ITEM NO. RM1

PUBLIC UTILITY COMMISSION OF OREGON
AHD REPORT
SPECIAL PUBLIC MEETING DATE: May 25, 2022

REGULAR X CONSENT ____ EFFECTIVE DATE N/A

DATE: May 18, 2022

TO: Public Utility Commission

FROM: Katie Mapes

THROUGH: Nolan Moser **SIGNED**

SUBJECT: OREGON PUBLIC UTILITY COMMISSION ADMINISTRATIVE HEARINGS DIVISION: (Docket No. AR 631) In the Matter of Rulemaking to Address Procedures, Terms, and Conditions Associated with Qualifying Facilities (QF) Standard Contracts

AHD RECOMMENDATION:

That the Commission give direction as it sees fit on the major open issues in Group 1. After receiving guidance from the Commission, AHD and the parties will proceed to address Group 2 issues, as well as any additional open Group 1 items. At a later date AHD will present a full package of revised rules to the Commission.

DISCUSSION:

Issue

Given the sprawling nature of this rulemaking, AHD has bifurcated the rules and issues in this rulemaking into two groups. The May 25, 2022 Special Public Meeting in the docket will present an opportunity for the Commission to provide any appropriate guidance and direction on the questions that must be addressed as part of the first group of rules. Rules will not be adopted at this time, and stakeholders will still have the opportunity to address issues associated with the Group 1 rules when a final proposal is put before the Commission for consideration after AHD and stakeholders address issues associated with the second grouping of rules. Instead, this public meeting represents a “check-in” to ensure that AHD and stakeholders are addressing issues consistent with the Commission’s understanding of the scope of this docket.

Applicable Rule or Law

Oregon Revised Statute (ORS) 756.060 provides "[t]he Public Utility Commission may adopt and amend reasonable and proper rules and regulations relative to all statutes administered by the commission and may adopt and publish reasonable and proper rules to govern proceedings and to regulate the mode and manner of all investigations and hearings of public utilities and telecommunications utilities and other parties before the commission."

ORS 758.535(2)(a) specifies that "the terms and conditions for the purchase of energy or energy and capacity from a qualifying facility shall…[b]e established by rule by the commission if the purchase is by a public utility." The Commission adopted Oregon Administrative Rules (OAR) Chapter 860, Division 29 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).

Analysis

Background

In Order No. 19-254, issued in Docket No. UM 2000, the Commission initiated the informal rulemaking stage of docket AR 631 for the purpose of adopting rules establishing standard contract terms and conditions for Qualifying Facilities (QFs). Staff led a robust stakeholder process during the informal stage of this rulemaking during which Staff and the stakeholders worked collaboratively to explore major PURPA issues.

Entities that filed and submitted comments and participated in workshops included: PacifiCorp, dba Pacific Power, Portland General Electric Company, and Idaho Power Company (together the Joint Utilities); the Community Renewable Energy Association, Renewable Energy Coalition, Northwest and Intermountain Power Producers Coalition (together the QF Industry Groups); NewSun Energy LLC; Obsidian Renewables, LLC; and the Oregon Solar + Storage Industries Association (OSSIA).

When the Commission opened this docket, Staff believed the process could result in a draft standard power purchase agreement that the Commission could adopt by rule. As the stakeholder process progressed, Staff came to believe that there is little support amongst the stakeholders for rules adopting the actual terms of a standard contract applicable to all three of the Joint Utilities. Staff thus concluded that adopting a standard power purchase agreement for use by all the utilities is not a readily achievable outcome in this rulemaking. While stakeholders do appear to support rules that adopt Commission policies and requirements applicable to standard contracts, there is not consensus on what those policies and requirements should be. Thus, in the absence of consensus, Staff created the draft rules. It sought to comply with state and

federal law, balance the interests of ratepayers and QFs, and may minimize the level of resources required to address disagreements between developers and utilities.

The Commission initiated a formal rulemaking process on October 26, 2021.[1] As discussed above, AHD bifurcated the issues in this proceeding into two groups. A schedule was set for Group 1 in the hopes that the bifurcation would allow for efficient consideration of those issues, after which the participants could proceed to consideration of Group 2 issues.

In the formal rulemaking process for Group 1, both the Joint Utilities and the QF Industry Groups have filed several rounds of comments responding to Staff's proposed rules as well as to two successive redlines of Staff's rules put out by AHD. In addition, those parties, including NewSun, have participated in two AHD-led workshops as well as a Commission workshop to discuss proposed changes to the rules. As Staff concluded during the informal rulemaking process, there continues to be number of issues that divide the Joint Utilities and QF Industry Groups in this proceeding and on which it appears a consensus will not be reached.

AHD reviewed issues, and for each contested area, has developed resolutions reflected in the Attachment A redlines. AHD does not present that package of revised rules to the Commissioners for adoption. Instead, AHD requests any guidance or direction the Commission may wish to provide at this time on the contested questions. There do remain issues related to the "Group 1" items on which the participants are still in dispute. It is AHD's opinion that those issues can continue to be discussed in the Group 2 phase of this proceeding and ultimately incorporated into a final package to be presented to the Commission at this rulemakings conclusion.

Issues on Which Commission Guidance is Invited

1. *Accommodating Delays in the Interconnection Process*

A fundamental question in this proceeding has been the extent to which delays in the interconnection process should be accommodated in these rules or whether those issues should instead be left to modifications to the interconnection process itself. For example, the draft Staff rules proposed that a commercial operation date could be up to three years after the PPA was executed, with an additional year possible for delays. AHD raised the question of whether four years would be appropriate, with an additional year for delays. While the QF Industry Groups are generally in favor of longer periods of time, the Joint Utilities argue that this risks locking in stale prices and that the shorter period is thus more appropriate. AHD notes that as proposed, if commercial operation delays are accommodated after a longer time, the fixed price period will not be similarly extended.

[1] Order No. 21-353.

A number of other timing proposals that attempt to address similar concerns—such as when timelines can be extended due to utility-caused delay or an act of *force majeure* and the appropriate cure period should the QF fail to meet its scheduled commercial operation date—were also raised in this proceeding. We seek Commission guidance on the balance it would like to strike between enabling sufficient time to achieve interconnection on the one hand and the risk of enabling speculative contracting and locking in stale prices on the other.

2. *Amounts of Security Required and Creditworthiness*

The draft rules propose that a QF that does not meet creditworthiness requirements be required to post both project development security (during the development phase of the project) and default security (after the project is operational). The Joint Utilities have proposed that they be allowed to require up to $150/kW for project development security and up to $50/kW for default security. The QF Industry Groups argue that these amounts are out-of-step with other jurisdictions and unreasonably high. They also argue that default security is entirely unnecessary as there is relatively little risk to the utility at that stage.

In addition, stakeholders have disputed whether project development security can be provided within 6 months of the PPA effective date instead of 30 days and whether step-in rights and senior liens should be acceptable forms of security. The Joint Utilities oppose these proposals arguing that utilities begin to rely on a QF becoming operational very soon after the effective date of the PPA and that step-in rights and senior liens provide relatively little risk mitigation.

Separately, participants have disputed the issue of how utilities determine whether a QF is "creditworthy." The QF Industry Groups have argued for those requirements to be contained in the Commission's rules rather than in individual PPAs. In their most recent set of comments, the Joint Utilities made a proposal for a creditworthiness requirement to be contained within the Commission rules to which the QF Industry Groups have not yet had an opportunity to respond. That proposal states:

> Creditworthiness requirements under subsections (16) and (17) of OAR 860-029-0010 may be satisfied by:
>
> 1. A senior, unsecured long term debt rating (or corporate rating if such debt rating is unavailable) of (a) 'BBB+' or greater from S&P, or (b) 'Baa1' or greater form Moody's; provided that if such ratings are split, the lower of the two ratings must be at least 'BBB+' or 'Baa1' from S&P or Moody's.
>
> 2. If a rating from S&P or Moody's is not available, the qualifying facility must provide financial documentation that supports an equivalent rating as determined by the purchasing utility through an internal process review and utilizing a proprietary credit scoring model. In such case, the purchasing utility

will request audited financial statements for the most recent two full years (including balance sheet, income statement, statement of cash flows, and accompanying footnotes), which information is evaluated considering (a) the type of generation resource, (b) the size of the resource, (c) the expected energy delivery start date, and (d) the term of the power purchase agreement. The internal review process will evaluate, at minimum, certain profitability, cash flow, liquidity, and financial leverage metrics.

3. If the qualifying facility is required to post a letter of credit, the letter of credit must be issued by an institution, not subject to bail-in regulation, with a credit rating on its long-term senior unsecured debt of at least 'A' from S&P and 'A2' from Moody's.

AHD is generally sympathetic to the need for some security to be provided to the extent that a QF is not creditworthy and that step-in rights and senior liens probably do not sufficiently mitigate the risks to the Joint Utilities, particularly at the project development stage. Thus, AHD would recommend retaining project development security requirements as drafted, though additional comment on the particular amount that the Joint Utilities can require is appropriate. AHD recommends allowing QFs to provide development security within 6 months of the effective date. At the default stage, however, those rights appear to be more valuable and the general risk to the purchasing utility and its customers to be lower, and therefore that options seems to AHD to be more viable.

AHD also believes it is appropriate for the Commission to set creditworthiness requirements in the rules in this proceeding. However, because the proposal put on the table by the Joint Utilities in the last round of comments was a new one, we believe public comment on this issue would be appropriate prior to adopting this specific set of creditworthiness requirements.

3. Reasonableness Standard

The QF Industry Groups have argued that the rules need to contain a reasonableness standard that can be enforced by the Commission as a concrete way to prevent unchecked exercise of monopsony power by the purchasing utilities. The QF Industry Groups offer as examples that the reasonableness standard would be useful in disputes over an interconnection customer's right to hire a third-party to independently review the utility's interconnection studies, timing requirements in the contracting process, and information required by the utility to obtain a draft PPA.

The Joint Utilities oppose that standard, stating that the rules and contracts entered into pursuant to the rules contain a variety of standards that the Commission must use. Some provisions are subject to the reasonableness standard, but others give parties a clear right or obligation. By way of example, if a purchasing utility has 14 days to

provide a revised draft PPA, it must meet the 14 day deadline but is also not obligated to provide the PPA faster if it is hypothetically "reasonable" to do so.

If the Commission does not believe an overarching "reasonableness" standard is appropriate, the QF Industry Groups have identified particular provisions where they believe it is appropriate to insert it. AHD is sympathetic to this proposal. In general, we agree with QF Industry Groups that they utilize litigation at the Commission as a last resort, and that the reasonableness standard may have the effect of encouraging resolution of disputes. We seek Commission guidance on this question.

4. 12x24 Schedule and Generation Profile

The Joint Utilities seek to require a contracting qualifying facility to provide both a 12x24 power delivery schedule and 8760 generation profile. The Joint Utilities state that both are necessary for system planning and balancing and also that it is something that most developers will have completed for their own purposes, making it not unduly burdensome. Conversely, the QF Industry Groups have maintained that such a requirement is not appropriate in all cases and that, for instance, a seasonal run-of-river hydro project would neither have nor need such estimates. They believe that a *non-binding* delivery schedule estimate and generation profile would be more appropriate when required. Throughout this phase of the rulemaking, AHD has sought to understand to what extent the initial 12x24 and 8760 profile will be utilized. AHD agrees that it is appropriate for a utility to request and receive this information, but how this information will be utilized will be an important element in the development of contracts following the adoption of these rules. AHD recommends that these schedules be subject to replacement by the QF after the performance of the facility is verified following actual operation.

5. What Must Qualifying Facilities Provide to Demonstrate Site Ownership or Control?

While there is no dispute that qualifying facilities must provide evidence demonstrating meaningful steps towards obtaining site ownership or control at the outset, the Joint Utilities and the QF Industry Groups differ as to what evidence is sufficient. The draft rules contain a note stating that "[t]he provision of a letter of intent or other non-binding documentation of site control, such an indication of interest to lease, or a qualitative description of the state of site control development, in and of themselves or together, are not sufficient to satisfy this required site control evidence. A letter of intent or other documentation showing that the lease will be granted contingent upon a receipt of a PPA by the developer will be sufficient." The QF Industry Groups have argued that this essentially requires *actual* site ownership or control rather than meaningful efforts to obtain it and it is thus in violation of FERC precedent. The Joint Utilities believe such limitations are appropriate to limit speculative contracting.

6. Insurance Requirements for Small Qualifying Facilities

The draft rules propose that qualifying facilities under 200 kW should be exempt from insurance requirements. The Joint Utilities have opposed such a requirement on the ground that it would shift all risks of under-insurance to customers. They have instead proposed that small qualifying facilities be required to obtain a $2 million umbrella insurance policy.

7. Renewable Energy Certificate (REC) Ownership

The QF Industry Groups have maintained that the rules should be revised to require that qualifying facilities opting to take renewable avoided cost prices retain ownership of the RECs produced after the end of the fixed-price period in the standard contract. The Joint Utilities disagree with this proposal on the substance but also argue that the question of ownership of how RECs are treated for purposes of avoided cost pricing belongs more properly in docket UM 2000. To date, REC ownership issues have been treated as outside the scope of this docket but we currently seek guidance from the Commission on whether they should instead be considered here.

8. Term of Fixed-Price Contracts

In a prior docket, the Commission ruled that Oregon's PURPA statute did not require that the term of fixed-price contracts be 20 years.[2] The QF Industry Groups argue that under Oregon law that decision was incorrect and should be revisited. We seek Commission guidance as to whether that issue should be reopened and addressed in the present docket.

9. Commission Jurisdiction over Contract Disputes

The QFs oppose language to be included in standard PPAs which would provide the Commission with jurisdiction to "resolve any action or claim relating to this Agreement," though that jurisdiction would not be exclusive. The QF Industry Groups state that certain claims arising out of the PPAs might not be properly subject to the Commission's jurisdiction—for instance, they might be matters committed entirely to the jurisdiction of the Federal Energy Regulatory Commission—and thus this could be read as an impermissible expansion of the Commission's authority.

10. 3-MW Limitation on Solar Qualifying Facilities

During the course of this docket, some participants raised the question of whether the Commission should reconsider its long-standing position that solar qualifying facility with a nameplate capacity above 3 MW are not eligible for standard form contracts. We seek guidance as to whether the Commission wants to reopen that issue in this docket.

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[2] *See* Docket No. UM 1725, Order No. 16-129 at 7 (Mar 29, 2016).

11. Common Developer Exception

The participants appear to be in general agreement on the language of the "common developer" exception as implemented in the draft rules. That provision would state that "[t]wo or more qualifying facilities will not be held to be owned or controlled by the same person(s) or affiliate(s) solely because they are developed by a single entity." That language is meant to mirror a stipulation entered into between the parties. There have since been disputes as to the meaning of that stipulation. The Joint Utilities ask the Commission to affirm their interpretation which is specifically that "the exception *does not* allow a single entity to develop *and own* multiple facilities within five miles as long as the developer intends that the facilities with be separately owned once they are operational."

PROPOSED COMMISSION MOTION:

Provide direction as the Commission sees fit on the issues described in this memo.

DIVISION 29
REGULATIONS RELATED TO AGREEMENTS BETWEEN ELECTRIC UTILITIES AND ELECTRIC COGENERATION AND SMALL POWER PRODUCTION FACILITIES

860-029-0010
Definitions for Division 029 Rules (Redline Version)

(1) "AC" means alternating current.

(2~~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.

(3~~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.

(4~~3~~) "Capacity" means the average output in kilowatts (kW) committed by a qualifying facility to an electric utility during a specific period.

(5~~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.

(6~~x~~) "Certified qualifying facility" means a qualifying facility that is certified as such under 18 C.F.R. Part 292.

(7~~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.

(8~~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.

(9~~7~~) "Commercial operation date" means the date after start-up testing is complete on which the total Nameplate Capacity Rating of the Facility is fully operational and reliable, and the Facility is fully interconnected, fully integrated, and synchronized with the system, and the qualifying facility has satisfied the criteria required by the power purchase agreement to commence operation and begin operating. ~~is fully operational and capable of delivering net output~~.

(10~~8~~) "Commission" means the Public Utility Commission of Oregon.

Commented [MK*P1]: This is a proposal from the Joint Utilities. We understand that they request this this language so a QF must complete the ***entire*** facility and have it interconnected before the COD. We include it here for discussion purposes, and are not yet prepared to propose it before the Commission.

(11~~x~~) "Contract price" means for the fixed price term, the applicable fixed price for On-Peak Hours and Off-peak Hours specified in the purchasing utility's avoided cost price schedule, and during the subsequent non-fixed price term, the purchasing utility's applicable Index Price in effect when the energy is generated.

(12~~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.

(13~~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.

(14~~x~~) "Development period" means the time period commencing on the power purchase agreement Effective Date and ending 24:00 PPT the day before the scheduled commercial operation date.

Commented [MK*P2]: Note that some of Oregon is on Mountain Time.

(15~~11~~) "Effective ~~d~~Date" means the date on which a power purchase agreement is executed by both the qualifying facility and the public utility.

(16~~12~~) "Electric utility" means a nonregulated utility or a public utility as defined in ORS 758.505.

(17~~13~~) "Energy" means electric energy, measured in kilowatt hours (kWh).

(18~~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.

(19~~x~~) "Existing QF" means a QF that is or has been operational before the effective date of a power purchase agreement.

(20~~x~~) "Facility" means all equipment, devices, associated appurtenances, owned, controlled, operated and managed by a qualifying facility in connection with, or to facilitate, the production, storage, generation, transmission, delivery, or furnishing of electric energy by the qualifying facility to the purchasing public utility and required to interconnect with the System.

(21~~x~~) "FERC" means the Federal Regulatory Commission.

(2215) "Firm energy" means a specified quantity of energy committed by a qualifying facility to an electric utility.

(2316) "Fixed ~~rate~~ price 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 is contracted to pay the qualifying facility avoided cost rates determined either at the time of contracting or at the time of delivery.

(24~~x~~) "Force Majeure" is defined at OAR 860-029-XXXX [New Rule #].

(25~~x~~) "Generator Interconnection Agreement" means the generator interconnection agreement between the qualifying facility and qualifying facility's interconnection provider.

(26~~x~~) "Forced Outage" means NERC Event Types U1, U2 and U3, and specifically excludes any Maintenance Outage or Planned Outage.

(2717) "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.

(2818) "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.

(2919) "Maintenance power" means electric energy or capacity supplied by a public utility during scheduled outages of a qualifying facility.

(30~~x~~) "Maintenance Outage" means NERC Event Type MO and includes any outage involving ten percent (10%) of the Facility's Net Output that is not a Forced Outage or a Planned Outage.

(31~~x~~) "MW" means megawatt.

(32~~x~~) "MWh" means megawatt-hour.

(3320) "Nameplate ~~e~~Capacity Rating" means the maximum installed instantaneous power production capacity of the completed Facility, expressed in MW (AC), and measured at the point of interconnection, when operated in compliance with the Generation Interconnection Agreement and consistent with the recommended power factor and operating parameters provided by the manufacturer of the generator, inverters, energy storage devices, or other equipment within the Facility affecting the Facility's capability to deliver useful electric energy to the grid at the point of interconnection. ~~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~~.

(34~~x~~) "NERC" means the North American Reliability Corporation.

(35~~x~~) "Net Output" means all energy and capacity produced by the qualifying facility, less station use and losses, and other adjustments flowing through the Point of Interconnection.

(36~~x~~) "Network Upgrades" means an addition, modification, or upgrade to the transmission system of a purchasing utility required at or beyond the Point of Delivery to accommodate the transmission provider's receipt of energy from a generation facility to the transmission provider's system.

(37~~x~~) "New qualifying facility" means a qualifying facility that is not an existing qualifying facility.

(38~~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.

(39~~x~~) "Non-fixed price term" means the portion of the purchase term of a power purchase agreement that begins after the fixed-price term has ended, during which the qualifying facility receives pricing equal to the purchasing public utility's index rate for comparable deliveries of energy. The length of the non-fixed price term is selected by the qualifying facility and specified in the power purchase agreement.

(40~~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.

(41~~x~~) "Off-peak hours" means all hours other than On-peak hours.

(42~~x~~) "On-peak hours" means the hours designated as such in the purchasing public utility's avoided cost price schedule.

(43~~x~~) "Permits" mean the permits, licenses, approvals, certificates, entitlements and other authorizations issued by governmental authorities required for the construction, ownership or operation of the Facility or occupancy of the site it is located.

(44~~x~~) "Planned Outage" means NERC Event Type PO and specifically excludes any Maintenance Outage or Forced Outage. A "Planned Outage" is also known as a "Scheduled Outage".

(45~~x~~) "Point of Delivery" means for agreements with off-system qualifying facilities, the point on the purchasing public utility's distribution or transmission system where the qualifying facility and purchasing public utility have agreed the qualifying facility will deliver energy to

the purchasing public utility. For on-system qualifying facilities, the Point of Delivery is the Point of Interconnection.

(46~~x~~) "Point of Interconnection" means the point where the qualifying facility is electrically connected to a public utility's transmission or distribution system.

(47~~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.4(24) "Purchase" means the purchase of electric energy or capacity or both from a qualifying facility by an electric utility.

(48~~25~~) "Public utility" means a utility regulated by the Commission under ORS Chapter 757, that provides electric power to customers.

(49~~x~~) "Purchase period" means the period of a power purchase agreement during which the qualifying facility is required to sell power to the public utility and the public utility is required to purchase power offered for sale.

Commented [MK*P3]: We deleted the defined term "purchase term" as redundant with "purchase period" but the rules we don't currently propose to amend will need a careful review to make sure all uses of "purchase term" have been replaced with "purchase period."

(51~~27~~) "Qualifying facility" means a cogeneration facility or a small power production facility as defined in 18 C.F.R. Part 292. Unless otherwise specified, "qualifying facility" includes proposed qualifying facilities, (e.g., entities that intend to obtain certification as a qualifying facility but that have not yet done so). ~~by these rules~~.

(52~~x~~) "Qualifying facility's cost to cover" means the positive difference, if any, between (a) the contract price per MWh, and (b) the net proceeds per MWh actually realized by qualifying facility for the output not purchased by the public utility as required by a power purchase agreement.

(53~~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.

(54~~x~~) "Renewable energy certificate" has the meaning given that term in OAR 330-160-0015(8) (effective September 3, 2008).

(55~~29~~) "Renewable Portfolio Standard" or "RPS" 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.

(56~~x~~) "Renewable qualifying facility" means a qualifying facility that generates electricity that may be used for compliance with the RPS.

(5730) "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.

(5831) "Sale" means the sale of electric energy or capacity or both by a public utility to a qualifying facility.

(59x) "Schedule" means the purchasing public utility's schedule filed with the Commission setting forth terms and prices for standard power purchase agreements and prices.

(6032) "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.

(6133) "Small power production facility" means a facility ~~which~~ that 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.

(62x) "Start-Up Testing" means the start-up testing required by the manufacturer or interconnection provider that establish that the Facility is reliably producing electric energy.

(6334) "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.

(64x) "System" means the electric transmission and distribution system owned or operated by the purchasing public utility.

(6535) "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.

(66x) "Test energy" means electric energy generated by the Facility during the Test Period, and RECs and capacity rights associated with such electric energy.

(67x) "Test period" means a period during which Start-Up Testing is conducted.

(6836) "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.

(6937) "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.

(70x) "Total output" means all energy produced by the Facility.

(71x) "Total term" is the total duration of a power purchase agreement starting on the Effective Date and ending the final day of the purchase period.

OAR 860-029-0005 – Applicability of Rules

(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 be offered on terms and conditions that 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:~~

~~The public utility's internal procedural requirements and information needs; Any contract offered by the public utility is subject to negotiation;~~

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

Commented [MK*P4]: Joint Utilities flagged this as an item where changes are needed to ensure consistency with the new rules. We agree in principle but want to discuss proposed changes.

Commented [MK*P5]: Joint utilities recommend deleting as New Rule # 3 now covers the contracting process.

~~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.~~

(34) 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.

860-029-0043
Standard Rates for Purchase

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

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

~~(3) Qualifying facilities with a nameplate capacity of 100 kW and less are eligible for standard avoided cost rates.~~

(34) 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.

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

860-029-XXXX [New Rule #2]

Eligibility for Standard Avoided Cost Prices and Purchase Agreements

(1) Solar qualifying facilities with a nameplate capacity rating of three (3) MW and less, and all other qualifying facilities with a nameplate capacity rating of ten (10) MW and less, are eligible for standard avoided cost prices.

(2) All qualifying facilities with a nameplate capacity rating of ten (10) MW and less are eligible to enter into a standard power purchase agreement.

(3) Renewable qualifying facilities that satisfy the criteria of subsection (1) are eligible to select the purchasing public utility's standard renewable avoided cost prices. A renewable qualifying facility choosing the standard renewable avoided cost prices must cede all RECs generated by the Facility to the purchasing public utility while the qualifying facility is receiving deficiency-period pricing from the purchasing public utility. ~~and during any other period of the power purchase agreement ordered by the Commission.~~

Commented [MK*P6]: Our conclusion at this time is that this is generally outside the scope of this proceeding. Years ago, the Commission made a policy decision to limit standard contracts to 3 MW for solar facilities. Though we do not plan to propose a change to this provision at this time, we will note for the Commission that it has the ability to provide policy guidance to revise this requirement.

Commented [MN7]: This change would prevent deviation from the standard described above, where RECs are ceded only during the period of deficiency.

(4) The determination of nameplate capacity rating for purposes of determining whether a qualifying facility meets the size criteria in subsections (1) and (2) is based on the cumulative nameplate capacity rating of the qualifying facility seeking the standard avoided cost prices or power purchase agreement and that of any other Facilities owned by the same person(s) or affiliates(s) located on the same site.

(a) Two qualifying facilities are located on the same site if the generating facilities or equipment providing fuel or motive force associated with the qualifying facilities are located within a five-mile radius and the qualifying facilities use the same source of energy or motive force to generate electricity.

~~Facilities are located on the same site as a qualifying facility if the Facilities are located within a five-mile radius of the qualifying facility and use the same source of energy or motive force to generate electricity as the qualifying facility or, are otherwise associated with, the qualifying facility.~~

(b) For purposes of this section:

(A) Person(s) are natural persons or any legal entities.

(B) Affiliate(s) are persons sharing common ownership or management, persons acting jointly or in concert with, or exercising influence over, the policies of another person or persons, or wholly owned subsidiaries.

(C) To the extent a person or affiliate is a closely held entity, a "look through" rule applies so that project equity held by LLCs, trusts, estates, corporations, partnerships, and other similar entities is considered to be held by the owners of the look through entity.

(c) Notwithstanding subsections (4)(a) and (b), the qualifying facility seeking standard prices or a standard power purchase agreement, and other Facilities within the same five-mile radius, will not be considered owned or controlled by the same person(s) or affiliate(s) if the person(s) or affiliate(s) in common are passive investors whose ownership interest is primarily for obtaining value related to production tax credits, green tag values, or MACRS depreciation, and the qualifying facility and other Facilities at issue are "family-owned" or "community-based" project(s).

(A) **Family-owned.** A project will be considered "family owned" if, after excluding the ownership interest of those who qualify as passive investor(s) under (4)(c), five or fewer individuals hold at least 50 percent of the project entity, or fifteen or fewer individual entities hold at least 90 percent of the project entity. For purposes of counting the number of individuals holding the remaining share (i.e., determining whether there are five or fewer individuals or 15 or fewer individuals) an individual is a natural person. Notwithstanding the foregoing, an individual, his or her spouse, and his

Commented [MK*P8]: Here we adopt this proposed clarification of the five mile rule from CREA, NIPPC, and REC.

or her dependent children, will be aggregated and counted as a single individual even if the spouse and/or dependent children also hold equity in the project.

(B) **Community Based.** A community-based (or community-sponsored) project must include participation by an established organization that is located either in the county in which the qualifying facility is located or within 50 miles of the qualifying facility and that either:

(i) has a genuine role in developing, or helping to develop, the qualifying facility and intends to have a significant continuing role with, or interest in, the qualifying facility after it is completed and placed in service, or

(ii) is a unit of local government that will not have an equity ownership interest in or exercise any control over the management of the qualifying facility and whose only interest is a share of the cash flow from the qualifying facility, that may not exceed 20 percent without prior approval of the Commission for good cause.

(d) Notwithstanding subsections (4)(a) and (b), two or more qualifying facilities that otherwise are not owned or operated by the same person(s) or affiliates(s) or are not otherwise associated will not be determined to be a single qualifying facility ~~or have~~based on the fact that they have in place a shared interest or agreement regarding interconnection facilities, interconnection-related system upgrades, or any other infrastructure not providing motive force or fuel. ~~For the purposes of this subsection,~~ T~~t~~wo or more qualifying facilities will not be held to be owned or controlled by the same person(s) or affiliate(s) solely because they are developed by a single entity.

(5) Disputes regarding eligibility for a standard power purchase agreement under this rule will be resolved by the Commission.

Commented [MK*P9]: Clarifying change.

Commented [MK*P10]: Clarifying change.

Commented [MK*P11]: Clarification on who will resolve standard PPA disputes.

860-029-XXXX [New Rule #3]

Process for Procuring Standard Power Purchase Agreement

(1) 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 section.

(2) Upon request, each public utility must provide a draft standard power purchase agreement to an eligible qualifying facility after the qualifying facility has provided the public utility, in written form:

(a) An executed standard form of interconnection study agreement and evidence that all related interconnection study application fees have been paid, or evidence that no study is required;

(b) Documentary evidence that the qualifying facility has taken meaningful steps to seek site control of the proposed location of the qualifying facility including, but not limited to, documentation demonstrating:

(A) an ownership of, a leasehold interest in, or a right to develop, a site of sufficient size to construct and operate the qualifying facility;

(B) an option to purchase or acquire a leasehold interest in a site of sufficient size to construct and operate the qualifying facility; or

(C) another document that clearly demonstrates the commitment of the grantor to convey sufficient rights to the developer to occupy a site of sufficient size to construct and operate the qualifying facility, such as an executed agreement to negotiate an option to lease or purchase the site.

Note: The provision of a letter of intent or other non-binding documentation of site control, such as an indication of interest to lease, or a qualitative description of the state of site control development, in and of themselves or together, are not sufficient to satisfy this required site control evidence. A letter of intent or other documentation showing that the lease will be granted contingent upon receipt of a PPA by the developer will be sufficient.

(c) The following information regarding the proposed qualifying facility:

(A) demonstration of ability to obtain certified qualifying facility status prior to commercial operation; for QFs larger than 1 MW, a Form 556 self-certification of the proposed qualifying facility or a FERC order granting an application for certification of the proposed qualifying facility is required. ;
(B) demonstration of eligibility for standard power purchase agreement and pricing under OAR 860-029- XXXX [New Rule # 2],
(C) design capacity (MW),
(D) estimate of station service requirements and net amount of power to be delivered to the purchasing public utility's electric system,
(E) generation technology and other related technology applicable to the site,
(F) estimate of 12 x 24 delivery schedule and 8760 generation profile,
(G) motive force or fuel plan,
(H) proposed commercial operation date,
(I) proposed contract term,
(J) proposed pricing provisions,
(K) Point of Delivery and Interconnection,
(L) latitude and longitude of proposed facility and site layout,

Commented [MK*P12]: This clarification would be provided in the order approving the rules. We will review associated FERC precedent but have added an additional clarification that we believe better expresses the intent of this provision.

Commented [MK*P13]: Our intention is for this and any other "notes" in the redline to be a clarification in the order, not incorporated into the text of the rules.

Commented [MK*P14]: Joint Utilities say they need information about the POI for off-system QFs to make 3rd party transmission arrangements.

(M) for a qualifying facility with battery storage system, description of the storage design capacity, description of technology used by battery storage system, storage system duration, and net power output, and
(N) other information specified in the utility's avoided cost rates schedule or standard power purchase agreement approved by the Commission.
~~(O) purchase agreement approved by the Commission. (O) for a qualifying facility selecting a scheduled commercial operation date between three and four years after the Effective Date of the standard power purchase agreement pursuant to [insert cross-reference], an interconnection study supporting the scheduled commercial operation date.~~

Estimates of the net amount of power to be delivered to the public utility's electric system and the 12 x 24 delivery schedule are subject to commercially reasonable revisions based upon the expected performance of the qualifying facility until the date the qualifying facility commences commercial operation, provided that any such revision must be consistent with OAR 860-029-0120(15).

(3) Once a qualifying facility has asked for a draft standard power purchase agreement and provided the information required under subsection (2), the public utility has fifteen (15) business days to provide the qualifying facility a draft standard power purchase agreement including current standard avoided cost prices and/or other optional pricing mechanisms as approved by the Commission.

(4) After receipt of a draft standard power purchase agreement, the qualifying facility may submit comments to the public utility regarding the draft agreement or request that the public utility prepare a final executable power purchase agreement.

(5) If the qualifying facility submits comments to the public utility or asks for revisions to the draft standard power purchase agreement, in writing, the public utility has ten (10) business days to (i) notify the qualifying facility it cannot make the requested changes, (ii) notify the qualifying facility it does not understand the requested changes or requires additional information, or (iii) provide a revised draft power purchase agreement. However, the public utility will have fifteen (15) business days to respond or provide a revised draft standard power purchase agreement when the qualifying facility requests a change to the Point of Delivery.

(6) The process outlined in subsections (4) and (5) will continue until both the qualifying facility and public utility agree to the terms of the draft standard power purchase agreement, i.e., neither the qualifying facility not the purchasing public utility have outstanding issues, corrections, or comments regarding the draft power purchase agreement.

(7) After the parties concur on the terms of the draft standard power purchase agreement, the qualifying facility can submit a written request to the public utility for a final executable version of the purchase agreement. The public utility has ten (10) business days from the receipt of the written request to provide a final executable form of the purchase agreement to the qualifying facility.

Commented [MK*P15]: We are inclined to leave this in – but note that the other information to be asked for is still subject to Commission approval.

Commented [MK*P16]: From the Joint Utilities – we are inclined to strike this proposal as an unnecessary hurdle to interconnection but are interested in hearing more on the rationale for or against in comments.

Commented [MK*P17]: Proposed by Joint Utilities – we ask for comments about whether this is the right standard and/or necessary to include.

Commented [MK*P18]: Joint Utilities would like to include other types of changes – we invite comment on which changes are appropriate here. Particularly:

- A change in electrical generating equipment that increases power production capacity by the greater of 1 MW or five percent of the previously certified capacity of the QF;
- A change in ownership in which an owner increases its equity interest by at least 10 percent from the equity interest previously reported;
- An addition or change in the battery system of a project;
- Any change that triggers a legal requirement for the developer to amend the FERC Form 556 on which the QF relies for QF eligibility, provided that in this scenario, the utility should not be required to issue a revised draft PPA until the later of the expiration of the fifteen business day period following the developer's request for an executable PPA and the fifteenth business day following the date on which the QF delivers to the utility an amended FERC Form 556 that corrects the applicable non-conformities; or
- Any change to avoided cost pricing or any other circumstances outside the utility's control that require a substantive modification be made to the PPA.

(8) Upon receipt of the final executable form of the purchase agreement ~~signed~~ executed by the qualifying facility, the purchasing public utility has five (5) business days in which to sign the final executable agreement.

(9) The final executable form of the purchase agreement will be considered effective on the date on which it is executed by the qualifying facility.

860-029-0120
Standard Power Purchase Agreements

(1) Each public utility must offer standard power purchase agreements to eligible qualifying facilities. Each public utility must submit all forms of standard power purchase agreements to the Commission for approval.

~~(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 that satisfies the requirements of this rule.~~

(~~3~~)(2) Qualifying facilities have the unilateral right to select a purchase period~~term~~ of up to 20 years for a standard 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 in the standard power purchase agreement, subject to the reduction specified in subsection (6) for a development period that exceeds three years, and may select a non-fixed price term of up to five years.

(3) The total term of a standard power purchase agreement is any development period followed by the purchase term. The total term starts on the date the power purchase agreement is executed by both parties and ends the last day of the purchase term.

Commented [MK*P19]: Joint utilities recommend removing and incorporating into definition of "Term"

(4) The development period of a standard power purchase agreement begins on the Effective Date, ~~which is date the power purchase agreement is executed by both parties,~~ unless the start of the development period is delayed by the initiation of the Network Upgrade cost allocation process in OAR 860-029-XXXX [Rule #1]. The development period ends at 24:00 P.P.T. the day before the scheduled commercial operation date specified in the standard power purchase agreement.

Commented [MK*P20]: Again, note issues with Mountain Time.

Commented [MK*P21]: Is this redundant with previous sections?

(5) The purchase term of a standard power purchase agreement begins on the scheduled commercial operation date.

Note: The scheduled commercial on-line date may be delayed by an excused delay, Force Majeure, or extended by agreement of the purchasing public utility and the qualifying facility or under subsection (7) of this section. In these cases, the purchase period commences on the delayed or extended scheduled commercial on-line date. In any event, the purchase period of a standard power purchase agreement will start on the scheduled commercial operation date even if the qualifying facility does not begin deliveries on the scheduled commercial operation date.

~~(4)~~(6) A qualifying facility may specify a scheduled commercial operation date for a standard power purchase agreement subject to the following requirements: ~~consistent with the following:~~

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

~~(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~~.

(b) Anytime between three years and four years after the Effective Date of the standard power purchase agreement if:

(A) The qualifying facility has received an interconnection-related system impact study report, cluster study report, or facilities study report indicating interconnection will take longer than three years from the Effective Date of the standard power purchase agreement; or

(B) The qualifying facility demonstrates to the public utility it cannot reasonably be expected to achieve commercial operation within three years from the Effective Date and the utility consents to a scheduled commercial operation date more than three years from the Effective Date, which consent shall not be unreasonably withheld.

(c) In any standard power purchase agreement with a scheduled commercial operation date more than three years after the Effective Date, the fixed-price term will be reduced one day for every day of the construction period after three-year anniversary of the Effective date, with the reduction taken from the end of the fixed-price term.

Example: A standard power purchase agreement with a construction period of three years and six months will have a fixed-price term of fourteen years and six months The fixed-price term will begin on the scheduled commercial operation date and will end after 14 years and 6 months.

(d) A qualifying facility entering into a standard power purchase agreement may not select a scheduled commercial operation date more than four years from the Effective Date.

Commented [MK*P22]: These would be included as clarifications in the order, not in the rule itself. We invite comments on whether this note contradicts later sections of the rules.

(7) Modification of Scheduled Commercial Operation Date or Termination

(a) Anytime within six (6) months after the Effective Date of a standard power purchase agreement, the qualifying facility may terminate the standard power purchase agreement or modify the scheduled commercial operation date in the standard power purchase agreement if the qualifying facility receives an interconnection study report that is completed after the Effective Date that:

(A) includes an estimate of time to interconnect that is longer than the development period in the executed standard power purchase agreement; or
(B) includes an estimate of costs to interconnect that render the project uneconomic in the qualifying facility's opinion.

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(b) A qualifying facility that chooses to modify the scheduled commercial operation date under subsection (7)(a) may not select a new scheduled commercial operation date more than four years from the date the standard power purchase agreement was executed.

Commented [MN23]: Consider movement to five years given interconnection challenges.

(c) If a qualifying facility terminates the standard power purchase agreement under subsection (7)(a), it is liable for damages incurred by the public utility up until the date of termination, which may be taken from the Project Development Security posted by the qualifying facility.

(d) In the event the qualifying facility is delayed in reaching commercial operation because of an event of Force Majeure or the public utility's default under the standard power purchase agreement or ~~under~~ any other agreement related to the interconnection of the qualifying facility to the purchasing utility's system, including interconnection study agreements and interconnection agreements, the scheduled commercial operation date in the standard power purchase agreement will be extended commensurately with the delay caused by the event of Force Majeure or the public utility's default, except for periods of delay that could have been prevented had the qualifying facility taken mitigating actions using commercially reasonable efforts. An extension of the scheduled commercial operation date under this subsection is not subject to the fixed-price term reduction in subsection (6)(c) or the four-year limitation in subsection (6)(d).

Commented [MK*P24]: Joint Utilities recommend separating the discussion of Force Majeure – we invite comments in response to the JU proposal as to how Force Majeure should be handled (as contained in their comments and redline).

~~(5)~~(8) Unless otherwise excused under the standard 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~~ operation date in the standard power purchase agreement. If a Notice of Default is issued for failure to meet the scheduled commercial ~~on-line~~ operation date in the standard power purchase agreement, the qualifying facility has one year in which to cure the default for failure to meet the scheduled commercial ~~on-line~~ operation date, during which the public utility may collect damages for failure to deliver.

Commented [MK*P25]: Joint Utilities propose shortening to 180 days; we are inclined to leave this at one year.

(a) Unless excused under the standard power purchase agreement, d~~D~~amages for failure to meet the scheduled commercial operation date in a standard power purchase agreement 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, determined on a daily basis with positive differences aggregated and invoiced as a monthly sum, plus costs reasonably incurred by the utility to purchase replacement power and additional transmission charges, if any, incurred by the utility to deliver replacement power to the point of delivery.

(b) If the qualifying facility would have been required by the standard power purchase agreement to transfer Renewable Energy Credits to the public utility during the period when the qualifying facility is in default under this subsection, damages owed to the public utility will include the public utility's cost to acquire replacement Renewable Energy Credits.

~~(6)~~(9) 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~~operation date in the power purchase agreement, if such failure is not otherwise excused under the agreement.

Commented [MK*P26]: Conform when final.

(10) Point of Delivery. An off-system qualifying facility may propose the Point of Delivery for a standard power purchase agreement. The purchasing public utility must agree to the Point of Delivery before it is included in ~~standard~~ the standard power purchase agreement. The purchasing public utility may not unreasonably withhold agreement.

~~(7)~~(11) The standard power purchase agreement must include a mechanical availability guarantee (MAG) for ~~intermittent~~ wind qualifying facilities as follows:

(a) ~~For wind facilities, a~~ 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 the calculation of the overall guarantee.

(b) A qualifying facility may be subject to damages for 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 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 additional transmission costs to deliver replacement power to the point of delivery, if any; 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)~~(12) 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.

(13) The standard purchase agreement will include an annual minimum delivery guarantee (MDG) for solar, geothermal, biomass, and baseload hydro qualifying facilities equal to 90 percent of the qualifying facility's expected energy for the year.

(a) The qualifying facility will owe damages for failure to meet the MDG equal to:

(A) the product of the deficiency for such period and the utility's cost to cover;

(B) the cost of any replacement energy procured by the utility as a result of the qualifying facility's failure to meet the MDG and any resulting incremental ancillary services and transmission costs; and

(C) the cost of replacement Renewable Energy Credits.

(b) The 90 percent MDG will be reduced on a pro rata basis for any portion of the annual period the qualifying facility was prevented from generating or delivering electricity for reasons of Force Majeure.

(14) 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 MDG if the qualifying facility does not meet the MDG for three consecutive years if such failure is not otherwise excused by the standard power purchase agreement.

(15) Incremental Utility Upgrades.

(a) The qualifying facility is obligated to provide the purchasing utility an as-built supplement describing the facility within 90 days after the commercial operation date. Except as expressly permitted under subsection 14(b), the facility may not:

(A) have a nameplate capacity rating that exceeds the nameplate capacity rating in the power purchase agreement at the time it was executed; or

(B) result in the expected annual net output specified in the power purchase agreement at the time it was executed to increase by more than 10 percent.

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(b) During the term of the power purchase agreement, except as permitted under subsection 14(c), the facility may not be modified in a manner that materially deviates from the as-built supplement without the purchasing utility's prior written approval. ~~(which~~That approval may not unreasonably be withheld, conditioned or delayed~~)~~.

provided that the purchasing utility is not required to approve any modification of the facility that:

(A) results in the facility increasing its nameplate capacity rating beyond the nameplate capacity rating specified in the power purchase agreement at the time it was executed; or

(B) is reasonably likely to result in the expected annual net output specified in the power purchase agreement at the time it was executed to increase by more than 10 percent.

(c) In the event that the qualifying facility seeks to upgrade the facility during the term of the power purchase agreement in a manner that does not increase the nameplate capacity rating of the facility in the power purchase agreement, ~~and~~ but which is reasonably expected to exceed 10 percent of expected annual net output in the power purchase agreement, such upgrades may be made without the utility's prior written approval under this subsection 14(c) subject to the following requirements:

(A) The proposed upgrades may not cause the qualifying facility to fail to meet the current eligibility requirements for either the standard power purchase agreement or standard prices, to breach its generation interconnection agreement, or ~~to require~~necessitate network upgrades in order to maintain designated network status.

(B) At least six months in advance of the scheduled installation date for the proposed upgrades, the qualifying facility must send written notice to the purchasing utility containing a detailed description of the proposed upgrades and~~,~~ their impact on expected net output and revised 12 x 24 delivery schedule and ~~,~~ requesting indicative pricing for the incremental additional net output expected to be generated as a result of the upgrades.

(C) Within 30 days after receiving such a request, the purchasing utility must respond with indicative pricing for the expected incremental additional net output to be generated as a result of the upgrades and which exceeds 10 percent of the expected annual net output specified in the power purchase agreement.

(D) Within 30 days after receiving indicative pricing, the qualifying facility may request a draft amendment to the power purchase agreement to reflect revised pricing for the remaining term of the power purchase agreement, effective upon completion of the upgrades. If it is not reasonably feasible to separately meter the incremental additional net output resulting from the proposed upgrades, the purchasing utility may create a blended rate based on the proportion the expected incremental additional net output bears to the expected total net output following the installation of the upgrades.

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Commented [MK*P27]: Flag for review. Clarifying edit.

Commented [MK*P28]: Flag for review. Clarifying edit.

(d) Within 90 days after the date on which upgrades are installed under subsections 14(a) (b) or (c), the qualifying facility is obligated to provide the purchasing utility an as-built supplement describing in detail the upgraded facility.

(e) A qualifying facility that wishes to install upgrades that would cause the facility to increase its nameplate capacity rating must terminate its existing power purchase agreement and may choose ~~to may seek~~ to enter a new standard or new non-standard power purchase agreement ~~or~~ based on the then current avoided cost. ~~non-standard prices~~ In calculating damages resulting from the early termination of the original standard power purchase agreement, if any, the cost to cover will be calculated based on the pricing set forth in the new non-standard pricing agreement notwithstanding any other provision in these rules to the contrary. A qualifying facility that chooses to negotiate a new power purchase agreement under this subsection will not be liable for damages for ~~failing~~ any default caused by its failure to maintain eligibility for a standard power purchase agreement.

(16) Project Development Security. A qualifying facility that has executed a standard power purchase agreement that does not meet the purchasing public utility's creditworthiness requirements must post Project Development Security for the purchasing public utility's benefit within ~~30 6 days~~ months of the Effective Date of the standard power purchase agreement. The purchasing public utility's credit requirements, consistent with those used in wholesale transactions, will be set forth in the purchasing public utility's form of standard power purchase agreement approved by the Commission. ~~The amount of required Project Development Security will be set forth in the purchasing public utility's form of standard power purchase agreement approved by the Commission.~~ The obligation to maintain the Project Development Security will expire once the qualifying facility commences commercial operation. The qualifying facility may use either of the following options to post Project Development Security:

(a) Cash Escrow Security. The qualifying facility shall deposit in an escrow account established by the purchasing utility in a banking institution acceptable to both the qualifying facility and purchasing utility, Project Development Security. Such sum shall earn interest at the rate applicable to money market deposits at such banking institutions from time to time. To the extent the purchasing utility receives payment from the Project Development Security for damages in the event of default, the qualifying facility will, within 15 days, restore the Project Development Security as if no such deduction had occurred.

(b) Letter of Credit Security. The qualifying facility shall post and maintain in an amount equal to the Project Development Security: (a) a guaranty from a party that satisfies the ~~Credit Requirements~~purchasing public utility's creditworthiness requirements, in a form acceptable to the public utility in its discretion, or (b) a Letter of Credit in favor of the purchasing public utility. To the extent the public utility receives payment from the Project Development Security for damages in the event of default, the qualifying facility

Commented [MK*P29]: Clarifying edits.

Commented [MK*P30]: This issue has been well developed in the comments and AHD-led workshops and raises important policy issues; we believe it is important for the Commission to hear discussion of participants' position at the public workshop.

Commented [MN31]: Given the challenges with meeting security requirements discussed during the meeting, we'd like to consider ways to address this. One potential solution is to extend the period under which security can be provided by projects. We would like to understand when reliance on the contract creates practical implications and costs for a utility. We also need to review the creditworthiness information submitted by utilities yesterday.

Commented [MK*P32]: Clarification that these requirements need to be set in a separate process.

will, within 15 days, restore the Project Development Security as if no such deduction had occurred.

(17) Default Security. A qualifying facility that has executed a standard power purchase agreement that does not meet the public utility's credit worthiness requirements must post Default Security upon commencing commercial operation. The utility's credit requirements and the amount of required Default Security will be set forth in the public utility's form of standard power purchase agreement approved by the Commission. The qualifying facility may use one of the following options to post Default Security:

(a) Cash Escrow Security. The qualifying facility shall deposit the Default Security in an escrow account established by the purchasing utility in a banking institution acceptable to both the qualifying facility and purchasing utility~~, Default Security~~. Such sum shall earn interest at the rate applicable to money market deposits at such banking institutions from time to time. To the extent the purchasing utility receives payment from the Default Security for damages in the event of default, the qualifying facility will, within 15 days, restore the Default Security as if no such deduction had occurred.

(b) Letter of Credit Security. The qualifying facility shall post and maintain in an amount equal to the Default Security: (a) a guaranty from a party that satisfies the Credit Requirements, in a form acceptable to the public utility in its discretion, or (b) a Letter of Credit in favor of the purchasing public utility. To the extent the public utility receives payment from the Default Security for damages in the event of default, the qualifying facility will, within 15 days, restore the Default Security as if no such deduction had occurred.

(18) Insurance requirements. The standard power purchase agreement must specify that a qualifying facility with a Nameplate Capacity Rating greater than 200 kW must secure and maintain general liability insurance coverage that complies with the following:

Commented [MK*P33]: Joint Utilities would add separate requirement for facilities under 200 kW. We invite comments on this proposal.

(a) The insurance provider must have a rating no lower than "A-" by A.M. Best Company.

(b) Insurance coverage will include:

(A) general commercial liability insurance covering bodily injury and property damage in the amount of $1,000,000 each occurrence combined single limit, or greater if desired by the qualifying facility; and

(B) Umbrella insurance in the amount of $5,000,000, or greater if desired by the qualifying facility.

(19) Except as explicitly provided in these rules, a~~A~~ny qualifying facility that has entered into a standard power purchase agreement with a public utility under PURPA will not make any changes in its ownership, control or management that would cause the qualifying facility to fail

to satisfy the eligibility requirements for entering into the standard power purchase agreement or receipt of standard pricing reflected in the agreement. No more than once every 24 months, at the request of the public utility, the qualifying facility will provide documentation and information reasonably requested by the public utility to establish the qualifying facility's continued compliance with eligibility requirements for the standard power purchase agreement executed by the qualifying facility and public utility. The public utility shall take reasonable steps to maintain the confidentiality of any such documentation and information the qualifying facility identifies as confidential, provided that the public utility may provide all such information to the Commission in a proceeding before the Commission.

(20) All standard power purchase agreements between a qualifying facility and a public utility for energy, or energy and capacity must include language that substantially conforms to the following: The Commission shall have jurisdiction to resolve any action or claim relating to this Agreement. The Commission may elect to decline to hear an action or claim relating to this Agreement. The Commission's jurisdiction to resolve actions or claims relating to this Agreement shall not be exclusive. ~~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.~~

Commented [MK*P34]: Clarifying language.