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July 10, 2018

VIA ELECTRONIC FILING

Commission Chair Megan Decker
Commissioner Stephen Bloom
Commissioner Letha Tawney
Public Utility Commission of Oregon
201 High Street SE, Suite 100
Salem, Oregon 97301-3398

RE: AR 593 Community Renewable Energy Association's Comments on Staff's Draft Rules

Dear Commissioners:

I write on behalf of the Community Renewable Energy Association ("CREA") in response of the initial draft administrative rules distributed by Staff of the Public Utility Commission of Oregon ("Commission") on July 3, 2018, which revise the Commission's Division 29 administrative rules regarding purchases and sales from qualifying facilities ("QF") under the Public Utility Regulatory Policies Act of 1978 ("PURPA").

CREA is an intergovernmental association organized under Oregon Revised Statutes Sections 190.003 to 190.118, which consists of local governments seeking to promote locally-owned renewable energy projects for all forms of renewable generation recognized in Oregon's Renewable Portfolio Standard (biomass, geothermal, hydropower, ocean thermal, solar, tidal, wave, wind and hydrogen). CREA is comprised of several Oregon counties which provide active participation through their county commissioners, including Sherman, Wasco, Gilliam, Harney, Hood River, Morrow, Polk, Union, Wheeler, Curry, and Wallowa Counties. In addition to these counties, CREA's current membership includes the Columbia Gorge Community College, and 25 irrigation districts, businesses, individuals and non-profit organizations who have interest in a viable community renewable energy sector for Oregon. CREA has been a longstanding advocate for viable PURPA policies in Oregon and has been an active participant in proceedings implementing PURPA before the Commission over the last decade.

CREA understands that the Commission intends this phase of this rulemaking to result in a prompt update of the Commission's administrative rules implementing PURPA to ensure consistency between the administrative rules and the currently implemented policies that have been adopted through the Commission's contested case proceedings since the rules were last

updated. Overall, CREA generally agrees that Staff has proposed many reasonable updates in its draft proposed rule. However, CREA has proposed a handful of additional revisions to Staff's initial draft of the proposed rule that would more completely reflect the Commission's current policies developed in the major PURPA dockets, including Docket Nos. UM 1129, UM 1610, and UM 1396. Our revisions are shown in redline on the document distributed by Staff, attached hereto. Additionally, we have also provided a brief explanation for the basis for each proposed revision in the comment field in that document, which we will not repeat in this separate cover letter. We will be available to discuss our edits directly with Staff and other parties during the remainder of the informal rulemaking process, and we will also submit more formal and detailed comments during the formal process, to the extent necessary.

CREA appreciates Staff's efforts to update the Commission's administrative rules and looks forward to continuing to work with the Commission and the other parties in this rulemaking process.

RESPECTFULLY SUBMITTED on July 10, 2018.

RICHARDSON ADAMS, PLLC

/s/ *Gregory M. Adams*

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Enclosure: Attachment 1 - Redline to Draft Rule

ATTACHMENT 1

CREA's Recommended Edits to Staff's Draft Proposed Rule Circulated July 3, 2018

(CREA edits in red underline and strikethrough)

Division 29- **Regulations Related to Agreements between** Electric Utilities ~~Interconnection with~~ **and** Electric Cogeneration and Small Power Production Facilities
OAR 860-029-0001 Purpose
OAR 860-029-0005 Applicability of rules
OAR 860-029-0010 Definitions for ~~Electric Interconnection~~ **Division 029** Rules
OAR 860-029-0020 Obligations of Qualifying Facilities to the Electric Utility
OAR 860-029-0030 Obligations of the Public Utility to Qualifying Facilities
OAR 860-029-0040 Rates for Purchase
OAR 860-029-0043 Standard Rates for Purchase
OAR 860-029-0046 Integration Charges
OAR 860-029-0050 Rates for Sales
OAR 860-029-0060 Interconnection Costs
OAR 860-029-0070 System Emergencies
OAR 860-029-0080 Electric System Cost Data
OAR 860-029-0085 Requirements for Standard Avoided Cost Rates
OAR 860-029-0090 Qualifying Cogeneration and Small Power Production Facilities
OAR 860-029-0100 Resolution of Disputes for Proposed Power Purchase Agreements
OAR 860-029-0120 Standard Power Purchase Agreements
OAR 860-029-0130 Nonstandard Power Purchase Agreements

Division 29- Electric Utilities Interconnection with Electric Cogeneration and Small Power Production Facilities	**Proposed Changes**
Division 29- **Regulations related to Agreements between** Electric Utilities ~~Interconnection with~~ **and** Electric Cogeneration and Small Production Power Facilities	Remove reference to "interconnection" and substitute with reference to "regulations related to agreements." The current title of Division 29 is misleading. The rules do not just govern "interconnection." Also proposed change to "860-029-0010 Applicability of Rules" and "860-029-0010 Definitions for Interconnection Rules" to modify references to "interconnections." As amended, the Division title would be "Regulations related to Agreements between Electric Utilities and Electric Cogeneration and Small Production Power Facilities."

OAR 860-029-0001 Purpose	**Proposed Changes**
The purpose of this Division is to implement ORS 758.505 through 758.555 and to implement regulations relating to electric utilities and qualifying cogeneration and small power production facilities as provided under Section 210 of the federal Public Utility Regulatory Policies Act of 1978 (PURPA), Public Law 95-617 (16 USC 824a-3).	None.

OAR 860-029-0005 Applicability of Rules	Proposed Changes
(1) Except as otherwise provided, these rules ~~shall~~ **will** apply to all interconnection**, purchase, and sale** arrangements between a public utility and facilities ~~which~~ **that** are qualifying facilities as defined herein. Provisions of these rules ~~shall~~ **will** not supersede contracts existing before the effective date of these rules. At the expiration of such an existing contract between a public utility and a cogenerator or small power producer, any contract extension of new contract ~~shall~~ **will** comply with these rules.	**Subsection (1).** Clarify that Division 029 Rules apply to purchase and sale arrangements as well as interconnection arrangements. Substitute "will" for "shall." This change is made throughout rules, and will generally not be specifically identified as a "proposed change."
(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 rates, terms, or conditions do not burden the public utility's customers.	Removed references to "prices" so rules refer to avoided cost "rates".
(3) Within 30 days following the initial contact between a prospective qualifying facility and a public utility, the public utility shall submit informational documents, approved by the Commission, to the qualifying facility which state: (a) The public utility's internal procedural requirements and informational needs; (b) That the avoided 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; (c) Avoided costs are subject to change pursuant to OAR 860-029-0080(3); (d) That the avoided 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.	**Subsection (3). Re-inserted this subsection.**

(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.	

OAR 860-029-0010 Definitions for Electric Interconnection Rules	Proposed Changes
OAR 860-029-0010 Definitions for ~~Electric~~ ~~Interconnection~~ **Division 029** Rules	**Title.** Change from definitions for "Electric Interconnection Rules" to "Definitions for "Division 29 Rules," because rules are not only about electric interconnection.
(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 include any costs of interconnection of such resource to the system.~~	**Subsection (1). "Avoided costs."** Modify definition of "avoided costs" to delete inclusion of "interconnection costs" because not included in federal definition.
(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 at 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" means 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 ~~which~~ **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~~	CREA Comment: Subsection (6) conflicts with the Energy Policy Act of 2005, which repealed the former utility-ownership limitation on ownership of a QF. A utility-owned facility meeting the cogeneration criteria is a QF under federal law, and this more restrictive language in this rule would be preempted by federal law.

~~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.**	**New subsection (7). "Commercial operation date."** Add this definition to clarify distinction between the day a QF is scheduled to begin operations (scheduled commercial operation date) and date it actually begins operation. Removed "and reliable" from definition.
~~(7)~~ **(8)** "Commission" means the Public Utility Commission of Oregon. ~~(8)~~ **(9)** "Costs of interconnection" means the 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.**	**New subsection (11). "Effective date."** Add to clarify when term of contract begins (not intended to be date on which fixed payments commence). Removed reference to legally enforceable obligation.
~~(10)~~ **(12)** "Electric utility" means a nonregulated regulated utility or a public utility as defined in ORS 758.005. ~~(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 purchases energy. (b) For firm energy, the combined allocated fixed costs and associated variable costs applicable to a displaced generating unit or to a purchase.	
	New Subsection (15). "Environmental attributes." Deleted proposed definition.
~~(13)~~ **(15)** "Firm energy" means a specified quantity of energy committed by a qualifying facility to an electric utility. For purposes of these rules, a commitment to deliver "firm energy" includes a firm commitment to deliver the electrical output of a qualifying facility over a specified term and does not necessarily require a commitment that a specified quantity of electrical energy will be delivered at a specified time.	CREA Comment: This draft rule, read in conjunction with other rules herein, could be misread to suggest that Oregon subscribes to the Texas "firm power" rule that precludes creation of a legally enforceable obligation by intermittent wind and solar QFs. We recommend a revision to avoid confusion since the OPUC's orders clearly track the reasoning of FERC on this point, where firmness and predictability of the power affects the capacity rate paid to the QF but not the ability to form a legally enforceable obligation. *See JD Wind 1, LLC*, 130 FERC ¶ 61,127, at PP 16-25 (Feb. 19, 2010).
(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, at the option of the qualifying facility, either at the time of contracting or at the time of delivery.	**New subsection (17). "Fixed rate term."** Add definition to clarify in rule that there is a term of contract during which fixed prices are paid, with a term up 15 years. CREA Comment: It is not clear why there needs to be reference to "time-of-delivery" rate in

	discussing the fixed rate term. By definition, a time-of-delivery rate is not a fixed rate. If the time-of-delivery reference remains in the rule, it should be clear the QF has the option to select the rate calculated at the time of contracting.
~~(14)~~ **(17)** "Index rate" means the lowest avoided cost approved by the Commission for a generating facility 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.	
	Deleted New subsection (20) re: nameplate capacity.
	New subsection (21). "Net output." Deleted proposed definition of "net output."
~~(16)~~ **(19)** "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.	**Subsection (22).** Deleted proposed changes to definition of nonfirm energy.

~~(17)~~ **(20)** "Maintenance power" means electric energy or capacity supplied by a public utility during scheduled outages of a qualifying facility. ~~(18)~~ **(21)** "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.	
	New subsection (25). Deleted proposed definition of "point of delivery."
~~(19)~~ **(22)** "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)~~ **(23)** "Purchase" means the purchase of electric energy or capacity or both from a qualifying facility by an electric utility. ~~(21)~~ **(24)** "Public utility" means a utility regulated by the Commission under ORS 757, that provides electric power to customers.	
(24) "Purchase term" means the period of a power purchase agreement during which the qualifying facility is selling its output to the public utility.	**Revised definition of purchase term so it no longer includes a particular start date. Staff can work with stakeholders on the definition, but I think the concept is important to make clear that the 20-year term of a contract generally does not start on the effective date of the contract.**

~~(22)~~ **(25)** "Qualifying facility" means a cogeneration facility or a small power production facility as defined by [*these rules*] 16 C.F.R. §292.201, *et seq*. Qualifying facility also means the owner or operator of a qualifying facility. (~~23~~) **(26)** "Rate" means any price, charge, or classification made, demanded, observed, or received with respect to the sale or purchase of electric energy or capacity of any rule, regulation, or practice respecting any such price, charge, or classification.	
(27) "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 xxxx, 2018.	**New subsection (3).** "Renewable portfolio standard." Add definition from statute because pertinent to availability of renewable avoided cost prices. (Order No. 11-505.)
(28) "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 xxxx. RPS Attributes do not include Environmental Attributes that are greenhouse gas offsets from methane capture not associated with the generation of electricity.	**New subsection (33**). "RPS attributes." Added because pertinent to availability of renewable avoided cost prices.
~~(24)~~ **(29)** "Sale" means the sale of electric energy or capacity or both by a public utility to a qualifying facility.	
(30) "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.	**New subsection (35).** "Scheduled commercial operation date."
~~(25)~~ **(31)** "Small power production facility" means a facility *which* **that** produces electric energy using as a primary energy source biomass, waste, solar energy, wind 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 holding~~	CREA Comment: As to subsection (31), Same comment as above regarding definition of Cogeneration QFs. We would also recommend deleting the last sentence since, as Staff's

~~company, an affiliated interest, or any combination thereof.~~ Only small power facilities which, with any other facilities located at the same site, have power production capacity of 80 megawatts or less are covered by these rules. ~~(26)~~ **(32)** "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)~~ **(33)** "System emergency" means a condition on a public utility's system that ~~which~~ is likely to result in imminent, significant disruption of service to customers, in imminent danger of life or property, or both. ~~(28)~~ **(34)**"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)~~ **(35)** "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	comments note below, this is a matter within FERC's exclusive jurisdiction and FERC rules clearly address the issue of the one-mile rule. As to subsection (35), this proposed definition of the LEO rule is not consistent with existing OPUC precedent. As drafted here, the proposed rule fails to lawfully implement FERC's LEO rule. We recommend a revision using the language of Order No. 16-174.

(b) In the absence of a fully executed agreement between the public utility and a qualifying facility: (1) Once a qualifying facility signs the final draft of an executable contract provided by a public utility to commit itself to sell power to the utility; or (2) Such earlier date as determined by the Commission, if a QF demonstrates the public utility caused delay or obstruction of progress towards a final draft of an executable contract.~~The date agreed to, in writing, by the qualifying facility and the electric utility as the date the obligation is incurred for purposes of calculating the applicable rate~~.	
	New subsection (41). Omitted definition of "Total term."

OAR 860-029-0020 Obligations of Qualifying Facilities to the Electric Utility	Proposed Changes
The conditions listed in this rule **will** ~~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 ~~pursuant to~~ **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.~~	**Subsection (1)**. Delete portion of subsection that refers to obligation of utility rather than obligation of QF and move deleted section to obligations of utility in OAR 860-029-0030.
(2) Contracts: (a) All contracts between a qualifying facility and public utility for energy and capacity shall 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 to 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 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 ~~shall~~ bear**s** 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.	**Subsection (2).** Removed substantive edits to this rule. CREA Comment: In light of recent OPUC Orders redefining this subpart (2)(a) of this provision as a forum selection clause that confers jurisdiction over contract disputes on the Commission, CREA recommends this provision be deleted because an administrative agency cannot expand its own jurisdiction by administrative rule. The original intent in Order No. 85-099 was not to create jurisdiction over contract disputes. Additionally, it is not clear that subpart (4) has been utilized and may now be obsolete.

(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 pubic 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 the public utility the option of** ~~At its option, the public utility may choose to~~ operate~~i~~**ing** 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 ~~pursuant to~~ **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.	**Subsection(6).** Rephrase as obligation of QF as opposed to right of public utility.

(7) Any agreement between a qualifying facility and a public utility ~~shall~~ **must** provide for the degree to which the qualifying facility will 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.	

OAR 860-029-0030 Obligations of the Public Utility to Qualifying Facilities	Proposed Changes
(1) Obligations to purchase from qualifying facilities: Each public utility ~~shall~~ **must** purchase, in accordance with in 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 who do not generate electricity. (3) Obligation to interconnect: Each public utility ~~shall make such~~ **must** interconnect~~ion~~ 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*~~ **will** 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 ~~shall~~ **will** be on a cost-related basis.	**Section 4. Removed proposed revisions to this subsection.**

(5) Parallel operation: Each public utility ~~shall~~ **will** 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 will file with the Commission a true copy or summary of the terms of the executed 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.**	**New subsection (7) is language moved from OAR 860-029-0020 re: obligations of qualifying facilities since it is an obligation of public utility. Language slightly modified because of changed context (no longer following another rule that discusses contracts.)**

OAR 860-29-0040 Rates for Purchase	**Proposed Changes**
(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 in 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 **must** ~~shall~~ 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.	**Subsection (2)(a).** Removed proposed revisions to subsection (2)(a).

(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 ~~shall~~ **will** be sufficient to encourage continued power production.	
(3) Rates for purchases – time of calculation: ~~Except for purchases made under section (4) of this rule (standard rates) e~~**E**ach qualifying facility 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 **must** ~~shall~~ be based on the purchasing 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~~ **will** 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.	**Subsection (3).** Deleted the exception for purchases under standard rates because is not an exception to the "option to select nonstandard rates." Will put discussion of standard rates in own rule. **Subsection (3)(a).** Removed proposed revisions to this subsection. **Subsection (3)(b)(A) and (B).** Deleted revisions to (3)(b)(A) and (B).
(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 acknowledgment 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~~	**Subsection 4. Re-inserted almost most of subsection (4) re: standard rates into this rule. Omitted last sentence because the rule states that standard rates "shall" apply to qualifying facilities under one MW. But, a QF is allowed to choose standard rates. The application of standard rates is not mandatory.**

~~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 **will**, ~~shall~~, 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 the energy and/or capacity supplied from a qualifying facility during system emergencies, including its ability to separate its load from its generation;	**The criteria for eligibility for standard rates is moved to OAR 860-029-0043.** **Former New Subsection (4). Removed subsection relating to offering standard renewable avoided cost rates because does not belong in this rule.**

(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 loses 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.	

OAR 860-029-0043 Standard Rates for Purchase	Proposed Rule (New)
(1) Each public utility will offer standard non-renewable avoided cost rates to eligible qualifying facilities. **(2) Each public utility that is currently complying with a renewable portfolio standard will 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 will file standard avoided cost rates that differentiate between qualifying facilities of different resource types by taking into account the contribution to meeting the utility's peak capacity of the different resource types.** **(5) Each public utility will update its standard avoided cost rates in accordance with OAR 860-029-00XX.**	**Subsection (1).** Removed subsection re: standard avoided costs from 860-029-0040 re: "Rates for Purchase" and moved to own rule. **Subsection (2).** Changed from previous version. In Order No. 11-505 the Commission specified that PGE and PAC will offer renewable avoided cost rates because "currently subject to" RPS. This rule picks up the "currently subject to" language. Former Subsection (3). Omitted this subsection, which was based on 18 C.F.R. 292.304. **Subsection (3).** FERC rules specify that QFs under 100 kW are eligible for standard rates. Do not include any Commission-determined eligibility cap in rule because they are subject to change. **Subsection (4).** Order No. 14-058 requires capacity contribution adjustment for renewable and non-renewable standard avoided cost prices.

OAR 860-029-0046 Integration Charges	Proposed Rule (New)
(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 will bear the burden to establish the proposed integration charge or charges reflect the costs of integrating the type of resource that will be subject to the charge.** **(3)** **To the extent they are to be imposed by the public utility, any integration charges will be included in the public utility's avoided cost schedules.**	**Subsection (1)**. Commission approved integration charges for wind resources in Order No. 05-584. In Order No. 14-058, Commission held integration charges may only be imposed on QFs within the utility's Balancing Authority. The idea behind this is if QF is connected indirectly, it will have to procure integration services from the entity that is transmitting. If the entity is directly interconnected, no charges are necessary. But, if this should be changed to BAA to capture all circumstances, will do so. In Order No. 15-292, the Commission stated that the three utilities could seek to impose integration charges for solar QFs. **Subsection (2).** Deleted portion of subsection (2) that was a restatement of subsection (1). **Subsection (3).** In Order No. 17- 075, the Commission approved Idaho Power's solar integration charge and specified for Idaho Power that "[i]ntegration charges for both solar and wind generation shall be listed separately in the schedule and made readily identifiable. (Order No. 17-075, p. 5.)

OAR 860-029-0050 Rates for Sales	Proposed Changes
(1) Rates for sales by public utilities ~~shall~~ **will**: (a) Be just and reasonable and in the public interest; and (b) Not discriminate against qualifying facilities. (2) Rates for sales **that** ~~which~~ are based on accurate data and consistent, system-wide costing principles **will** ~~shall~~ 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 **must** ~~shall~~ 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 on undue burden on the public utility. (5) The rate for sale of back-up power or maintenance power:	No material change.

(a) **May** ~~Shall~~ 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) **Must** ~~Shall~~ 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.	

OAR 860-029-0060 Interconnection Costs	**Proposed Changes**
(1) Obligation to pay: Any interconnection costs **are** ~~shall be~~ 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 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 contact period 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.	No material change.

OAR 860-029-0070 System Emergencies	Proposed Changes
(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 the public utility; or (b) Order 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 **that** ~~which~~ is generating 50 percent or more of its load, ~~shall~~ **may** not be curtailed during a system emergency, or under mandatory curtailment established by Order No. 78-823, until all other customers in its class have been fully curtailed. (4) A qualifying facility **that** ~~which~~ 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.	No material change.

OAR 860-029-0080 Electric System Cost Data	Proposed Changes
(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 non-regulated utility ~~shall~~ **must** prepare and file with the Commission a schedule of avoided costs equaling the non-regulated 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~~ **at the time it files** its ~~least cost~~ **integrated resource** plan ~~pursuant to Order No. 89-507~~ and file final avoided cost information within 30 days of **a** Commission **decision regarding** acknowledgment of the ~~least-cost~~ **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 less than 1,000 megawatts. The avoided costs ~~shall~~ **will** be stated on a cents per kW basis, during peak and off-peak periods, by year, for the current calendar year and each of the next five years; and	**Subsection (3).** Change "least cost plan" to "integrated resource plan." Remove reference to Order No. 89-507 because it is unnecessary. Restored requirement that avoided cost data filed after acknowledgment of IRP is "to be effective 30 days after filing." The first draft of revised rules had consolidated this and other timelines for review of the different types of avoided cost filings. Those new subsections are omitted from this draft. Most rules re: timing of filing, etc., restored to original state. Changed replacement of the word "shall." Was "must" in first revised draft. But, "will" fits better.

(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) ~~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 time period; 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. ~~And standard rates filed under OAR 860-029-0040(4) shall be subject to suspension and modification by the Commission.~~	**Subsection (6).** Restored part of this rule to original state. Moved third sentence re: suspension and review of standard rates to rule re: standard avoided rates below (0085).
(6) On May 1 of each year, a public utility must file with the Commission updates to the avoided cost information filed under subsection (2) to be effective within 60 days of filing, to reflect: **(a)Updated natural gas prices;**	**New subsection 6.** New rule codifying requirement in Order No. 14-058 that utilities must file annual update each May updating forecasted gas prices, forecasted market 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.**	status of PTC, and changes from acknowledged IRP Update.
(7) A public utility may propose or the Commission may require a public utility to file the data described in OAR 860-029-0080(3) **anytime** during the two-year period between filing **integrated resource** ~~least-cost~~ plans ~~pursuant to Order No. 89-507~~ to reflect significant changes in circumstances such as 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.	Subsection (7). Changes references to "least cost plans" to references to "integrated resource plans" and deletes unnecessary reference to Order No. 89-507. Re-inserted statement that revision will become effective 90 days after filing.
(8) 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).	**Subsection 8. This subsection was inadvertently omitted from first draft. It is a current rule.**
	Former new subsection 7. Omitted. The new subsection 7 was one of a few intended to clarify various timelines and procedures for reviewing avoided cost data and rates. These new provisions are eliminated and original rule language re-inserted in original place.
	Former new subsection 8. Omitted. Same as above.

OAR 860-029-0085 Requirements for Standard Avoided Cost Rates	Proposed Rule (New)
(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 subject to 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 subsections (1) and (2) 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 suspended 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 filed under subsections (1) and (2) to reflect:** **(i) Updated natural gas prices;** **(ii) On- and off-peak forward-looking electricity market prices;** **(iii) Changes to the status of Production Tax Credit; and** **(iv) Any other actions or changes that are acknowledged by the Commission upon review of an IRP Update and that are relevant to the calculation of avoided costs.** **(b) Updates filed under this subsection are subject to review and approval by the Commission as described in subsection (3).**	**Subsection (1)**. Created new rule because current rules specify that utility must file avoided cost data within 30 days of acknowledgment, but do not specify that utility must file standard rates. **Subsection (2).** Clarifying when renewable avoided cost rate is required. Based on language in Order No. 11-505. In that order, the Commission specifies that PGE and PAC are required to offer renewable avoided cost rates because are "currently subject to the RPS." (Order No. 11-505, p. 4.) **Subsection (3)**. Specifying time for review of final avoided cost prices and that are subject to suspension and modification. Language re: suspension and modification of standard rates was previously included in OAR 860-029-0080 re: standard rates. Language re: review and approval is also included in OAR 860-029-0080. **Subsection (4)**. Codifying process determined in Order No. 14-058. Subsection (4)(b). Streamlined this subsection so does not entirely repeat the standard of review

Standard avoided cost rates filed under this subsection will be effective within 60 days of filing. **(5)(a) Upon request or on 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.** **(b) An update under this subsection may be considered at any time.** **(c) Updates to avoided cost rates under this rule are subject to review and approval by the Commission and will become effective 90 days after filing.**	already stated in subsection (3). Also, inserted provision that updates are effective within 60 days of filing. **Subsection (5)(c). This rule related to standard contracts is based on rule re: filing of avoided cost data (OAR 860-029-0080(7). In Order No. 14-058, the Commission made clear that this out-of-cycle update provision applies to standard rates as well as avoided cost data. The existing rule says these types of changes are effective 90 days after filing. So, that effective date is in this rule.**

~~OAR 860-029-0090 Qualifying Cogeneration and Small Power Production Facilities~~	**Proposed Changes**
~~OAR 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 must meet to qualify as a qualifying agency.~~	The Commission should eliminate this rule. It says the criteria adopted by FERC are the **minimum** criteria for a QF. But, FERC and federal courts have made clear that states have no authority to impose any other criteria for qualifying as a QF. *See Independent Energy Producers Association, Inc. v. CPUC*, 36 F.3d 848 (9th Cir. 1994) ("Nowhere do these regulations contemplate a role for the state in setting QF standards or determining QF status.")

OAR 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 type.** 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 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.	**Subsection (1)**. Removed proposed edits to this rule so it remains as is, other than the change to the eligibility threshold for standard contracts. Note: There seem to be too many implementation questions regarding the use of an alternative dispute resolution process for standard contracts to allow a draft rule on this topic.

(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 terms and conditions. (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 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 counter parties 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 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.	

860-029-0110 Eligibility for a Standard Power Purchase Agreement and Standard Rates	Proposed Rule (New) (OMITTED)
	This proposed rule attempted to capture the 5-mile radius rule. It is omitted.

860-029-0120 Standard Power Purchase Agreements	Proposed Rule
(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 at fixed-prices have the unilateral right to a fixed-price term of up to 15 years.** **(4) The contract must specify that a qualifying facility may select a scheduled commercial on-line date:** **(a) Anytime within three years from the date of contract execution;**	(1) Removed "and rates" because this rule is about standard PPAs. (2) No change. Former (3) regarding timelines for contracting. Omitted this subsection. NEW (3). Including 20-year term and 15-year fixed price term for standard contracts. Former (4). Renumbered (3) and re-stated as requirement of standard contract. Also removed references to legally enforceable obligation because this is a rule about standard contracts. Former (5). Re-inserted into OAR 860-029-0020.

(b) Anytime later than three years after the date of contract 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.	**Former (6). Renumbered (4). Modified as suggested by Joint Utilities.**
(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 online date in the standard power purchase agreement. If a Notice of Default is issued for failure to meet the scheduled commercial online date in the power purchase agreement, the qualifying facility has one year in which to cure the default for failure to meet the scheduled commercial online 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.	**Former (7). Renumbered (5).**
(6) Subject to the one-year cure period in subsection (45) above, a utility may terminate a standard power purchase agreement for failure to meet the scheduled commercial online date in the power purchase agreement, if such failure is not otherwise excused under the contract, regardless of the utility's actual resource position at the time of the default or the utility's resource position that underlies the scheduled avoided cost prices that would have been payable to the qualifying facility at the time of default.	CREA Comment: Subsection (6) should be clarified to remove ambiguity that there is no right to terminate during the one-year cure period for a delay default. **Former (8). Renumbered (6). Modified as suggested by Joint Utilities.**
(7) The standard power purchase agreement will 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 hour 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:** **(i) 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;** **(ii) 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** **(iii) adding any reasonable costs incurred by the utility to purchase replacement power and additional transmission costs to deliver replacement power to the point of delivery, if any.** **(8) A public utility may issue a Notice of Default, and subsequently terminate a standard contract 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.	

OAR 860-029-0130 Nonstandard Power Purchase Agreements	Proposed Rule (New)
(1) Each public utility must offer non-standard avoided cost rates and non-standard 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.	**Former Subsection (2)re: timelines and starting point for negotiations omitted.**
(3) The qualifying facility will be providing firm energy or capacity if the contract requires ~~delivery of a~~ a firm commitment to deliver the electrical output of a qualifying facility over a specified term and does not necessarily require a commitment that a specified quantity of electrical energy will be delivered at a specified time **~~specified amount of energy or capacity over a specified term~~ and includes sanctions for non-compliance 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 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**	**Former Subsection (3) renumbered as Subsection (2).** Order No. 14-058 confirms that QFs have the right to sell energy during a 15-year fixed price term and then a five-year as available term. **Former Subsection (4)** re: language that is in contract omitted from this rule and re-inserted in original location in OAR 860-29-0020 (Obligations of QFs). **Former Subsection (5) renumbered as subsection (3).** CREA Comment: As to subsection (3), same comment as above with regard to the definition of "Firm Energy."

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 motive force testing to prove commercial operation should not be a cause of termination.** **(4) 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.** **(5) 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 based 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 non-standard power purchase agreements.**	**Subsections (5)-(7).** Codifies guidelines for non-standard contracts from Order No. 07-360.