ITEM NO. RM2

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: October 21, 2021

REGULAR X CONSENT ____ EFFECTIVE DATE N/A

DATE: October 14, 2021

TO: Public Utility Commission

FROM: Stephanie Andrus and Caroline Moore

THROUGH: Bryan Conway **SIGNED**

SUBJECT: OREGON PUBLIC UTILITY COMMISSION STAFF:
(Docket No. AR 631)
Request to Open a Formal Rulemaking to Address Procedures, Terms, and Conditions Associated with Qualifying Facility Standard Contracts.

STAFF RECOMMENDATION:

Staff recommends that the Oregon Public Utility Commission (Commission) approve Staff's request to open a formal rulemaking and issue a notice of proposed rulemaking to adopt permanent rules addressing standard contracting procedures and terms.

DISCUSSION:

Issue

Whether the Commission should initiate the formal stage of Docket No. AR 631 and submit a Notice of Proposed Rulemaking for publication in the Oregon.

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 No. AR 631 for the purpose of adopting rules establishing standard contract terms and conditions for Qualifying Facilities (QFs).[1] Since this docket opened, the stakeholders have worked collaboratively to tee up issues and explore them. Multiple parties have filed comments and participated in workshops, including PacifiCorp, Portland General Electric Company, and Idaho Power Company (together "the Joint Utilities"), the Community Renewable Energy Association, Renewable Energy Coalition, Northwest Independent Power Producers Association (together "the Coalition"), NewSun Energy, Obsidian Renewables, LLC, and the Oregon Solar and Storage Industries Association ("OSSIA"). The informal AR 631 process has gone through several iterations and personnel changes since 2019, and Staff appreciates the continuing efforts of stakeholders to provide Staff with information and discuss the merits of various issues in the years since this docket was opened.

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.[2] Staff believes 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 concludes that adopting a standard power purchase agreement for use by all the Joint 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. In absence of consensus, Staff has attempted to draft rules that comply with state and federal law, balance the interests of ratepayers and QFs, and may minimize the level of resources required to address

[1] Order No. 19-254, Appendix A, p. 3.
[2] Id.

disagreements between developers and utilities. Furthermore, Staff notes that stakeholders have worked in good faith to improve Staff's draft rules and made concessions to facilitate rules that may be acceptable to all stakeholders. Staff appreciates these concessions, including the efforts of the Joint Utilities to provide constructive suggestions on Staff's draft language.

Notwithstanding the lack of consensus on the draft rules, Staff recommends that the Commission initiate the formal rulemaking process. Given the tension inherent in PURPA, stakeholders will likely never agree completely on the policies in these draft rules. However, Staff hopes they will continue to work together to ensure that the language of the proposed rules does no more and no less than what is intended and does so in the clearest way possible. Staff believes that productive policy discussion in the informal phase has run its course and initiating the formal rulemaking at this time will provide a solid platform on which to work toward improved language and Commission decisions on these important policy questions.

If the Commission agrees that these draft rules address the appropriate issues and are pointing in the right direction, Staff believes the Commission's decision-making process will be more efficient and fairer if the draft rules are moved to the formal rulemaking process in their current form so that parties have ample time to prepare and submit their arguments to the Commission in the next rulemaking phase.

Draft Rules
A complete set of the draft rules is appended to this Staff Report (See Attachment A). These rules include both revisions to the existing Division 29 policies and the introduction of new policies to achieve the previously stated goals of furthering state and federal law, balancing the interests of ratepayers and qualifying facilities (QFs), and striving to clarify major areas of disagreement between QFs and utilities.

Below is a brief discussion of some of the most significant and/or disputed rules. This discussion will not cover all the objections and recommendations that stakeholders have made. Importantly, the fact an objection or comment of a stakeholder is not noted here does not indicate that Staff has dismissed it or believes it should not be considered in the formal rulemaking.

OAR 860-029-0010 – Definitions (Proposed revisions)

For OAR 860-0290-0010, Staff proposes modifications to some definitions and the addition of others. Some of the proposed changes are as follows:

(20) “Nameplate Capacity Rating” – Revise existing definition so that nameplate capacity is measured at the point of interconnection.

(27) “Qualifying facility” – Revise existing definition to include entities that *intend* to obtain qualifying facility status with FERC to avoid confusion about whether an entity has to be a certified qualifying facility in order to beginning the contracting process.

(x) “Certified qualifying facility” – Define term to differentiate between qualifying facilities that have satisfied all the requirements to be a qualifying facility from those that have not.

(x) “Development period” – Define term to help clarify the purchase term of a PPA does not start on the execution date.

(x) “Facility” – Define term to clarify the physical components of a qualifying facility.

(x) “Point of Delivery” – Define term for use in off-system PPAs.

(x) “Point of Interconnection” – Define term for use in on-system PPAs.

(x) “Purchase Term” – Define term to help clarify when fixed-price payments begin.

Staff is not aware of significant disagreement regarding any of the revisions to OAR 860-029-0010 that Staff has proposed, though it is likely stakeholders will continue to propose changes to refine the draft language. It is also possible that stakeholders will advocate for additional definitions that Staff has not included.

OAR 860-029-0120–Standard Power Purchase Agreements

Staff’s proposed revisions to OAR 860-029-0120 include provisions: (1) codifying existing policy that each pubic utility’s form of standard power purchase agreement must be approved by the Commission; (2) defining the different periods of a power purchase agreement, in part to clarify the fixed-price term of a PPA does not start on the day the PPA is executed; (3) codifying Commission policy that the QF has unilateral right to select a scheduled commercial operation date up to three years from date of contract execution; (4) providing QFs the unilateral to right select scheduled commercial operation date (COD) up to four years after contract execution in certain circumstances; (5) providing that the fixed-price term of a power purchase agreement

will be shortened one day for each day of the period between contract execution and scheduled COD that is more than three years from contract execution; (6) eliminating the option to select a scheduled COD more than four years after construction execution (previously allowed with consent of utility); (7) providing that qualifying facilities may terminate the PPA without penalty within six months of PPA execution in certain circumstances; (8) specifying that QFs that do not meet the purchasing utility's creditworthiness criteria must post "security with 30 days of contract execution and if the QF still does not meet the purchasing utility's creditworthiness requirements at the time of commercial operation, must maintain security as "default" security; (9) eliminating the option to rely on Step-in rights or a Senior Lien as security; (10) modifying requirements related to insurance; (11) adding a Minimum Delivery Guarantee for solar facilities; and (12) adding new provisions regarding the QF's ability to increase net output after commercial operation.

Stakeholder positions. The Joint Utilities and all other stakeholders take opposing positions on many of the proposed revisions to 860-029-0120. The Coalition recommends (1) allowing QFs the unilateral right to select a scheduled COD up to five years after contract execution date; (2) eliminating proposed reduction to the fixed price term when the interval between contract execution and the scheduled commercial online date is greater than three years, (3) allowing QFs to continue to use Step-in Rights or a Senior Lien as security; and (4) eliminating proposed requirement for a Minimum Delivery Guarantee for solar and run-of-river hydro QFs. New Sun presents a "1-3-5-7 proposal" for selecting and reaching COD, which allows a QF up to 5 years to reach commercial operation without reducing the fixed price period and 7 years with impacts to the fixed priced period under certain circumstances.

In contrast, the Joint Utilities recommend (1) limiting the interval between execution of the power purchase and the scheduled COD to no more than three years; and (2) eliminating the six-month window during which qualifying facilities can terminate a power purchase agreement for certain circumstances, and support many of Staff's proposed revisions listed that the QFs oppose.

Staff Analysis
Interval between Effective Date and Scheduled COD. There is considerable tension between a QF's need for sufficient time to develop and construct a QF facility once a power purchase agreement is executed, the purchasing utility's planning needs, and the ratepayers' interest in minimizing exposure from stale prices. Currently, the Commission strikes a balance between these interests by allowing QFs the unilateral right to select a Scheduled COD up to three years in the future and to select a Scheduled COD more

than three years in the future if it the QF can establish that a period in excess of three years "is reasonable and necessary and the utility agrees."[3]

Staff's proposed revisions essentially maintain the status quo, but eliminate a possible point of disagreement between the QF and purchasing public utility by providing that the QF does not need the utility's agreement to select a COD more than three years in future when the QF has an interconnection study indicating interconnection is not possible within three years. The new provision eliminating the QF's option of selecting a Scheduled COD more than four years after the Effective Date with the purchasing utility's consent eliminates another potential point of disagreement and protects ratepayers from risks related to PPAs with stale pricing. The draft proposed rules provide additional protection against stale prices by reducing the fixed price term of the PPA by one day for every day in the development period that is more than three years from the Effective Date.

Option to terminate PPA within six months of the Effective Date. Staff proposes this rule to help address the potential paradox between the PPA and interconnection processes i.e., the need to have PPA and pricing to secure financing and commit funds required for interconnection and the need to understand interconnection costs and timelines in order to commit to a PPA. Staff finds this challenging both for QF development and least cost, least risk utility planning for ratepayers. Currently, QFs have no option to terminate a PPA, other than default. The draft proposed rules add a new provision allowing QFs that have executed a PPA to terminate the PPA without incurring damages for the utility's future losses if the QF receives a PPA that (i) includes an estimate of time to interconnect that is longer than the development period in the executed standard power purchase agreement; or (ii) includes an estimate of costs to interconnect that render the project uneconomic in the qualifying facility's opinion.

The Joint Utilities raised objections to this provision when Staff first introduced it, but it is not clear to Staff that Joint Utilities continue to oppose it. No QF appears to oppose it, but NewSun's "1-3-5-7 proposal" suggests a full year. Staff believes its proposed rule is a fair compromise to address the significant delays in the utility interconnection process and to reduce litigation.

Security. The draft proposed rules maintain the status quo that a QF must post security if the QF does not meet the purchasing utility's creditworthiness requirements, but now security posted between the Execution Date and Scheduled COD is called development security and security posted after the Scheduled COD is called default security. The draft proposed rules do not specify how much security must be posted or a limit on security. Staff does not have sufficient information at this point to determine what level

[3] Order No. 15-130 (UM 1610).

of security should be required. Staff believes this issue can be explored further during the formal rulemaking process or determined at the time the public utilities submit draft PPAs to the Commission for approval.

The draft rules propose to eliminate the QFs ability to use Step-in Rights and Senior Liens as security. This is a significant change. QFs executing standard PPAs that must post security typically choose to provide Step-in Rights. In reality however, Step-in Rights and Senior Liens offer little to no security to purchasing utilities prior to the scheduled COD because defaults prior to the scheduled COD are often because the QF does not build a project. Step-in Rights and Senior Liens for a project that does not exist are not meaningful security. Step-in Rights as security after a Scheduled COD may not be valueless, but they are of little interest to purchasing utilities. Staff agrees with utilities that allowing QFs to select Step-in Rights as security for contracts the utility is legally required to enter is not appropriate.

Minimum Delivery Guarantees. The proposed draft rules specify that standard PPAs for solar, geothermal, biomass, and baseload hydro qualifying facilities must have a Minimum Delivery Guarantee (MDG) equal to 90 percent of the qualifying facility's expected energy for the year. MDGs are currently allowed for baseload QFs but are not currently required for solar QFs. Staff proposes requiring MDGs for solar resources to help to ensure parity between the capacity prices paid to solar QFs and the value of the capacity offered.

The QFs oppose MDGs for solar QFs noting the risk associated with their fuel source. The QFs assert that even if a MDG is required for a solar QF, the MDG should not be 90 percent of the expected energy.

At this time Staff does not agree that MDGs for solar QFs are inappropriate. Staff believes that stakeholders can continue to work to clarify this rule in the formal rulemaking process, including what the MDG is measured against and the appropriate percentage to use as the MDG.

New Rule No. 1. Conditional DNR process.

Currently, there is no mechanism in the standard contracting process to allocate to the QF the costs a purchasing public utility incurs to construct transmission-related network upgrades necessitated by the purchase from a QF. The Joint Utilities assert that they are prohibited by their Open Access Transmission Tariffs (OATT) from ascertaining whether a purchase from a qualifying facility will necessitate transmission-related network upgrades until after they have an executed a power purchase agreement with the qualifying facility. The Joint Utilities have developed a Conditional Designated

Network Resource (DNR) process that would allow their respective Transmission Functions to ascertain the need for transmission-related network upgrades after a power purchase agreement is executed. A Conditional DNR process is currently part of the power purchase agreements for the Community Solar Program.
Draft Rule No. 1 would authorize a purchasing public utility to engage in a Conditional DNR process immediately after executing a standard power purchase agreement with an off-system qualifying facility. If the Conditional DNR process indicates a purchase from an off-system QF will require construction of Network Upgrades on the purchasing utility's transmission system, the purchasing utility can apply to the Commission for an order allocating some or all of the costs of the Network Upgrades to the qualifying facility. The rule provides that after receiving a request for cost allocation, the Commission will conduct a process in which both the QF and purchasing utility can present arguments regarding the appropriate allocation of costs. The rule provides that the QF can terminate the PPA without penalty after the purchasing utility initiates the Conditional DNR Process and up to 14 days after the Commission issues its decision on cost allocation.

Stakeholder positions. The QF stakeholders oppose Draft Rule No. 1 in its entirely. The Coalition argues it impermissibly allows for post-execution amendments to avoided cost prices after the standard power purchase agreement is executed. Further, the Coalition makes clear that if Draft Rule No. 1 is adopted, the Commission must include additional parameters on the Conditional DNR process such as limiting its application to off-system qualifying facilities in narrowly defined circumstances, specifying the development period is tolled during the Conditional DNR process.

The Joint Utilities support the rule, but recommend modifying the rule so that it applies to both on-system and off-system power purchase agreements, noting that providing transmission service for on-system QFs may also require construction of Network Upgrades.

Staff analysis. Staff disagrees with the Joint Utilities' recommendation to adopt a rule authorizing the Conditional DNR process for both on- and off-system qualifying facilities. Staff acknowledges it is possible a purchasing utility will need to construct Network Upgrades to transmit the output of an on-system QF as well as an off-system QF. However, Staff believes the risk that there will be transmission-related Network Upgrades for on-system qualifying facilities is mitigated by the interconnection process that on-system qualifying facilities must go through to interconnect with the purchasing public utility. Given the mitigated risk of Network Upgrades for on-system QFs, Staff does not believe the Conditional DNR process is warranted for on-system QFs.

Staff agrees with the Coalition that parameters on the Conditional DNR process are warranted and has included provisions to help ensure the utilities' use of the process is reasonable. Nonetheless, stakeholders can offer additional recommendations regarding the language of the rule to protect against an overly liberal use of the Conditional DNR process.

Finally, both the QF Coalition and Joint Utilities believe it is necessary that the Conditional DNR process allow for *opportunity* for a contested case hearing to resolve cost allocation issues for transmission-related Network Upgrades, even though it may not always be necessary to have a contested case hearing. Staff agrees. Whether specific language should be added to clarify the opportunity for a contested case can be explored further by stakeholders in the formal rulemaking whether additional language can clarify this point.

New Rule No. 2 - Eligibility for Standard Avoided Cost Prices and Purchase Agreements

New Rule No. 2 codifies the following previous decisions of the Commission regarding (1) size eligibility for standard avoided cost prices and power purchase agreements, (2) eligibility for renewable avoided cost prices, including the requirement the qualifying facility cede the RECs associated with its output to the purchasing utility, and (3) the five-mile rule used to determine whether a qualifying facility is a single facility for the purpose of determining eligibility for standard prices or the standard purchase agreement.

Stakeholder positions. No stakeholder appears to take issue with the policies underlying the provisions in Draft Rule No. 2. However, the stakeholders have had objections to some of Staff's draft language implementing the Commission's "Five-mile rule."

Staff analysis. Staff believes it and stakeholders are generally in agreement regarding most of proposed Draft Rule No. 2 and that no stakeholder opposes adopting a rule to implement the current policy. Staff and stakeholders can further refine this rule as needed during the formal rulemaking.

New Rule No. 3 Process for Procuring Standard Power Purchase Agreement

Rule No. 3 delineates the timeline and process for the standard power purchase contracting process, including the information requirements the qualifying facility must satisfy to obtain a draft power purchase agreement.

Stakeholder positions. Both the Coalition and Joint Utilities recommend changes to New Rule No. 3. For example, the Coalition recommends changes that would potentially broaden the evidence on which facility QF could rely to show it is eligible for the standard prices or purchase agreement, and the Joint Utilities recommend language that would limit the evidence. The Joint Utilities also recommend changes to the proposed timeline.

Staff Analysis. As with Rule No. 2, Staff believes the points raised by the Coalition and Joint Utilities regarding Rule No. 3 can be examined in the formal rulemaking process. Currently, Staff believes that its proposed timelines and policies strike a reasonable balance, but stakeholders can provide countervailing views and propose changes during the formal process.

New Rule No. 4 Delivery and Purchase

New Rule No. 4 codifies requirements related to the sale and delivery of power under PURPA. It is intended to specify the purchasing utility's obligation to purchase energy and the QF's obligation to sell energy starting on the QF's commercial operation date, specifying the public utility's obligations related to excess energy and energy delivered prior to the scheduled commercial operation date.

Stakeholder positions. The Joint Utilities oppose the proposed rule allowing QFs to begin commercial operations up to 180 days prior to the scheduled COD. The Joint Utilities believe that QFs should not be allowed to begin commercial operations any sooner than 90 days prior to commercial operation. They assert that allowing QFs the option to commence commercial operation up to six months prior to the scheduled COD is disruptive to their planning and also inconsistent with their practice of procuring transmission service for the QF effective 90 days prior to the scheduled commercial operation date through the transmission service request (TSR) process. The Joint Utilities state that it can be necessary to begin the TSR process for a QF well in

advance, and that they may not have sufficient transmission capacity for a QF that begins commercial operation six months earlier than expected.

The QF Coalition believes QFs should have the unilateral right to begin commercial operations at least 180 days before the scheduled commercial operation date. The QF Coalition asserts that it is difficult to pinpoint at time of PPA execution the date on which a project will be completed and that that the risk of financial penalty for failing to meet a scheduled COD means it is generally necessary to err on the side of a late rather than early scheduled COD. NewSun believes that in light of these difficulties, a QF should be allowed to come online any time after PPA execution.

Staff analysis. Staff understands the competing interests of the Joint Utilities and QFs. To balance these interests, Staff has proposed a rule prohibiting QFs from commencing commercial operations any sooner than 180 days prior to the scheduled COD without utility consent. The rule also provides that a utility can require that a QF wait until 90 days prior to scheduled COD to commence commercial operation if the utility is unable to accept energy from the QF prior to that time.

Staff notes that stakeholders can continue to work to come to consensus on a rule during the formal rulemaking process that better satisfies the interest of both the Joint Utilities and QFs. Stakeholders may also work to come to agreement the price that Joint Utilities must pay for energy delivered prior to the scheduled COD and/or the circumstances in which a QF selling output to the purchasing utility prior to the scheduled COD and at what price.

New Rule No. 5 Force Majeure

New Rule No. 5 is intended to define Force Majeure for the purpose of PURPA power purchase agreements. Staff believes defining Force Majeure in administrative rule will limit potential for disputes over Force Majeure provisions in standard power purchase agreements.

Stakeholder positions. The Joint Utilities support the rule defining Force Majeure and the QFs question the appropriateness of doing so. The QFs point out that the Commission has previously concluded a court is in a better position to interpret a Force Majeure provision in a PURPA purchase agreement than the Commission. NewSun proposes several changes to the definition.

Staff analysis. Staff acknowledges the Commission's previous opinion that a court is better able to interpret a contract provision related to Force Majeure. In fact, Staff proposes this draft rule to allow the Commission to determine, as a matter of policy,

what Force Majeure means in a standard PPA. This will put the Commission in the position of being able to interpret its policy in the event of disputes.

The QFs note their concern with Staff's rationale, arguing it is inappropriate for the Commission to create what they perceive to be a non-static definition for Force Majeure. Staff agrees that it would not be appropriate to include a non-static Force Majeure provision in a standard PPA. It is not Staff's intent create a provision for which the Commission can change its interpretation depending on current circumstances. However, it is Staff's intent that the Commission specifically adopt a policy as to what Force Majeure means so that the Commission can ensure it is made effective in standard PPAs.

New Rule No. 6 Default, Damages and Termination

New Rule No. 6 is intended to codify and standardize rules related to events that constitute default, damages, and when termination of a standard power purchase agreement is appropriate.

Stakeholder positions. The QFs note that the damages provisions in the draft rule are one-sided as they are only specified for QF breaches, not utility breaches.

Staff analysis. Stakeholders have made recommendations on ways to improve this rule and these recommendations can be discussed in the formal rulemaking proceeding.

New Rule No. 7 Operations and Control

New Rule No. 7 is intended to codify certain requirements related to the obligations of the qualifying facility and public utility related to the operation of the public utility.

Stakeholder positions. The Joint Utilities generally support draft Rule No.7.

NewSun objects to many portions of the rule, noting that the rule covers issues that are not appropriate for rules, are overly restrictive for QFs in some areas, and provide too much discretion to utilities.

Additional issues. The Coalition recommends that the proposed rules include a requirement that purchasing utilities act reasonably, noting that the current rules do not include such a general requirement.[4]

[4] Joint comments of the Community Renewable Energy Association, Northwest & Intermountain Power Producers Coalition, and Renewable Energy Coalition on Staff's Draft Proposed Rules, pp. 1-2.

Staff is concerned that a generally applicable "reasonableness requirement" may have unintended consequences and does not currently propose adding such a requirement to the draft proposed rules.

NewSun recommends that the Commission include a draft rule that allows a QF entering into a standard PPA to opt out of offering/selling capacity.

Staff disagrees with NewSun's proposal. A QF that does not wish to sell capacity to a utility may execute a non-standard PPA.

Conclusion

Stakeholders have objections to some of draft proposed rules and have identified improvements to many rules, even if they do not object the rules in general. While Staff agrees the rules must be further developed and improved before they are adopted, Staff does not believe continuing the informal process is warranted. Staff believes that initiating the "formal" rulemaking process would facilitate an even more robust collaborative effort that will improve the draft rules.

PROPOSED COMMISSION MOTION:

Approve Staff's request to open a formal rulemaking and issue a notice of proposed rulemaking to adopt permanent rules addressing standard contracting procedures and terms.

AR 631

AR 631 –DRAFT STAFF RULES

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

(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 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.

(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.

(129) "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.

(1310) "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.

(14x) "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.

(1511) "Effective dDate" means the date on which a power purchase agreement is executed by both the qualifying facility and the public utility.

(1612) "Electric utility" means a nonregulated utility or a public utility as defined in ORS 758.505.

(1713) "Energy" means electric energy, measured in kilowatt hours (kWh).

(1814) "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.

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

(20x) "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.

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

AR 631 –DRAFT STAFF RULES

(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 ~~c~~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.

(4723) "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.

(4825) "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.

(5026) "Purchase term" means the period of a power purchase agreement during which the qualifying facility is selling its output to the public utility.

(5127) "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.

(5328) "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).

(5529) "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.

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

(57~~30~~) "RPS attributes" means all attributes related to the net output generated by the qualifying facility that are required to provide the public utility with "qualifying electricity" as that term is defined in Oregon's Renewable Portfolio Standard Act, ORS 469A.010, in effect as of October 23, 2018. RPS attributes do not include environmental attributes that are greenhouse gas offsets from methane capture not associated with the generation of electricity.

(58~~31~~) "Sale" means the sale of electric energy or capacity or both by a public utility to a qualifying facility.

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

(60~~32~~) "Scheduled commercial operation date" means the date selected by the qualifying facility on which the qualifying facility intends to be fully operational and reliable and able to commence the sale of energy or energy and capacity to the public utility.

(61~~33~~) "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.

(62~~x~~) "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.

(63~~34~~) "Supplementary power" means electric energy or capacity supplied by a public utility, regularly used by a qualifying facility in addition to that which the facility generates itself.

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

(65~~35~~) "System emergency" means a condition on a public utility's system which is likely to result in imminent, significant disruption of service to customers, in imminent danger of life or property, or both.

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

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

(68~~36~~) "Time of delivery" means:

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

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

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

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

(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.

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.

860-029-00XX [New Rule #1]

Obligation for Costs to Accept Deliveries from Off-System Qualifying Facilities

(1) If the merchant function of the public utility has access to information that the proposed Point of Delivery in an off-system qualifying facility's request for a draft standard power purchase agreement may be unavailable due to transmission capacity constraints or competing uses of reserved transmission, the public utility will provide the qualifying facility with written notice of the possible constraint or reserved use and if applicable, the public utility's decision to decline the qualifying facility's proposed Point of Delivery. A public utility must act reasonably and without discrimination in declining the qualifying facility's proposed Point of Delivery. Nothing in this subsection prevents the public utility from proposing an alternate Point of Delivery or requires the public utility to undertake informational or other studies or to change its standard study processes to seek information not reasonably in its possession during the contracting process.

(2) If the qualifying facility proposes an alternate Point of Delivery in response to a public utility's written notice under subsection (1), the public utility will have fifteen (15) business days to complete its review of proposed alternate Point of Delivery and provide the notification described in subsection (1).

(3) Provided that the public utility and the qualifying facility have agreed upon a Point of delivery, the standard power purchase agreement for an off-system qualifying facility may, at the public utility's discretion, include a provision specifying that costs to construct transmission-service related Network Upgrades of the purchasing public utility's system necessary for transmission service for a qualifying facility's output may be allocated to the qualifying facility by Commission order after the process described in subsections (4), (5), and (6) of this rule.

(4) If the public utility chooses to include a transmission-service cost-allocation provision in the standard power purchase agreement for an off-system qualifying facility, the public utility must:

(a) Specify in the power purchase agreement that the development period in the standard power purchase agreement does not commence until after the processes in subsection (4), (5), and if applicable, subsection (6), are complete.

(b) No later than fifteen (15) business Days after the Effective Date of the standard power purchase agreement, submit an application to the appropriate transmission provider requesting designation of the qualifying facility as a network resource and requesting network transmission service for the purpose of transmitting the power purchased from qualifying facility to the public utility's load.

(c) Request an effective date for commencement of network transmission service for the qualifying facility that is (i) 180 days prior to the scheduled commercial operation date, or (ii) as soon as practicable after the Effective Date of the executed standard power

purchase agreement if the scheduled commercial operation date is less than 180 days following the Effective Date.

(d) No later than five (5) business days after the public utility's receipt of a response to the application submitted under subsection (b), inform the qualifying facility of the transmission provider's response.

(e) No later than fifteen (15) business days after the public utility's receipt of a response to the application submitted under subsection (b), notify the qualifying facility in writing whether it is submitting a request for a Network Upgrade cost allocation determination to the Commission and if applicable, file the request for cost allocation determination with the Commission.

(5) Upon receipt of a request for a cost allocation determination under subsection (4)(e), the Commission will conduct a proceeding at which the public utility and qualifying facility will each have opportunity to present their respective positions to the Commission as to the proper allocation of the costs of transmission service Network Upgrades. After providing notice and opportunity to comment regarding a request filed under subsection (5), the Commission will issue an order regarding the appropriate allocation of costs of transmission service Network Upgrades

(6) After receipt of notice under subsection (4)(e) of this section that the public utility is seeking a cost allocation determination, but no later than fourteen (14) days after any Commission order allocating costs of transmission service-related Network Upgrades to the qualifying facility, the qualifying facility may terminate the power purchase agreement upon written notice to the public utility. The qualifying facility's timely termination of the standard power purchase agreement under this subsection will not be an event of default, and no damages or other liabilities under the power purchase agreement will be owed by or to either party.

(7) Notwithstanding the other subsections in this rule, nothing prevents the purchasing public utility and qualifying facility from agreeing to amend the standard power purchase agreement to address transmission-related Network Upgrade costs or to substitute a new Point of Delivery.

860-029-XXXX [New Rule #2]

Eligibility for Standard Avoided Cost Prices and Purchase Agreements

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

(2) All qualifying facilities with a nameplate capacity 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.

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

(a) 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, acting jointly or in concert with, exercising influence over, the policies of another person or entity, or wholly owned subsidiaries that do not have common ownership.

(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

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 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, two or more facilities will not be held to be owned or controlled by the same person(s) or affiliates solely because they are developed by a single entity.

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.

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

(A) demonstration of ability to obtain certified qualifying facility status prior to commercial operation,
(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 public utility's electric system,
(E) generation technology and other related technology applicable to the site,
(F) estimate of 12 x 24 delivery schedule,
(G) motive force or fuel plan,
(H) proposed operation date,
(I) proposed contract term,
(J) proposed pricing provisions,
(K) Point of Delivery or Interconnection,
(L) latitude and longitude of proposed facility and site layout,
(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.

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 revision until the date the qualifying facility commences commercial operation.

(3) Once a qualifying facility has asked for a draft 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 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 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 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.

(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.

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 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, 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.

(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.T. the day before the scheduled commercial operation date specified in the standard power purchase agreement.

(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.

(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 longer than 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.

(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.

(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 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 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).

~~(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.

(a) Damages 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 date in the power purchase agreement, if such failure is not otherwise excused under the agreement.

(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 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.

(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 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 is reasonably expected to exceed 10 percent of expected annual net output in the power purchase agreement, such upgrades may be made 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 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, their impact on expected net output and revised 12 x 24 delivery schedule, 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.

(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 utility's creditworthiness requirements must post Project Development Security for the purchasing public utility's benefit within 30 days of the Effective Date of the standard power purchase agreement. 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, 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 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 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:

(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) Any 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: 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.

860-029-XXXX [New Rule #4]
Delivery and Purchase under Standard Power Purchase Agreement

(1) Commencing on the scheduled commercial operation date of the standard power purchase agreement and continuing until the end of the total term (the "purchase period"), the qualifying facility will be obligated to deliver and sell, and the purchasing public utility will be obligated to receive and purchase, the Net Output delivered to the Point of Delivery or Point of Interconnection, subject to other relevant requirements in this division.

(2) The public utility must accept but is not obligated to pay for excess energy. For purposes of this rule excess energy means:

(a) for on-system qualifying facilities, net output at the Point of Interconnection that exceeds the qualifying facility's Nameplate Capacity Rating;

(b) for off-system qualifying facilities, energy delivered to the Point of Delivery in excess of scheduled amounts, netted over a monthly period.

(3) Title and risk of loss related to the energy shall transfer from the qualifying facility to the purchasing public utility at the Point of Delivery, except that title to RECs transferred under a power purchase agreement shall transfer to the purchasing utility when generated.

(4) A qualifying facility may not commence commercial operation any sooner than 180 days before the scheduled commercial operation date of the standard power purchase agreement unless the public utility consents to early operation. A public utility may require a qualifying facility to wait to commence commercial operation until no sooner than 90 days prior to the scheduled commercial operation if the public utility is unable to accept delivery from the qualifying facility.

(5) The public utility will pay the qualifying facility the index rate for Test Energy delivered prior to the scheduled commercial operation date.

860-029-XXXX [New Rule #5]
Force Majeure

(1) Every power purchase agreement shall include a Force Majeure provision that complies with the requirements of this section.

(2) "Force Majeure" means an event that prevents a party to the power purchase agreement (hereinafter referred to as "party") from performing an obligation under a power purchase agreement and that:

(a) is not reasonably anticipated as of the effective date of the power purchase agreement,

(b) is not within the reasonable control of the party affected by the event,

(c) is not the result of such party's negligence of failure to act, and

(d) could not be overcome by the affected party's use of due diligence in the circumstances.

(3) Force majeure includes events of the following types (but only to the extent that such an event, in consideration of the circumstances, satisfies the requirements in subsection (2)); environmental disasters, civil disturbance, sabotage, strikes, lock-outs, work stoppages, and action or restraint by court order or Governmental Authority.

(4) Notwithstanding subsections (2)-(3), none of the following constitute Force Majeure:

(a) the qualifying facility's ability to sell, or the public utility's ability to purchase energy or capacity at a more advantageous price than is provided under the power purchase agreement,

(b) the cost or availability of fuel or motive force to operate the Facility.

(c) economic hardship, including lack of money or increased cost of electricity, steel, labor, or transportation,

(d) any breakdown or malfunction of the Facility's equipment (including any serial defect) that is not caused by an independent event of Force Majeure,

(e)The imposition upon either qualifying facility or purchasing public utility of costs or taxes,

(f) delay or failure of qualifying facility to obtain or perform any required facility document unless due to a Force Majeure event;

(g) any delay, alleged breach of contract, or failure by the transmission provider or interconnection provider unless due to a Force Majeure event as defined in any agreement with the transmission provider or interconnection provider,

(h) maintenance upgrade(s) or repair(s) of any facilities or right of way corridors constituting part of or involving the interconnection facilities, whether performed by or for the qualifying facility, or other third parties (except for repairs made necessary as a result of an event of Force Majeure;

(i) the qualifying facility's failure to obtain, or perform under, the Generation Interconnection Agreements, or its other contracts and obligations to transmission owner, transmission provider or interconnection provider, unless due to a Force Majeure event; or

(j) any event attributable to the use of interconnection facilities for deliveries of Net Output to any party other than the purchasing public utility.

(5) If either qualifying facility or purchasing public utility is rendered wholly or in part unable to perform its obligation under the power purchase agreement because of a Force Majeure, the affected party shall be excused from whatever performance is affected by the Force Majeure to the extent and for the duration of the event of Force Majeure, after which such party will recommence performance of such obligation, provided that the non-performing party:

(a) provides the other party written notice describing the Force Majeure, no later than two weeks after its occurrence,

(b) ensures its failure to perform is of no greater scope and of no longer duration than what is required by the Force Majeure, and

(c) uses its best efforts to remedy its inability to perform.

(6) No obligation of either the qualifying facility or public utility that arose before the Force Majeure causing suspension of performance will be excused as a result of Force Majeure.

860-029-XXX/Default, Damages and Termination [New Rule #6]

(1) The following events may constitute a default under a standard power purchase agreement:

(a) failure to begin power deliveries by scheduled commercial operation date,

(b) failure to provide Project Development or Default Security,

(c) failure to maintain status as a certified qualifying facility once power deliveries have commenced,

(d) failure of the qualifying facility to sell entire net output to the purchasing public utility,

(e) failure to make a payment when due under the power purchase agreement, if amount of payment is not the subject of good faith dispute,

(f) abandonment of the Facility,

(h) failure to receive or purchase all or part of Net Output

(i) failure to satisfy applicable Minimum Availability Guarantee for two (2) consecutive years,

(j) failure to satisfy applicable Minimum Delivery Guarantee for three (3) consecutive years, or

(k) failure to provide a timely notice of early termination under OAR 860-029-XXX [New Rule #1].

(2) Unless otherwise excused under the standard power purchase agreement by Excused Delay, Force Majeure, or otherwise, the non-defaulting party is authorized to issue a Notice of Default upon any of the events described in subsection (1).

(3) Cure periods

(a) If a Notice of Default is issued under subsection (1)(a), the qualifying facility has one year in which to cure the default for failure to meet the scheduled commercial operation date.

(b) If a Notice of Default is issued under subsection (1)(b), (1)(c), (1)(d), 1(e), 1(f), or 1(g), the non-defaulting party has thirty (30) days in which to cure the event of default.

(c) There is no cure period for a Notice of Default issued under subsection (1)(h), (1)(i) or (j).

(4) Imposition of damages.

(a) The public utility may impose damages after issuing a Notice of Default under subsection (1)(a) or (1)(d) as specified in OAR 860-029-0120(7).

(b) If damages are imposed, they must be remitted to the non-breaching party no later than 30 days after the breaching party received an invoice for damages. The invoice for damages must include a written statement explaining in reasonable detail the calculation of the damages amount.

(5) Subject to the cure periods in subsection (3), the non-defaulting party may issue a Notice of Termination to terminate a standard power purchase agreement for a default under subsection (1).

(6) The non-defaulting party must provide the defaulting party a Notice of Termination at least 30 days prior to date of Termination. The notice period for termination may run concurrently with the default period.

(7) Termination of Duty to Buy. If a standard power purchase agreement is terminated because of an Event of Default by the qualifying facility and the qualifying facility wishes to sell Net Output to the purchasing public utility following such termination, the public utility may require the qualifying facility do so subject to the terms of the terminated agreement, including but not limited to the contract price, until the termination date. The qualifying facility may not take any action or permit any action to occur the result of which avoids or seeks to avoid the restrictions in subsection through use or establishment of a special purpose entity or other Affiliate.

(8) Termination Damages. If the standard power purchase agreement is terminated by the public utility as a result of an event of default by the qualifying facility, termination damages owed by the qualifying facility to the public utility will be the positive difference, if any, between (a) the public utility's estimated costs to secure replacement power and Renewable Energy Credits, if applicable, for a period of twenty four (24) months following the date of termination, including any associated transmission necessary to deliver such replacement power; and (b) the contract price for such twenty four (24) month period ("Termination Damages"). The public utility must calculate the Termination Damages on a monthly basis and in a commercially reasonable manner and provide to the qualifying facility a written statement explaining in reasonable detail the calculation of Termination Damages in the Notice of Termination. Termination damages are due by qualifying facility within thirty days of receipt of the written Notice of Termination from the public utility.

(9) Duty/Right to Mitigate. Both the public utility and qualifying facility have a duty to mitigate damages and will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance under a standard power purchase agreement.

(10) Security. If a standard power purchase agreement is terminated because of the qualifying facility's default, the public utility may, in addition to pursuing any and all other remedies available at law or in equity, proceed against any security held by the public utility in whatever form to reduce the amounts that the qualifying facility owes the public utility arising from such default.

(11) Cumulative Remedies. Except in circumstances in which a remedy provided for in the power purchase agreement is described as a sole or exclusive remedy, the rights and remedies provided to the parties in the standard power purchase agreement are cumulative and not exclusive of any other rights or remedies of the parties.

860-029-XXXX [New Rule #7]

Coordination between qualifying facility and public utility under standard power purchase agreements.

(1) Coordination with System. The qualifying facility's delivery of electricity to purchasing public utility under a standard power purchase agreement must be at a voltage, phase, power factor, and frequency as reasonably specified by purchasing public utility. The qualifying facility will furnish, install, operate, and maintain in good order and repair, and without cost to the purchasing public utility, such switching equipment, relays, locks and seals, breakers, automatic synchronizers, and other control and protective apparatus determined by the public utility to be reasonably necessary for the safe and reliable operation of the Facility in parallel with the System, or the qualifying facility may contract with the purchasing public utility to do so at the qualifying facility's expense. The purchasing public utility must at all times have access to all switching equipment capable of isolating the Facility from the System.

(2) Planned Outages in standard power purchase agreements.

(a) The qualifying facility must provide the purchasing public utility with an annual forecast of Planned Outages for each year of the purchase period at least one month, but no more than three months, before the first day of that year, and may update such Planned Outage forecast as necessary to comply with Prudent Electrical Practices. Any such update to the Planned Outage forecast must be promptly submitted to the public utility.

(b) The public utility may specify in the power purchase agreement two (2) calendar months in each year in which the qualifying facility may not schedule planned outages ("High Demand Months") except to the extent reasonably required to enable a vendor to satisfy a guarantee requirement. The public utility may change either or both High Demand Months with no less than twelve (12) months advance notice to the qualifying facility.

(3) Maintenance Outages in standard power purchase agreements.

(a) If the qualifying facility reasonably determines that it is necessary to schedule a Maintenance Outage, the qualifying facility must notify the purchasing public utility of the proposed Maintenance Outage as soon as practicable but in any event at least five (5) days before the outage begins. The qualifying facility must take all reasonable measures consistent with Prudent Electrical Practices to not schedule any Maintenance Outage during the High Demand Months identified by the public utility.

(b) Notice of a proposed Maintenance Outage by the qualifying facility must include the expected start date and time of the outage, the amount of generation capacity of the Facility that will not be available, and the expected completion date and time of the outage. The purchasing utility will promptly respond to such notice and may request reasonable modifications in the schedule for the outage. The qualifying facility must use

all reasonable efforts to comply with any request to modify the schedule for a Maintenance Outage provided that such change has no substantial impact on the qualifying facility.

(c) Once the Maintenance Outage has commenced, the qualifying facility must keep the public utility apprised of any changes in the generation capacity available from the Facility during the Maintenance Outage and any changes in the expected Maintenance Outage completion date and time. As soon as practicable, any notifications given orally must be confirmed in writing. The qualifying facility may must take all reasonable measures consistent with Prudent Electrical Practices to minimize the frequency and duration of Maintenance Outages.

(4) Forced Outages in standard power purchase agreements. The qualifying facility must promptly notify the purchasing public utility orally, via telephone to a number specified by the public utility (or other method approved by the public utility), of any Forced Outage resulting in more than ten percent (10%) of the Nameplate Capacity Rating of the Facility being unavailable. This report from qualifying facility must include the amount of the generation capacity of the Facility that will not be available because of the Forced Outage and the expected return date of such generation capacity. The qualifying facility must promptly update the report as necessary to advise the public utility of changed circumstances. As soon as practicable, any oral report of a Forced Outage must be confirmed in writing to the public utility.

(5) Notice of Emergency Deratings and Outages in standard power purchase agreements. Notwithstanding the requirements of subsections (4)-(6), the qualifying facility will inform the purchasing public utility, via telephone to a number specified by public utility (or other method approved by public utility), of any limitations, restrictions, deratings or outages reasonably predicted by qualifying facility to affect more than five percent (5%) of the Nameplate Capacity rating of the Facility for the following day and will promptly update such notice to the extent of any material changes in this information.