

## **RULE 29. SPECIAL RULE FOR COGENERATION & SMALL POWER PRODUCTION**

### **SECTION I. DEFINITIONS**

- A. GENERAL RULE** Terms defined in the Public Utility Regulatory Policies Act of 1978 (PURPA) shall have the same meaning for purposes of this rule as they have under PURPA, unless further defined in this rule.
- B. DEFINITIONS** The following definitions apply for purposes of this rule.
- (1) "Avoided costs" means the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source.
  - (2) "Back-up power" means electric energy or capacity supplied by an electric utility to replace energy ordinarily generated by a qualifying facility's own generation equipment during an unscheduled outage of the qualifying facility.
  - (3) "Commission" means the Mississippi Public Service Commission.
  - (4) "Interconnection costs" means the reasonable costs of connection, switching, metering, transmission, distribution, safety provisions and administrative costs actually incurred by the electric utility directly related to the installation and maintenance of the physical facilities necessary to permit interconnected operations with a qualifying facility.
  - (5) "Interruptible power" means electric energy or capacity supplied by an electric utility subject to interruption by the electric utility under specified conditions.
  - (6) "Long-term contract" means a contract which is for a term greater than one year.
  - (7) "Maintenance power" means electric energy or capacity supplied by an electric utility to a qualifying facility during scheduled outages of the qualifying facility.
  - (8) "New qualifying facility capacity" means electric capacity of a qualifying facility, construction of which was commenced on or after November 9, 1978.
  - (9) "Purchase" means the purchase of electric energy or capacity or both from a qualifying facility by an electric utility.
  - (10) "Qualifying facility" means a cogeneration facility or a small power production facility which is a qualifying facility under Subpart B of the Federal Energy Regulatory Commission's Regulations under Section 201 of the Public Utility Regulatory Policies Act of 1978 as in effect on the effective date of this rule.
  - (11) "Rate" means any price, rate, 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 rate, charge, or classification, and any contract pertaining to the sale or purchase of electric energy or capacity.
  - (12) "Sale" means the sale of electric energy or capacity or both by an electric utility to a qualifying facility,
  - (13) "Supplementary power" means electric energy or capacity supplied by an electric utility and regularly used by a qualifying facility in addition to that which the facility generates itself.
  - (14) "System emergency" means a condition on a utility's system which is likely to result in imminent significant disruption of service to the utility's customers or is imminently likely to endanger life or property.

### **SECTION II. GENERAL PROVISIONS**

- A. APPLICABILITY** This rule applies to the regulation of sales and purchases between qualifying facilities and electric utilities subject to the Commission's jurisdiction in this matter.
- B. NEGOTIATED RATES OR TERMS**
- (1) Any electric utility and qualifying facility may agree to a rate for any purchase, or terms or conditions relating to any purchase, which differ from the rate or terms or conditions which would otherwise be required by this rule.
  - (2) Nothing in this rule shall affect the validity of any contract entered into between a qualifying facility and electric utility for any purchase.

(3) Any contract entered into between a qualifying facility and an electric utility for any purchase shall comply with applicable rules, regulations, practices and procedures of the Commission in effect at the date of execution of the contract.

(4) No electric utility may unreasonably refuse to negotiate and enter into a long-term contract for the purchase of energy and/or capacity from a qualifying facility in accordance with the provisions of this rule,

C. REVIEW AND APPROVAL OF CONTRACTS All contracts between the utility and any qualifying facility executed subsequent to the date of the adoption of these rules by the Commission shall be filed with the Commission, Upon filing, the commission may, within 30 days, approve the contract with a finding that it is just and reasonable, and in the public interest, or order further review of the contract prior to approval. If the Commission has not ordered further review of the contract within 30 days from the date of filing, the contract shall be automatically approved.

D. CONFIDENTIALITY

(1) Any data or information furnished by a qualifying facility to a utility during negotiations which is specified as confidential and privileged shall be treated by the utility as confidential and privileged, and

(2) Any data or information furnished by a utility to a qualifying facility during negotiations which is specified as confidential and privileged shall be treated by the qualifying facility as confidential and privileged.

SECTION III. INTERCONNECTION AND WHEELING

A. OBLIGATION TO INTERCONNECT

(1) Subject to A. (2) and D. of this section, any electric utility shall make such interconnections with any qualifying facility as may be necessary to accomplish purchases or sales under this rule.

(2) No electric utility is required to interconnect with any qualifying facility if, solely by reason of purchases or sales over the interconnection, the electric utility would become subject to regulation as a public utility under Part 11 of the Federal Power Act.

(3) Each electric utility shall offer to operate in parallel with a qualifying facility, provided that the qualifying facility complies with such standards for system safety and operating reliability as may be established by the Commission under D. (3) of this section.

(4) No qualifying facility may have at any one location or facility interconnection with more than one electric utility.

B. TRANSMISSION TO OTHER ELECTRIC UTILITIES (WHEELING)

(1) If a qualifying facility agrees, an electric utility which would otherwise be obligated to purchase energy or capacity from such qualifying facility may transmit the energy or capacity to any other electric utility. The cost of such transmission may be recovered by the transmitting utility from the qualifying facility pursuant to the regulatory authority having jurisdiction. Any electric utility to which such energy or capacity is transmitted shall purchase such energy or capacity under this rule as if the qualifying facility were supplying energy or capacity directly to such electric utility. The rate for purchase by the electric utility to which such energy is transmitted shall be adjusted up or down to reflect line losses pursuant to Section IV and shall not include any charges for transmission.

(2) The Commission shall be informed by the qualifying facility of any request made by the qualifying facility to an electric utility for the transmission of energy and/or capacity to another utility.

C. INTERCONNECTION COSTS Each qualifying facility shall be obligated to pay any interconnection costs in excess of the costs to either party which would have been incurred had the facility not been a qualifying facility, Each utility shall make provisions in its contracts with qualifying facilities or in its standard rates for purchases for the repayment of excess interconnection costs. Should the parties fail to agree, the Commission may determine the manner for payments of interconnection costs, which may include reimbursement over a reasonable period of time, Such determination shall include, among other concerns, consideration of the adequacy of security for any deferred payments.

#### D. OPERATING SAFETY AND RELIABILITY

- (1) In no event shall a qualifying facility interconnect with an electric utility's system without the knowledge and written consent of the utility.
- (2) The qualifying facility shall be responsible for the design, installation and safe operation of all equipment and facilities on the qualifying facility's side of the point of interconnection and shall be subject to the requirements of all governmental agencies asserting safety jurisdiction and shall comply with all applicable codes, ordinances, rules and regulations thereof.
- (3) The Commission may establish reasonable standards to ensure system safety and reliability of interconnected operations.
- (4) Each electric utility shall establish reasonable standards for interconnection with qualifying facilities to ensure system safety and for the protection of the electric utility's equipment and personnel.
- (5) The qualifying facility shall be responsible for establishing, providing and paying the associated cost of appropriate operating communications with the utility. The utility shall advise the qualifying facility in meeting this requirement.
- (6) A qualifying facility shall be required to provide energy or capacity to an electric utility during a system emergency only to the extent:
  - (a) provided by agreement between such qualifying facility and electric utility; or
  - (b) ordered under Section 202 (c) of the Federal Power Act.
- (7) During any system emergency, an electric utility may discontinue:
  - (a) purchases from a qualifying facility if such purchases would contribute to such emergency; and
  - (b) sales to a qualifying facility, provided that such discontinuance is on a nondiscriminatory basis.

#### SECTION IV. PURCHASES FROM QUALIFYING FACILITIES

- A. OBLIGATION TO PURCHASE Subject to paragraph B of this Section, each electric utility shall purchase, in accordance with this rule, any energy and/or capacity which is made available from a qualifying facility:
  - (1) directly to the electric utility; or
  - (2) indirectly to the electric utility in accordance with Section III. B.
- B. PERIODS DURING WHICH PURCHASES NOT REQUIRED
  - (1) During any period when, due to operational circumstances, a utility (or its system, in the case of a utility which belongs to a centrally dispatched pool) would be required, in order to accommodate purchases from qualifying facilities, to alter its dispatch of generating units in a manner which would result in a net increase in operating costs to the electric utility, the utility shall be allowed to discontinue those purchases which would otherwise necessitate such alteration of the utility's dispatching; provided, however, that the utility gives reasonable notice to each affected qualifying facility in time for the qualifying facility to discontinue the delivery of energy or capacity to the electric utility.
  - (2) Any utility which fails to comply with the notification requirements of B.1. of this Section is required to pay the qualifying facility the same amount as would have been paid had purchases from the qualifying facility not been discontinued.
  - (3) A claim by an electric utility that such a period has occurred or will occur is subject to such verification by the Commission as the Commission determines necessary or appropriate, either before or after the occurrence.
- C. RATES FOR PURCHASES
  1. Rates for purchases shall:
    - (a) be just and reasonable to the electric consumer of the utility and in the public interest; and
    - (b) not discriminate against qualifying cogeneration and small power production facilities; and
    - (c) not be required to exceed the avoided costs of the utility; and

(d) be negotiated (except for rates set under Section IV. C. 3 of this rule) and if the parties fail to agree, either party may submit the issue to the Commission which will resolve the matter on a case by case basis.

## 2. Relationship to avoided costs.

(a) A rate for purchases satisfies the requirements of C. 1. (a), (b), and (c) if the rate equals the avoided costs determined after consideration of the factors set forth in C. 5. of this section; except that,

(b) A rate for purchases from other than new qualifying facility capacity may be less than the avoided cost if the Commission determines that a lower rate is consistent with C. 1.

(a), (b), and (c), and is sufficient to encourage cogeneration and small power production.

(c) Rates for purchases from new qualifying facility capacity shall be in accordance with C. 2. (a) of this section, regardless of whether the electric utility making such purchases is simultaneously making sales to the qualifying facility.

(d) In the case in which the rates for purchases are based upon estimates of avoided costs to be paid over the specific term of the contract or other legally enforceable obligation or are standard rates for purchases as provided in C. 3. of this Section, the rates for such purchases do not violate this rule if the rates for such purchases differ from avoided costs at the time of delivery.

## 3. Standard rates for purchases

(a) There shall be put into effect, not later than six (6) months from the date this rule becomes effective, standard rates for purchases from qualifying facilities with a design capacity of 100 kilowatts or less.

(b) Shall be filed for approval by the electric utility with the Commission.

(c) Shall be consistent with Section IV. C. 1. (a), (b), and (c), and IV. C. 5; and

(d) May differentiate among qualifying facilities using various technologies on the basis of the supply characteristics of the different technologies; and

(e) Shall specify those terms and conditions of service necessary for application of the rate.

## 4. Purchases "as available" or pursuant to a legally enforceable obligation. Each qualifying facility shall have the option either:

(a) to provide energy as the qualifying facility determines such energy to be available for such purchases, in which case the rates for such purchases shall be based on the purchasing utility's avoided costs calculated at the time of delivery; or

(b) to provide energy or capacity pursuant to a legally enforceable obligation for the delivery of energy or capacity over a specified term, in which case the rates for such purchases shall, at the option of the qualifying facility exercised prior to the beginning of the specified term, be based on either:

(1) the avoided costs calculated at the time of delivery; or

(2) the avoided costs calculated at the time the obligation is incurred.

## 5. In determining avoided costs, the following factors shall, to the extent practicable, be taken into account:

(a) Data provided by the utility pursuant to Section 292.302 of the Federal Energy Regulatory Commission's Regulations under Section 210 of PURPA.

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

(1) The ability of the utility to dispatch the qualifying facility;

(2) The expected or demonstrated reliability of the qualifying facility.

(3) The terms of any contract or other legally enforceable obligation, including the duration of the obligation, termination notice requirement and sanctions for non-compliance;

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

- (5) The usefulness of energy and capacity supplied from a qualifying facility during system emergencies including its ability to separate its load from its generation;
- (6) The individual and aggregate value of energy and capacity from qualifying facilities on the electric utility's system;
- (7) The smaller capacity increments and the shorter lead times available when capacity is added from qualifying facilities
- (c) The relationship of the availability of energy and capacity from the qualifying facility to the ability of the electric 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 electric utility generated an equivalent amount of energy itself or purchased an equivalent amount of electric energy or capacity.

D. RECOVERY OF COST OF PURCHASES All costs, net of costs associated with interconnection or otherwise recovered from the qualifying facility, incurred by an electric utility for purchases of power and/or energy from a qualifying facility pursuant to a standard rate for purchase or other legally enforceable obligations as provided in Section IV, Paragraph C hereof shall be treated by the electric utility as a cost of purchased power.

## SECTION V. SALES TO QUALIFYING FACILITIES

### A. OBLIGATIONS TO SELL

- 1. Each electric utility shall sell to any qualifying facility any energy and capacity requested by the qualifying facility at such character of service as ordinarily available.
- 2. Upon request of a qualifying facility, each electric utility shall provide:
  - (a) supplementary power
  - (b) back-up power
  - (c) maintenance power and/or
  - (d) interruptible power
- 3. The Commission may waive any requirement of A. 2. of this section if, after notice in the area served by the electric utility and after opportunity for public comment, the electric utility demonstrates and the Commission finds that compliance with such requirement will:
  - (a) impair the electric utility's ability to render adequate service to its customers; or
  - (b) place an undue burden on the electric utility.

### B. RATES FOR SALES

- 1. Rates for sales shall:
  - (a) be just and reasonable and in the public interest and
  - (b) not discriminate against any qualifying facility in comparison to rates for sales to other customers with similar load or other cost-related characteristics served by the electric utility.
- 2. Rates for sales of supplementary, back-up, maintenance and/or interruptible power may be negotiated by the parties, subject to Commission approval pursuant to Section 11. C. of this rule.
- 3. Rates for sales of back-up and maintenance power shall:
  - (a) 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 an electric utility's system will occur simultaneously or during the system peak or both and
  - (b) take into account the extent to which scheduled outages of the qualifying facilities can be usefully coordinated with scheduled outages of the utility's facilities.

## SECTION VI. RESOLUTION OF DISPUTES

A. PROCEDURE A proceeding to resolve a dispute between an electric utility, and a qualifying

facility arising under this rule may be instituted by either party filing a complaint or a formal complaint with the Commission in accordance with the Rules of Practice and Procedure of the Commission.

**B. COMMISSION RESOLUTION OF DISPUTES RELATED TO CONTRACTS** If a contract has not been successfully negotiated within 90 days after submission of a written proposal by the qualifying facility or of a written request to the utility for a proposal or if there is an alleged breach of an existing contract or a dispute between the parties as to interpretation of an existing contract, the Commission may, in its discretion on a case-by-case basis, provide a resolution of the specific matters at issue according to the following procedures:

1. The qualifying facility or the electric utility may petition the Commission for informal arbitration of the specific matters in dispute, naming the other party as respondent.
2. Upon receipt of a petition from either party and of a certificate of service of the petition upon the other party, the Commission shall assign the case to one or more members of its staff who will conduct informal arbitration on an expedited basis and issue a written decision within 30 days, except that:
3. Within 30 days of the issuance of the staff decision either party may bring a formal complaint to the Commission from any part of the decision. If no formal complaint has been filed within 30 days, the staff decision will become final and binding upon the parties as an Order of the Commission.
4. Commission proceedings upon the appeal of a staff decision will be conducted according to the Commission's existing rules for the formal adjudication of cases, except that to the extent possible, an expedited schedule will be maintained which will permit issuance of the Commission's final decision within 90 days of the staff decision from which the appeal was taken. The Commission's decision will be in the form of an Order and will be final and binding upon the parties subject to appeal.

#### **SECTION VII. EXEMPTION FROM REGULATION**

All qualifying facilities are exempted from Mississippi State laws and regulations, other than those promulgated herein, respecting:

- (1) The rates of electric utilities, and
- (2) The financial and organizational regulation of electric utilities.\*

\*RULE 29 was promulgated by Order of the Commission in Docket U-3986, effective September 19, 1983