility may terminate a standard power purchase agreement for failure to meet the scheduled commercial on-line date in the power purchase agreement, if such failure is not otherwise excused under the agreement.

(7) The standard power purchase agreement must include a mechanical availability guarantee (MAG) for intermittent qualifying facilities as follows:

(a) For wind facilities, a 90 percent overall guarantee starting three years after the commercial operation date for qualifying facilities with new contracts or one year after the commercial operation date for qualifying facilities that renew contracts or enter into a superseding contract, subject to an allowance for 200 hours of planned maintenance per turbine per year that does not count toward calculation of the overall guarantee.

(b) A qualifying facility may be subject to damages for its failure to meet the MAG calculated by:

(A) Determining the amount of the "shortfall" for the year, which is the difference between the projected average on-and off-peak net output from the project that would have been delivered had the project been available at the minimum guaranteed availability for the contract year and the actual net output provided by the qualifying facility for the contract year;

(B) Multiplying the shortfall by the positive difference, if any, obtained by subtracting the Contract Price from the price at which the utility purchased replacement power; and

(C) Adding any reasonable costs incurred by the utility to purchase replacement power and additional transmission costs to deliver replacement power other point of delivery, if any.

(8) A public utility may issue a Notice of Default, and subsequently terminate a standard power purchase agreement pursuant to its terms and limitations, for failure to meet the MAG if the qualifying facility does not meet the MAG for two consecutive years if such failure is not otherwise excused by the power purchase agreement.

STATUTORY/OTHER AUTHORITY: ORS 183, 756, 757, 758
STATUTES/OTHER IMPLEMENTED: ORS 756.040, 758.505-758.555
HIST.: NEW

860-029-0130
Nonstandard Power Purchase Agreements

(1) Each public utility must offer nonstandard avoided cost rates and nonstandard power purchase agreements to all qualifying facilities directly or indirectly interconnected with the public utility.

(2) Qualifying facilities have the unilateral right to select a purchase term of up to 20 years for a power purchase agreement. Qualifying facilities electing to sell firm output at fixed prices have the unilateral right to a fixed-price term of up to 15 years.

(3) A qualifying facility may specify a scheduled commercial on-line date consistent with the following:

(a) Anytime within three years from the date of agreement execution;

(b) Anytime later than three years after the date of agreement execution if the qualifying facility establishes to the utility that a later scheduled commercial on-line date is reasonable and necessary and the utility agrees.

(4) The qualifying facility will be determined to be providing firm energy or capacity if the contract requires delivery of a specified amount of energy or capacity over a specified term and includes sanctions for noncompliance under a legally enforceable obligation. For a qualifying facility providing firm energy or capacity:

(a) The utility and the qualifying facility should negotiate the time periods when the qualifying facility may schedule outages and the advance notification requirement for such outages, using provisions in the utility's partial requirements tariffs as guidance.

(b) The qualifying facility should be required to make best efforts to meet its capacity obligations during the utility system emergencies.

(c) The utility and the qualifying facility should negotiate security, default, damage and termination provisions that keep the utility and its ratepayers whole in the event the qualifying facility fails to meet its obligations under the contract.

(d) Delay of commercial operation should not be a cause of termination if the utility determines at the time of contract execution that it will be resource sufficient as of the qualifying facility scheduled commercial operation date specified in the purchase power agreement. The utility may impose damages.

(e) Lack of notice force testing to prove commercial operation should not be a cause of termination.

(5) An "as-available" obligation for delivery of energy, including deliveries in excess of nameplate rating or the amount committed in the power purchase agreement, should be treated as a non-firm commitment. Non-firm commitment should not be subject to minimum delivery requirements, default damages for construction delay or under-delivery, default damages for the qualifying facility choosing to terminate the power purchase agreement early, or default security for these purposes.

(6) For qualifying facilities unable to establish creditworthiness, the utility must at a minimum allow the qualifying facility to choose either a letter of credit or cash escrow for providing default security. When determining security requirements, the utility should take into account the risk associated with the qualifying facility base on such factors such as its size and type of supply commitments. Default security methodologies specified in the utility's standard power purchase agreements are a useful starting point for negotiations for nonstandard power purchase agreements.

(7) Qualifying facilities may either contract with the purchasing utility for a "surplus sale" or for a "simultaneous purchase and sale" provided, however, that the qualifying facility's selection of either contractual arrangement is not inconsistent with any retail tariff provision of the purchasing utility then in effect or any agreement between the qualifying facility and the purchasing utility.

(a) Contracts for surplus sale and for simultaneous purchase and sale will be available to qualifying facilities regardless of whether they qualify for standard power purchase agreements and rates or non-standard power purchase agreements and rates. However, the "simultaneous purchase and sale" is not available to qualifying facilities not directly connected to the purchasing utility's electrical system.

(b) The negotiation parameters and guidelines should be the same for both surplus sale and simultaneous purchase and sale contracts.

(d) The avoided cost calculations by utilities do not require adjustment solely as a result of the selection of either surplus sale or simultaneous purchase and sale arrangements.

STATUTORY/OTHER AUTHORITY: ORS 183, 756, 757, 758
STATUTES/OTHER IMPLEMENTED: ORS 756.040, 758.505-758.555
HIST.: NEW