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FILING CAPTION: Rulemaking Regarding Power Purchases by Public Utilities from Small Qualifying Facilities

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RULES:
860-029-0005, 860-029-0010, 860-029-0020, 860-029-0030, 860-029-0040, 860-029-0043, 860-029-0046, 860-029-0050, 860-029-0060, 860-029-0070, 860-029-0080, 860-029-0085, 860-029-0090, 860-029-0100, 860-029-0120, 860-029-0130

AMEND: 860-029-0005

RULE TITLE: Applicability of Rules

NOTICE FILED DATE: 07/26/2018

RULE SUMMARY: The changes to this rule clarify that the division 029 rules apply to purchase and sale arrangements as well as interconnection arrangements.

RULE TEXT:
(1) These rules apply to all interconnection, purchase, and sale arrangements between a public utility and facilities that are qualifying facilities as defined herein. Provisions of these rules 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 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 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 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) Avoided costs actually paid to a qualifying facility 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 29 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, 758.505-758.555

AMEND: 860-029-0010

RULE TITLE: Definitions for Division 029 Rules

NOTICE FILED DATE: 07/26/2018

RULE SUMMARY: The changes to this rule including changing the title to more accurately reflect the scope; adding definitions for nameplate capacity and RPS attributes; adding definitions to clarify distinctions between dates of when a facility is contracted, scheduled to begin operations, actually begins operations, and begins selling output; putting definitions in alphabetical order and renumbering; and other format changes.

RULE TEXT:

(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, including 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 which produces electric energy and steam or other forms of useful energy (such as heat) by cogeneration that are used for industrial, commercial, heating, or cooling purposes.

(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.

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

(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.

(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 the public utility.

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

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

(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.

(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.

(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.

(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.

(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.

(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.

(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.

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

(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.

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

(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.

(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.

(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. 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.

(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.

(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.

(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.

(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.

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

STATUTES/OTHER IMPLEMENTED: ORS 756.040, 758.505-758.555

AMEND: 860-029-0020

RULE TITLE: Obligations of Qualifying Facilities to the Electric Utility

NOTICE FILED DATE: 07/26/2018

RULE SUMMARY: The changes to this rule remove provisions addressing obligations of utilities rather than qualifying facilities. The removed portions are added to the rule about utilities' obligations.

RULE TEXT:

The conditions listed in this rule 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 these rules must execute a written agreement with the public utility.

(2) Contracts:

(a) All contracts between a qualifying facility and a public utility for energy, or energy and capacity 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 shall bear 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 must be constructed and operated in accordance with all applicable federal, state, and local laws and regulations.

(4) The qualifying facility 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 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 must be accessible to the public utility at all times.

(6) The qualifying facility must allow the public utility 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 pursuant to OAR 860-029-0070. The public utility 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 must provide for the degree to which the qualifying facility 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

AMEND: 860-029-0030

RULE TITLE: Obligations of the Public Utility to Qualifying Facilities

NOTICE FILED DATE: 07/26/2018

RULE SUMMARY: The changes to this rule include the addition of section (7) after its removal from OAR 860-029-0020 and other minor changes to clarify provisions.

RULE TEXT:

(1) Obligations to purchase from qualifying facilities: Each public utility 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 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 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 must interconnect 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 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 be on a cost-related basis.

(5) Parallel operation: Each public utility 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

AMEND: 860-029-0040

RULE TITLE: Rates for Purchases

NOTICE FILED DATE: 07/26/2018

RULE SUMMARY: The rule changes include removing the exception for purchases under standard rates in section (3) because it is not an exception to select the nonstandard rate, removing the last sentence in subsection (4)(a) because a qualifying facility may choose standard rates and the application of standard rates is not mandatory, and other minor changes to clarify provisions.

RULE TEXT:

(1) Rates for purchases by public utilities 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 must purchase at a rate which is the public utility's avoided cost or the index rate, whichever is higher. A good faith effort 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 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 be sufficient to encourage continued power production.

(3) Rates for purchases — time of calculation: Each 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 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/or 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 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 integrated resource plan, standard rates for purchases from eligible qualifying facilities to become effective 30 days after filing. The publication shall contain all the terms and conditions of the purchase.

(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, 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

ADOPT: 860-029-0043

RULE TITLE: Standard Rates for Purchase

NOTICE FILED DATE: 07/26/2018

RULE SUMMARY: This rule includes information previously found in OAR 860-029-0040 regarding standard avoided costs, reflects the requirements that the public utility that is currently complying with a renewable portfolio standard must offer standard renewable avoided cost rates to eligible qualifying facilities, reflects Federal Energy Regulatory Commission requirement that public utilities' standard avoided cost rates must differentiate between qualifying facilities of different resource types, and reflects the requirement for public utilities to update standard avoided cost rates for capacity contribution adjustments.

RULE TEXT:

(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 OAR 860-029-0085.

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

STATUTES/OTHER IMPLEMENTED: ORS 756.040, 758.505-758.555

ADOPT: 860-029-0046

RULE TITLE: Integration Charges

NOTICE FILED DATE: 07/26/2018

RULE SUMMARY: This rule codifies Commission prior decisions about public utilities being able to charge integration charges for solar and wind qualifying facilities located in the Balancing Authority Area of the public utility and about including such integration charges in the public utility's avoided cost schedules.

RULE TEXT:

(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

AMEND: 860-029-0050

RULE TITLE: Rates for Sales

NOTICE FILED DATE: 07/26/2018

RULE SUMMARY: The changes in this rule are for clarity and are not material in nature.

RULE TEXT:

(1) Rates for sales by public utilities 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 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 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) 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) 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

AMEND: 860-029-0060

RULE TITLE: Obligation to Pay and Reimbursement of Interconnection Costs

NOTICE FILED DATE: 07/26/2018

RULE SUMMARY: The changes in this rule are for clarity and are not material in nature.

RULE TEXT:

(1) Interconnection costs are the responsibility of the owner or operator of the qualifying facility. Interconnection costs that may reasonably be incurred by the public utility 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) The public utility 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 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, 767, 758

STATUTES/OTHER IMPLEMENTED: ORS 756.040, 758.505 - 758.555

AMEND: 860-029-0070

RULE TITLE: System Emergencies

NOTICE FILED DATE: 07/26/2018

RULE SUMMARY: The changes in this rule are for clarity and are not material in nature.

RULE TEXT:

(1) Qualifying facility's obligation to provide power during system emergencies: A qualifying facility 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 that is generating 50 percent or more of its load, 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 that is unable to deliver power to a public utility owing to curtailment by the public utility 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

AMEND: 860-029-0080

RULE TITLE: Electric Utility System Cost Data

NOTICE FILED DATE: 07/26/2018

RULE SUMMARY: The rule changes remove unnecessary references, update terminology, improve clarity, add a provision to codify prior decisions and current practice regarding the filing of annual avoided cost updates, and move language about standard rate suspension and review to OAR 860-029-0085.

RULE TEXT:

(1) Each public utility 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 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 must file with the Commission draft avoided-cost information at the time it files its integrated resource plan and file final avoided-cost information within 30 days of a Commission decision of acknowledgement of the integrated resource plan to be effective 30 days after filing. The information submitted 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 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 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 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) 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.

(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.

(8) 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 plans 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. Such a revision will become effective 90 days after filing.

(9) 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

ADOPT: 860-029-0085

RULE TITLE: Requirements for Standard Avoided Cost Rates

NOTICE FILED DATE: 07/26/2018

RULE SUMMARY: This rule requires utilities to file standard avoided cost rates within 30 days of Commission decision on acknowledgement of an integrated resource plan, clarifies when a renewable avoided cost rate is required, specifies time for review of final avoided cost rates and that such rates are subject to suspension and modification, requires utilities to file on May 1 of each year updates to standard avoided cost rates and specifies that the rates are subject to Commission review and approval and clarifies when out-of-cycle updates may be considered.

RULE TEXT:

(1) Each public utility must file with the Commission standard avoided cost rates within 30 days of a Commission decision regarding acknowledgement 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 an 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 cost 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

REPEAL: 860-029-0090

RULE TITLE: Qualifying Cogeneration and Small Power Production Facilities

NOTICE FILED DATE: 07/26/2018

RULE SUMMARY: This rule is repealed because the Federal Energy Regulatory Commission and the courts have made clear that states have no authority to impose any additional criteria for qualifying as a qualifying facility.

RULE TEXT:

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

AMEND: 860-029-0100

RULE TITLE: Resolution of Disputes for Proposed Negotiated Power Purchase Agreements

NOTICE FILED DATE: 07/26/2018

RULE SUMMARY: The change to this rule is the threshold for the dispute resolution process from 10 MWs to the eligibility threshold for a standard contract for the qualifying facility's resource type.

RULE TEXT:

(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 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, 758.505 - 758.555

ADOPT: 860-029-0120

RULE TITLE: Standard Power Purchase Agreements

NOTICE FILED DATE: 07/26/2018

RULE SUMMARY: This rule codifies Commission policies set forth in Order Nos. 14-058 and 15-130 setting requirements of standard power purchase agreements between public utilities and qualifying facilities.

RULE TEXT:

(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) 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 meet 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 contract 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 to the 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

ADOPT: 860-029-0130

RULE TITLE: Nonstandard Power Purchase Agreements

NOTICE FILED DATE: 07/26/2018

RULE SUMMARY: This rule establishes requirements for nonstandard power purchase agreements, codifying Commission policy decisions set forth in Order Nos. 07-360 and 14-058.

RULE TEXT:

(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 power purchase agreement. The utility may impose damages.

(e) Lack of notice force testing to prove commercial operation should not be the 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 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 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.
(c) 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