



July 26, 2021

## Workshop Announcement

AR 631 Procedures, Terms, & Conditions Associated With QF Standard Contracts

As discussed with docket participants via email, Staff of the Public Utility Commission of Oregon (Staff) will hold an AR 631 informal phase workshop via webinar on July 26, 2021 at 2 p.m.

The purpose of the workshop is to discuss Staff's draft rules released July 14, 2021, which are attached to this announcement.

**DATE:** July 26, 2021

**TIME:** 2:00 p.m. – 5:00 p.m.

**LOCATION:** Microsoft Teams meeting

**Join on your computer or mobile app**

[Click here to join the meeting](#)

**Or call in (audio only)**

[+1 503-446-4951,,504748972#](#) United States, Portland

Phone Conference ID: 504 748 972#

Please direct questions to **Stephanie Andrus** at [stephanie.andrus@doj.state.or.us](mailto:stephanie.andrus@doj.state.or.us) or 971-719-0690 or **Caroline Moore** at [caroline.f.moore@puc.oregon.gov](mailto:caroline.f.moore@puc.oregon.gov) or 503-480-9427.



**Division 29**

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

**860-029-0001**

**Purpose**

The purpose of this Division is to implement ORS 758.505 through 758.555 and to implement regulations relating to electric utilities and qualifying cogeneration and small power production facilities as provided under Section 210 of the federal Public Utility Regulatory Policies Act of 1978 (PURPA), Public Law 95-617 (16 USC 824a-3).

**860-029-0005**

**Applicability of Rules**

- (1) These rules apply to all interconnection, purchase, and sale arrangements between a public utility and qualifying facilities as defined herein. Provisions of these rules do not supersede contracts existing before the effective date of this rule. At the expiration of such an existing contract between a public utility and a cogenerator or small power producer, any contract extension or new contract must comply with these rules.
- (2) Nothing in these rules limits the authority of a public utility or a qualifying facility to agree to a rate, terms, or conditions relating to any purchase, which differ from the rate or terms or conditions that would otherwise be provided by these rules, provided such rate, terms, or conditions do not burden the public utility's customers.
- (3) Within 30 days following the initial contact between a prospective qualifying facility and a public utility, the public utility must submit informational documents, approved by the Commission, to the qualifying facility which state:
  - (a) The public utility's internal procedural requirements and information needs;
  - (b) Any contract offered by the public utility is subject to negotiation;
  - (c) Avoided costs are subject to change pursuant to OAR 860-029-0080(3); and
  - (d) Avoided costs actually paid to a qualifying facility depend on the quality and quantity of power to be delivered to the public utility. The avoided costs may be recalculated to reflect stream flows, generating unit availability, loads, seasons, or other conditions.
- (4) Upon request or its own motion, the Commission may waive any of the Division 29 rules for good cause shown. A request for waiver must be made in writing, unless otherwise allowed by the Commission.

**860-029-0010****Definitions for Division 029 Rules**

(x) “AC” means alternating current.

(x) “Affiliate” means, with respect to the qualifying facility, any person that directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with qualifying facility or that shares management or that acts jointly or in concert with or exercises influence over the policies or actions of the qualifying facility. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

(x) “Annual Degradation Factor” means . . .

(x) “As-built supplement” means a document provided by the qualifying facility that is the final “as built” description of the Facility including the Point of Delivery, and that identifies changes in equipment of Facility configuration or other modifications to the Facility that vary from the description of the Facility included in the power purchase agreement.

(1) "Avoided costs" means the electric utility's incremental costs of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, the electric utility would generate itself or purchase from another source, including any costs of interconnection of such resource to the system.

(2) "Back-up power" and "stand-by power" mean electric energy or capacity supplied by a public utility to replace energy ordinarily generated by a qualifying facility's own generation equipment during an unscheduled outage of the facility.

(x) “Balancing Authority” means an entity responsible for maintaining the load-interchange-generation balance within the balancing authority area applicable to the Facility.

(x) “Base hours” means the total number of hours in each contract year (8,760 or 8,764 for leap years).

(x) “Billing period” means one calendar month.

(x) “Business day” means any day on which banks in Portland Oregon are not authorized or required by law to be closed.

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

(4) "Capacity costs" mean the costs associated with supplying capacity; they are an allocated component of the fixed costs associated with providing the capability to deliver energy.

- (x) "Certified qualifying facility" means a qualifying facility that is certified as such under 18 C.F.R. § 292.207, in effect as of xxxx, 2021.
- (5) "Cogeneration" means the sequential generation of electric energy and useful heat from the same primary energy source or fuel for industrial, commercial, heating, or cooling purposes.
- (6) "Cogeneration facility" means a facility which produces electric energy and steam or other forms of useful energy (such as heat) by cogeneration that are used for industrial, commercial, heating, or cooling purposes.
- (7) "Commercial operation date" means the date after start-up testing is complete, and the qualifying facility has satisfied the criteria in OAR 860-029-00 necessary to commence operation on which the qualifying facility begins to deliver its Net Output. ~~Is fully operational and capable of delivering output.~~
- (8) "Commission" means the Public Utility Commission of Oregon.
- (x) "Conditional DNR Notice" is defined in OAR 860-029-XXXX [New Rule #1].
- (x) "Construction period" means the time period commencing on the power purchase agreement effective date and ending on the day before the scheduled commercial on-line date.
- (x) "Contract Interest Rate" means the lesser of (a) the highest rate permitted under Requirements of Law or (b) 200 basis points per annum plus the rate per annum equal to the publicly announced prime rate or reference rate for commercial loans to large businesses in effect from time to time quoted by Citibank, N.A. as its "prime rate." If a Citibank, N.A. prime rate is not available, the applicable prime rate will be the announced prime rate or reference rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, N.Y., selected by the Party to whom interest is being paid
- (x) "Contract price" means during the 15-year fixed price term commencing on the scheduled commercial operation date, 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.
- (x) "Contract year" means each twelve (12) month period commencing at 00:00 hours Pacific Prevailing Time ("PPT") on January 1 and ending at 24:00 hours PPT on December 31; provided, however, that the first Contract Year shall commence on the effective date of the power purchase agreement and the last Contract Year shall end on the last day of the Total Term.
- (9) "Costs of interconnection" means the reasonable costs of connection, switching, dispatching, metering, transmission, distribution, equipment necessary for system protection, safety provisions, and administrative costs incurred by an electric utility directly related to

installing and maintaining the physical facilities necessary to permit purchases from a qualifying facility.

(x) “Default security” means an amount equal to fifty dollars (\$50) per kW of the final Nameplate Capacity Rating of the qualifying facility.

(10) "Demand" means the average rate in kilowatts at which electric energy is delivered during a set period, to be determined by mutual agreement between the electric utility and the customer.

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

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

(x) “Electric System Authority” means each of NERC, WECC, WREGIS, an RTO, a regional or sub-regional council or authority, and any other similar council, corporation, organization or body of recognized standing with respect to the operations of the electric system in the WECC region, as such are applicable to the Seller or Purchaser.

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

(14) "Energy costs" means:

(a) For nonfirm energy, the incremental costs associated with the production or purchase of electric energy by the electric utility, which include the cost of fuel and variable operation and maintenance expenses, or the cost of purchased energy;

(b) For firm energy, the combined allocated fixed costs and associated variable costs applicable to a displaced generating unit or to a purchase.

(x) “Excess output” means any increment of Net Output delivered at a rate, on an hourly basis, exceeding the Facility Capacity Rating.

(x) “Excused Delay” means the failure of the qualifying facility to meet the commercial readiness requirements on or before the scheduled commercial on-line date, but only to the extent such failure is caused by an event of Force Majeure or a failure of purchasing public utility to meet a material deadline or obligation included in the power purchase agreement or in any agreement related to the interconnection of the qualifying facility to the purchasing utility’s system, including interconnection study agreements and interconnection agreements; provided that the duration of any Excused Delay shall not extent to any period of delay that could have been prevented had seller taken mitigating actions using commercially reasonable efforts.

- (x) “Existing QF” means a QF that (1) is or has been operational before the effective date of a power purchase agreement or (2) has ever sold energy or capacity to the purchasing utility or a third party.
- (x) “Expected Net Output” means the number of MWh Net Output in the first full Contract Year reduced, as applicable, by an annual degradation factor per Contract year, measured at the Point of Delivery.
- (x) “Facility” means all equipment, devices, associated appurtenances, owned, controlled, operated and managed by a qualifying facility in connection with, or to facilitate, the production, generation, transmission, delivery, or furnishing of electric energy by the qualifying facility to the purchasing public utility and required to interconnect with the System.
- (x) “FERC” means the Federal Regulatory Commission.
- (15) "Firm energy" means a specified quantity of energy committed by a qualifying facility to an electric utility.
- (16) "Fixed rate term" means for qualifying facilities electing to sell firm energy or firm capacity or both, the term of a power purchase agreement during which the public utility pays the qualifying facility avoided cost rates determined either at the time of contracting or at the time of delivery.
- (x) “Force Majeure” is defined at OAR 860-029-XXXX [New Rule #6].
- (x) “Generator Interconnection Agreement” means the generator interconnection agreement between the qualifying facility and qualifying facility’s interconnection provider.
- (x) Generation unit” means a complete electrical generation system within the Facility that is able to generate and deliver energy to the Point of Interconnection independent of other Generation Units within the same Facility. For example, for a solar facility, a Generation Unit is an inverter and associated panels.
- (x) “Governmental Authority” means federal, national, state, municipal, local, tribal, territorial, or other governmental department, commission, board, bureau, agency, regulatory authority, instrumentality, judicial, legislative or administrative body, domestic or foreign, including, without limitation, FERC and the Commission.
- (x) “Imbalance energy” means the portion of Firm Energy, measured in kWh, scheduled and delivered to the Delivery Point that was not Net Output.
- (17) "Index rate" means the lowest avoided cost approved by the Commission for a generating utility for the purchase of energy or energy and capacity of similar characteristics including on-line date, duration of obligation, and quality and degree of reliability.

(18) "Interruptible power" means electric energy or capacity supplied by a public utility to a qualifying facility subject to interruption by the electric utility under certain specified conditions.

(x) "Lost Energy" means (in kWh):

A. In connection with a Facility after the Commercial Operation Date, if the Mechanical Availability Percentage falls below the Minimum Availability Guarantee for a Contract Year, ((the Minimum Availability Guarantee as determined pursuant to Section 3.4 / the actual Mechanical Availability Percentage for the applicable Contract Year) X actual Net Output for the applicable Contract Year) - actual Net Output for the applicable Contract Year; or

B. In connection with a Facility that does not establish the Commercial Operation Date on or before the Scheduled Commercial Operation Date, the Estimated Monthly Average Net Output (by On-Peak Hours and Off-Peak Hours – see Exhibit C) for each month during the period from the Scheduled Commercial Operation Date until the earlier of the actual Commercial Operation Date or contract termination pursuant to Section 10. The Estimated Monthly Average Net Output shall be pro-rated for any partial months; or

C. In connection with a Facility whose Agreement has been terminated by PGE pursuant to Section 10 of this Agreement because of Seller's default, the lesser of the sum of the Estimated Monthly Average Net Output (by On-Peak and Off-Peak Hours – see Exhibit C) for each month during the 24 months following termination, or the sum of the Estimated Monthly Average Net Output (by On-Peak and Off-Peak Hours – see Exhibit C) for each month from the date of termination through the end of the Term. The Estimated Monthly Average Net Output shall be pro-rated for any partial months.

**[Note to AR 631 Parties: The draft rules do not close the loop with respect to damages for lost energy. This is something Staff needs to correct.]**

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

(x) "MW" means megawatt.

(x) "MWh" means megawatt-hour.

(20) "Nameplate Capacity Rating" means the maximum installed instantaneous generation capacity of the completed Facility, expressed in MW (AC), 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 ~~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.~~

- (x) “NERC” means the North American Electric Reliability Corporation.
- (x) “Net available capacity” means the full (maximum) net energy output a Facility is capable of delivering to the electric grid at the point of interconnection continuously for at least sixty (60) minutes.
- (x) “Net Output” means all energy and capacity produced by the qualifying facility, less station use and transformation and transmission losses, and other adjustments (e.g., the qualifying facility’s load other than station use) flowing through the Point of Delivery.
- (x) “New qualifying facility” means a qualifying facility that is not an existing qualifying facility.
- (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.
- (x) “Non-fixed price term” means the portion of the purchase period 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.
- (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.
- (x) “Off-peak hours” means all hours other than On-peak hours.
- (x) “On-peak hours” means the hours designated as such in the purchasing public utility’s avoided cost price schedule.
- (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.
- (x) “Point of Delivery” means for agreements with off-system qualifying facilities, the point on the purchasing public utility side of the interface with the applicable Balancing Authority 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.
- (x) “Point of interconnection” means the point where the qualifying facility is electrically connected to a public utility’s transmission or distribution system.



(23) "Primary energy source" means the fuel or fuels used for the generation of electric energy. The term does not include minimum amounts of fuel required for ignition, start-up, testing, flame stabilization, and control uses; the term does not include minimum amounts of fuel required to alleviate or prevent unanticipated equipment outages and emergencies which directly affect the public health, safety, or welfare.

(x) "Prime Rate" means the publicly announced prime rate or reference rate for commercial loans to large businesses with the highest credit rating in the United States in effect from time to time quoted by Citibank, N.A. If a Citibank, N.A. prime rate is not available, the applicable Prime Rate shall be the announced prime rate or reference rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, N.Y., selected by the Party to whom interest based on the prime rate is being paid.

(x) "Prudent Electrical Practices" means those practices, methods and acts engaged in or approved by a significant portion of the independent electric power generation industry for facilities of similar size and characteristics or any of the practices, methods or acts, which, in the exercise of reasonable judgment in the light of facts known at the time a decision is made, could have been expected to accomplish the desired result at the lowest reasonable costs consistent with reliability, safety, and expedition.

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

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

(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.

(27) "Qualifying facility" means a cogeneration facility or a small power production facility as defined in 18 C.F.R. 292.203-.205, in effect as of xxx, 2021. Unless otherwise specified, "qualifying facility" includes potential qualifying facilities, (e.g., entities that intend to obtain certification as a qualifying facility but that have not yet done so). ~~by these rules.~~

(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.

(28) "Rate" means any price, charge, or classification made, demanded, observed, or received with respect to the sale or purchase of electric energy or capacity or any rule, regulation, or practice respecting any such price, charge, or classification.

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

(29) "Renewable Portfolio Standard" or "RPS" is the standard for large electric utilities in ORS 469A.052(1) or the standard for small electric utilities in ORS 469A.055 in effect as of October 23, 2018.

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

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

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

(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.

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

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

(x) "Start-up testing" means the applicable required factory and start-up tests that must be completed by a qualifying facility prior to commercial operation.

(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.

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

(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.

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

(x) “Test period” means a period of no more than sixty (60) calendar days, during which Start-Up Testing is to be concluded.

(36) "Time of delivery" means:

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

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

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

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

(37) "Time the obligation to purchase the energy capacity or energy and capacity is incurred" means the earlier of:

(a) The date on which a binding, written obligation is entered into between a qualifying facility and a public utility to deliver energy, capacity, or energy and capacity; or

(b) The date determined by the Commission.

(x) “Total output” means all energy produced by the Facility.

(x) “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.

## 860-0290-0020

### Obligations of Qualifying Facilities to the Electric Utility

The conditions listed in this rule apply to all qualifying facilities that sell or intend to sell electricity to a public utility under this Division:

(1) The owner or operator of a qualifying facility purchasing or selling electricity pursuant to these rules must execute a written power purchase agreement with the public utility.

~~(2) Contracts:~~

~~(a) All contracts between a qualifying facility and a public utility for energy, or energy and capacity must include language that which substantially conforms to the following: This agreement is subject to the jurisdiction of those governmental agencies and courts having control over either party or this agreement. The public utility's compliance with the terms of this contract is conditioned on the qualifying facility submitting to the public utility and to the~~

~~Public Utility Commission of Oregon, before the date of initial operation, certified copies of all local, state, and federal licenses, permits, and other approvals required by law.~~

~~(b) Under subsection (2)(a) of this rule, the public utility shall bear no obligation to identify which approvals are required by law, or to verify the approvals were properly obtained, or that the project is maintained pursuant to the terms of the approvals.~~

~~(3) To ensure system safety and reliability of interconnected operations, all interconnected qualifying facilities must be constructed and operated in accordance with all applicable federal, state, and local laws and regulations.~~

(2) Any qualifying facility entering into a power purchase agreement with a public utility under PURPA will construct and operate the Facility in a manner that ensures its continuing status as a qualifying facility and in a manner consistent with its FERC Qualifying Facility certification.

(3) Any qualifying facility that has entered into a 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 power purchase agreement and the pricing reflected in this agreement. No more than once every 24 months, the qualifying facility shall provide documentation and information reasonably requested by PGE to establish the qualifying facility's continued compliance with eligibility requirements for the 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 that public utility identifies as confidential, provided that PGE may provide all such information to the Commission upon the Commission's request.

(4) The qualifying facility must furnish, install, operate, and maintain in good order and repair, and without cost to the public utility, switching equipment, relays, locks and seals, breakers, automatic synchronizers, and other control and protective apparatus as shown by the public utility to be reasonably necessary to operate the qualifying facility in parallel with the public utility's system, or may contract for the public utility to do so at the expense of the qualifying facility. Delivery must be at a voltage, phase, power factor, and frequency as specified by the public utility.

(5) The qualifying facility must make switching equipment capable of isolating the qualifying facility from the public utility's system ~~must be~~ accessible to the public utility at all times.

(6) The qualifying facility must allow the public utility the option of operating the switching equipment, described in section (4) of this rule if, in the sole opinion of the public utility, continued operation of the qualifying facility in connection with the public utility's system may create or contribute to a system emergency. Such a decision by the public utility is subject to the Commission's verification pursuant to OAR 860-029-0070. The public utility must endeavor to minimize any adverse effects on the qualifying facility of the operation of the switching equipment.

(7) Any agreement between a qualifying facility and a public utility must provide for the degree to which the qualifying facility must assume responsibility for the safe operation of the interconnection facilities.

(8) At its option, the public utility may require a qualifying facility to report periodically the amount of deliveries and scheduled deliveries to the public utility, as shown to be reasonably necessary for the public utility's system operations and reporting.

(9) During the total term of the power purchase agreement, the qualifying facility will not sell any net output from the Facility to any party other than purchasing public utility.

(10) The qualifying facility must deliver net output to purchasing utility to the Point of Delivery free and clear of all liens, claims and encumbrances.

### **860-029-0030**

#### **Obligations of the Public Utility to Qualifying Facilities**

(1) Obligations to purchase from qualifying facilities: Each public utility must purchase, in accordance with ~~the requirements in these rules OAR 860-029-0040, any energy and capacity in excess of station service (power necessary to produce generation)~~ **Net Output** and amounts attributable to conversion losses that are made available: ~~from a qualifying facility:~~

(a) Directly from a qualifying facility in ~~it's~~ **the purchasing public utility's** service territory; or

(b) Indirectly from a qualifying facility in accordance with section (4) of this rule.

(2) Obligation to sell to qualifying facilities: Each public utility must sell to any qualifying facility, in accordance with OAR 860-029-0050, any energy and capacity requested by the qualifying facility on the same basis as available to other customers of the public utility in the same class who do not generate electricity.

(3) Obligation to interconnect: Each public utility must interconnect with any qualifying facility as may be necessary to accomplish purchases or sales under this division. The obligation to pay for any interconnection costs shall be determined under OAR 860-029-0060.

(4) Obligation to accept energy and capacity at Point of Delivery from off-system qualifying facilities: Each public utility must accept energy and capacity from an off-system qualifying facility at a Point of Delivery as may be necessary to accomplish purchases under this division. The obligation to pay for costs incurred by public utility to accept energy and capacity at the Point of Delivery and transmit to load may be determined under OAR 860-029-00XX [New Rule #1].

(4) (5) Option to wheel power to other electric utilities or to the Bonneville Power Administration: At the request of a qualifying facility, a public utility (which would otherwise be obliged to purchase energy or capacity from such qualifying facility) may transmit (wheel)

energy or capacity to any other electric utility or to the Bonneville Power Administration, at the expense of the qualifying facility. Use of a public utility's transmission facilities shall be on a cost-related basis.

(5)(6) Parallel operation: Each public utility must offer to operate in parallel with a qualifying facility, provided that the qualifying facility complies with the standards established in accordance with OAR 860-029-0020.

(6) (7) When the generating portion of the qualifying facility consumes more electric energy than it produces, the public utility shall cease purchases.

(7) (8) Within 30 days of the execution of any purchase agreement with a qualifying facility, the public utility must file with the Commission a true copy or summary of the terms of the executed agreement. If a summary is filed, the summary must identify the quantity and quality of the power and the price being paid. A true copy of the executed contract must be made available upon request for Commission staff review.

#### **860-029-0040**

##### **Rates for Purchases**

(1) Rates for purchases by public utilities must:

(a) Be just and reasonable to the public utility's customers and in the public interest; and

(b) Be in accordance with this rule, regardless of whether the public utility making such purchases is simultaneously making sales to the qualifying facility.

(2) Establishing rates:

(a) Except for qualifying facilities in existence before November 8, 1978, and except when a public utility fails to make a good faith effort to comply with the request from a qualifying facility to wheel, a purchase rate satisfies the requirements of section (1) of this rule if the rate equals the avoided costs after consideration of the factors set forth in section (5) of this rule.

(b) If a public utility fails to make a good faith effort to comply with the request from a qualifying facility to wheel, the public utility must purchase at a rate which is the public utility's avoided cost or the index rate, whichever is higher. A good faith effort will be demonstrated by the public utility's publication of a generally applicable reasonable policy of the public utility to use the public utility's transmission facilities on a cost-related basis.

(c) When the purchase rates are based upon estimates of avoided costs over a specific term of the contract or other legally enforceable obligation, the rates do not violate these rules if any payment under the obligation differs from avoided costs.

(d) Nothing in these rules will be construed as requiring payment of avoided-cost prices to qualifying facilities in existence before November 1978, provided, however, that prices for such purchases shall be sufficient to encourage continued power production.

(3) Rates for purchases — time of calculation: Each qualifying facility has the option to:

(a) Provide nonfirm energy as the qualifying facility determines such energy to be available for such purchases, in which case the rates for such purchases must be based on the purchasing public utility's nonfirm energy avoided cost or if subsection (2)(b) of this rule is applicable, in effect when the energy is delivered; or

(b) Provide firm energy and/or capacity pursuant to a legally enforceable obligation for the delivery of energy and/or capacity over a specified term, in which case the rates for purchases must be based on:

- (A) The avoided costs calculated at the time of delivery, or, if subsection (2)(b) of this rule is applicable, the index rate in effect at the time of delivery; or
- (B) At the election of the qualifying facility, exercised at the time the obligation is incurred, the avoided costs, or the index rate then in effect if subsection (2)(b) of this rule is applicable, projected over the life of the obligation and calculated at the time the obligation is incurred.

(4) Standard rates for purchases shall be implemented as follows:

(a) In the same manner as rates are published for electricity sales, each public utility shall file with the Commission, within 30 days of Commission acknowledgement of its integrated resource plan, standard rates for purchases from eligible qualifying facilities to become effective 30 days after filing. The publication shall contain all the terms and conditions of the purchase.

(b) If a public utility fails to make a good faith effort to comply with the request from a qualifying facility to wheel, the public utility shall purchase at a rate which is the public utility's standard rate or the index standard rate, whichever is higher. A good faith effort shall be demonstrated by the public utility's publication of its generally accepted reasonable policy to use the public utility's transmission facilities on a cost-related basis.

(c) The public utility's standard rates may differentiate among qualifying facilities using various technologies on the basis of the supply characteristics of the different technologies.

(5) Factors affecting rates for purchases: In determining avoided costs and for determining the index rate the following factors will, to the extent practicable, be taken into account:

(a) The data provided pursuant to OAR 860-029-0080(3) and the Commission's evaluation of the data; and

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

- (A) The ability of the public utility to dispatch output of the qualifying facility;
- (B) The expected or demonstrated reliability of the qualifying facility;
- (C) The terms of any contract or other legally enforceable obligation;
- (D) The extent to which scheduled outages of the qualifying facility can be usefully coordinated with scheduled outages of the public utility's facilities;
- (E) The usefulness of energy and/or capacity supplied from a qualifying facility during system emergencies, including its ability to separate its load from its generation;
- (F) The individual and aggregate value of energy and capacity from qualifying facilities on the public utility's system; and
- (G) The smaller capacity increments and the shorter lead times available, if any, with additions of capacity from qualifying facilities.

(c) The relationship of the availability of energy and/or capacity from the qualifying facility as derived in subsection (5)(b) of this rule, to the ability of the public utility to avoid costs, including the deferral of capacity additions and the reduction of fossil fuel use; and

(d) The costs or savings resulting from variations in line losses from those that would have existed in the absence of purchases from a qualifying facility if the purchasing public utility generated an equivalent amount of energy itself or purchased an equivalent amount of energy and/or capacity.

(6) Each public utility that is currently complying with Oregon's renewable portfolio standard must offer renewable and non-renewable avoided cost rates to eligible qualifying facilities.

### **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.~~



(4) Each public utility must file standard avoided cost rates that differentiate between qualifying facilities of different resource types by taking into account the contributions to meeting the utility's peak capacity of the different resource types.

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

#### **860-029-0046**

##### **Integration Charges**

(1) Each public utility may assess Commission-approved integration charges on wind and solar qualifying facilities that are located within the public utility's Balancing Authority Area.

(2) The public utility bears the burden to establish the proposed integration charge or charges reflecting the costs of integrating the type of resource that will be subject to the charges.

(3) To the extent they are to be imposed by the public utility, any integration charges must be included in the public utility's avoided cost schedules.

#### **860-029-0050**

##### **Rates for Sales**

(1) Rates for sales by public utilities must:

(a) Be just and reasonable and in the public interest; and

(b) Not discriminate against qualifying facilities.

(2) Rates for sales that are based on accurate data and consistent, system-wide costing principles will be considered not to discriminate against any qualifying facility to the extent that such rates apply to the public utility's other customers with similar load or other cost-related characteristics.

(3) The following additional services must be provided by a public utility to a qualifying facility at its request:

(a) Supplementary power;

(b) Back-up power;

(c) Maintenance power; and

(d) Interruptible power.

(4) When a waiver request is filed under OAR 860-029-0005(4), the Commission may waive any requirement of section (3) of this rule if, after notice in the area served by the public utility and after opportunity for public comment, the public utility demonstrates and the Commission finds that compliance with such requirement will:

- (a) Impair the public utility's ability to render adequate service to its other customers; or
- (b) Place an undue burden on the public utility.

(5) The rate for sale of back-up power or maintenance power:

(a) May not be based upon an assumption (unless supported by factual data) that forced outages or other reductions in electric output by all qualifying facilities on a public utility's system will occur simultaneously, during the system peak, or both; and

(b) Must take into account the extent to which scheduled outages of the qualifying facilities can be coordinated usefully with the scheduled outages of the public utility's facilities.

#### **860-029-0060**

##### **Obligation to Pay and Reimbursement of Interconnection Costs**

(1) Interconnection costs are the responsibility of the owner or operator of the qualifying facility. Interconnection costs that may reasonably be incurred by the public utility will be assessed against a qualifying facility on a nondiscriminatory basis with respect to other customers with similar load or other cost-related characteristics.

(2) The public utility will be reimbursed by the qualifying facility for any reasonable interconnection costs including costs of financing at an interest rate no greater than the effective rate of the public utility's last senior securities issuance at the time of the contract with the qualifying facility. Such reimbursement may be over any agreed period not greater than one-half the length of any contract between the public utility and the qualifying facility when the contract is for a period greater than two years; otherwise, reimbursement will be made over a one-year period. At the public utility's option and with the Commission's approval, a public utility may guarantee a loan to a qualifying facility for interconnection costs rather than finance such costs from the public utility's own funds.

#### **860-029-00070**

##### **System Emergencies**

(1) Qualifying facility's obligation to provide power during system emergencies: A qualifying facility is required to provide energy and capacity to a public utility during a system emergency only to the extent:

- (a) Provided by agreement between such qualifying facility and public utility; or

(b) Ordered under section 202(c) of the Federal Power Act.

(2) During any system emergency, a public utility may curtail:

(a) Purchases from a qualifying facility if such purchases would contribute to such emergency (including net output requirement); and

(b) Sales to a qualifying facility, as qualified by section (3) of this rule, provided that such curtailment is on a nondiscriminatory basis.

(3) Except in cases of practical impossibility, sales to a qualifying facility that is generating 50 percent or more of its load, may not be curtailed during a system emergency, or under mandatory curtailments established by Order No. 78-823, until all other customers in its class have been fully curtailed.

(4) A qualifying facility that is unable to deliver power to a public utility owing to curtailment by the public utility will be relieved of any obligation to sell to the public utility during the curtailment).

#### **860-029-0080**

#### **Electric Utility System Cost Data**

(1) Each public utility must provide sufficient data concerning its avoided costs and costs of interconnection to allow the owner or operator of a qualifying facility to estimate, with reasonable accuracy, the payment it could receive from the utility if the qualifying facility went into operation under any of the purchase agreements provided for in these rules.

(2) By January 1 of each odd-numbered year, each nonregulated utility must prepare and file with the Commission a schedule of avoided costs equaling the nonregulated utility's forecasted incremental cost of resources over at least the next 20 years.

(3) Each public utility must file with the Commission draft avoided-cost information at the time it files its integrated resource plan and file final avoided-cost information within 30 days of a Commission decision of acknowledgement of the integrated resource plan to be effective 30 days after filing. The information submitted will be maintained for public inspection and include the following data for calculating avoided costs:

(a) The estimated avoided costs on its system, solely with respect to the energy component, for expected levels of purchases from qualifying facilities. The levels of purchases will be stated in blocks of not more than 100 megawatts for systems with peak demand of 1,000 megawatts or more and in blocks equivalent to not more than 10 percent of the system peak demand for systems of less than 1,000 megawatts. The avoided costs will be stated on a cents-per-kWh basis, during peak and off-peak periods, by year, for the current calendar year and each of the next five years; and

(b) The public utility's estimated capacity costs at completion of the planned capacity additions and planned capacity firm purchases, on the basis of dollars per kW, and the associated energy costs of each addition or purchase, expressed in cents per kWh. These costs will be expressed in terms of individual generating resources and of individual, planned firm purchases.

(4) Each public utility contracting to purchase nonfirm energy from a qualifying facility under OAR 860-029-0040(3)(a) must file with the Commission each quarter its nonfirm energy avoided cost.

(5) Nothing in these rules shall preclude the determination of avoided costs:

(a) As the average avoided costs over an appropriate period of time; or

(b) To reflect variations in avoided costs due to changes in stream flows, generating unit availability, loads, seasons, or other conditions.

(6) State review: Any data submitted by a public utility under this rule shall be subject to review and approval by the Commission. In any such review, the public utility has the burden of supporting and justifying its data.

(7)(a) On May 1 of each year, a public utility must file with the Commission updates to the avoided cost information filed under section (2) of this rule to be effective within 60 days of filing to reflect:

(A) Updated natural gas prices;

(B) On- and off-peak forward-looking electricity market prices;

(C) Changes to the status of Production Tax Credit; and

(D) Any other action or change including changes to the capital costs of a proxy resource in an acknowledged IRP update that is relevant to the calculation of avoided costs.

(b) In the event a utility's integrated resource plan is acknowledged within 60 days of May 1 in a particular year, the utility may seek a waiver of either the May 1 update or the post IRP-acknowledgement filing.

(8) A public utility may propose or the Commission may require a public utility to file the data described in OAR 860-029-0080(3) anytime during the two-year period between filing integrated resource plans to reflect significant changes in circumstances, including, but not limited to, the acquisition of a major block of resources or the completion of a competitive bid. Such a revision will become effective 90 days after filing.

(9) At least every two years, the public utility must file with the Commission the data described in OAR 860-029-0040(4) and 860-029-0080(3).

**869-029-0085****Requirements for Standard Avoided Cost Rates**

(1) Each public utility must file with the Commission standard avoided cost rates within 30 days of a Commission decision regarding acknowledgement of the public utility's integrated resource plan.

(2) Each public utility currently complying with Oregon's renewable portfolio standard must file both "renewable" and "non-renewable" standard avoided cost rates.

(3) The standard avoided cost rates filed by a public utility under sections (1) and (2) of this rule are subject to review and approval as well as modification by the Commission. The Commission may suspend the standard avoided cost rates during review. In any such review, the public utility has the burden of supporting and justifying its standard avoided cost rates. The standard avoided cost rates will be effective 30 days after filing unless otherwise determined by the Commission.

(4)(a) On May 1 of each year, a public utility must file with the Commission updates to its standard avoided cost rates under sections (1) and (2) of this rule to reflect:

- (A) Updated natural gas prices;
- (B) On- and off-peak forward-looking electricity market prices;
- (C) Changes to the status of Production Tax Credit; and
- (D) Any other actions or changes that are acknowledged by the Commission upon review of an IRP Update and that are relevant to the calculation of avoided costs.

(b) In the event a utility's integrated resource plan is acknowledged within 60 days of May 1 in a particular year, the utility may seek a waiver of either the May 1 update or the post IRP-acknowledgement filing.

(c) Updates filed under this section are subject to review and approval as well as modification by the Commission. The Commission may set the effective date of the standard avoided cost rates during review. In any such review, the public utility has the burden of supporting and justifying its standard avoided cost rates. Standard avoided cost rates filed under this section will be effective within 60 days of filing.

(5)(a) Upon request or its own motion, the Commission may consider updates to avoided cost rates to reflect significant changes in circumstances including, but not limited to, the acquisition of a major block of resources or the completion of a competitive bid process.

(b) An update under this section may be considered at any time.

(c) Updates to avoided cost rates under this section are subject to review and approval by the Commission and will become effective within 90 days after filing.

### **860-029-0100**

#### **Resolution of Disputes for Proposed Negotiated Power Purchase Agreements**

(1) This rule applies to a complaint, filed pursuant to ORS 756.500, regarding the negotiation of a Qualifying Facility power purchase agreement for facilities with a capacity greater than the eligibility threshold for a standard contract for the Qualifying Facility's resource group. These provisions supplement the generally applicable filing and contested case procedures contained in OAR chapter 860, division 001.

(2) Before a complaint is filed with the Commission, the Qualifying Facility must have followed the procedures set forth in the applicable public utility's tariff regarding negotiated power purchase agreements.

(3) At any time after 60 calendar days from the date a Qualifying Facility has provided written comments to the public utility regarding the public utility's draft power purchase agreement, the Qualifying Facility may file a complaint with the Commission asking for adjudication of any unresolved terms and conditions of its proposed agreement with the public utility.

(4) A Qualifying Facility filing a complaint under this rule is the "complainant." The public utility against whom the complaint is filed is the "respondent."

(5) The complaint must contain each of the following, as described by the complainant:

(a) A statement that the Qualifying Facility provided written comments to the utility on the draft power purchase agreement at least 60 calendar days before the filing of the complaint.

(b) A statement of the attempts at negotiation or other methods of informal dispute resolution undertaken by the negotiating parties.

(c) A statement of the specific unresolved terms and conditions.

(d) A description of each party's position on the unresolved provisions.

(e) A proposed agreement encompassing all matters, including those on which the parties have reached agreement and those that are in dispute.

(6) Along with the complaint, the Qualifying Facility must submit written direct testimony that includes all information upon which the complainant bases its claims.

(7) The Commission will serve a copy of the complaint upon the respondent. Service may be made by electronic mail if the Commission verifies the respondent's electronic mail address to service of the complaint and a delivery receipt is maintained in the official file. Within 10 calendar days of service of the complaint, the respondent must file its response with the

Commission, addressing in detail each claim raised in the complaint and a description of the respondent's position on the unresolved provisions. The respondent may also identify and present any additional issues for which the respondent seeks resolution.

(8) Along with its response the respondent must submit written direct testimony that includes all information upon which the respondent relies to support its position.

(9) An assigned Administrative Law Judge (ALJ) will conduct a conference with the parties to identify disputed issues, to establish a procedural schedule and to adopt procedures for the complaint proceeding. To accommodate the need for flexibility and to implement the intent of this streamlined complaint process, the ALJ retains the discretion to adopt appropriate procedures provided such procedures are fair, treat the parties equitably, and substantially comply with this rule. Such procedures may include, but are not limited to, hosting a technical workshop, holding a hearing, or submitting written comments.

(10) Only the counterparties to the agreement will have full party status. The ALJ may confer with members of the Commission Staff for technical assistance.

(11) After the hearing, or other procedures set forth in section (9), if the Commission determines that a term or provision of the proposed agreement is not just, fair, and reasonable, it may reject the proposed term or provision and may prescribe a just and reasonable term or provision. The Commission's review is limited to the open issues identified in the complaint and in the response.

(12) Within 15 business days after the Commission issues its final order, the public utility must prepare a final version of the power purchase agreement complying with the Commission decision and serve it upon the Qualifying Facility. Within 10 days of service of the final power purchase agreement, the Qualifying Facility and the public utility may sign and file the agreement with the Commission, may request clarification whether the agreement terms comply with the Commission order, or may apply for rehearing or reconsideration of the order. The terms and conditions in the power purchase agreement will not be final and binding until the agreement is executed by both parties.

(13) The provisions of any power purchase agreement approved pursuant to this rule apply only to the parties to the agreement and are not to be considered as precedent for any other power purchase agreement negotiation or adjudication.

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

##### **Obligation to Pay Costs to Accept Deliveries from Off-System Qualifying Facilities**

(1) For any off-system qualifying facility delivering Net Output to the purchasing public utility's system at a Point of Delivery, the power purchase agreement will include a provision allowing for possible amendment to the executed standard power purchase agreement after the cost review process included in this section.

(2) Within five (5) business days following the date the power purchase agreement is signed by both the qualifying facility and purchasing public utility, the purchasing public utility's Merchant Function may submit an application to the Transmission Provider requesting designation of the qualifying facility as a Network Resource.

- (a) If the purchasing public utility is notified in writing by the Transmission Provider that designation of the qualifying facility as a Network Resource requires the construction of transmission system network upgrades or otherwise requires potential redispatch of other Network Resources of the public utility (the "Conditional DNR Notice"), the public utility has fifteen (15) business days in which to submit an application to the Commission seeking an amendment to the power purchase agreement to address the impact to the public utility associated with accepting Net Output from the off-system qualifying facility.
- (b) If the purchasing utility is notified in writing by the Transmission Provider that the designation of the qualifying facility as a Network Resource does not require construction of transmission system network upgrades or otherwise require potential redispatch of other Network Resources of the public utility, the purchasing utility will notify the qualifying facility in writing that no amendment to the power purchase agreement will be sought.
- (C) If the purchasing public utility receives no response to its application to the Transmission Provider requesting designation of the qualifying facility as a Network Resource within twenty (20) business days after the application was submitted, the purchasing public utility will not have opportunity to seek amendment to the power purchase agreement under this section and will notify the qualifying facility in writing that no amendment to the power purchase agreement will be sought.

(3) If the purchasing public utility submits an application to the Commission under subsection (2)(a), the purchasing public utility and qualifying facility will each have opportunity to present their respective positions to the Commission as to whether and how the prices in the power purchase agreement and other terms and conditions of the power purchase agreement should be amended or whether the qualifying facility should be allowed to change the Point of Delivery, in light of the Conditional DNR Notice.

(4) After providing notice and opportunity to comment regarding an application filed under subsection (2)(a), the Commission will issue an order regarding the appropriate allocation of costs related to accepting the qualifying facility's net output at the Point of Delivery or whether the Point of Delivery should be changed.

(5) In the event of a Conditional DNR Notice or any subsequent Commission order allocating costs or ordering a new Point of Delivery, the qualifying facility may terminate the power purchase agreement upon written notice to the public.

(6) Neither a qualifying facility's notice of termination or termination, of a power purchase agreement will be an event of default, and no damages or other liabilities under the power purchase agreement will be owed by or to either party, if the qualifying facility issues its notice



of termination under subsection (5) to the purchasing public utility within 180 days of the Commission order.

(7) If a purchasing utility does not submit an application to designate a Qualifying Facility as a Network Resource within five (5) business days of executing a power purchase agreement, the public utility may not allocate or seek to allocate to the qualifying facility any costs associated with accepting the Net Output of the qualifying facility at a Point of Delivery, and may not file an application with the Commission under subsection (2)(a).

(8) Notwithstanding the other subsections in this rule, nothing prevents the purchasing public utility and qualifying facility from agreeing to amend a power purchase agreement to address transmission-related Network Upgrade costs or 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 the non-fixed price term of the power purchase agreement.

(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, or exercising influence over, the policies of another person or entity.

(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 because of a shared interest or agreement regarding interconnection facilities, interconnection-related system upgrades, or any other infrastructure not providing motive force or fuel.

**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.

**[Note: Subsection (1) was moved from OAR 860-029-0120].**

(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) 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, an option to lease or purchase the site or an executed letter of intent or exclusivity agreement to negotiate an option to lease or purchase the site.
- (c) The following information regarding the proposed qualifying facility:
  - (A) demonstration of ability to obtain certified qualifying facility status prior to commercial operation,
  - (B) design capacity (MW),
  - (C) station service requirements and net amount of power to be delivered to public utility's electric system,
  - (D) generation technology and other related technology applicable to the site,
  - (E) schedule of monthly power deliveries,
  - (F) motive force or fuel plan,
  - (G) proposed on-line date,
  - (H) proposed contract term,
  - (I) proposed pricing provisions,
  - (J) Point of delivery or interconnection,
  - (K) latitude and longitude of proposed facility and site layout, and
  - (L) 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.

(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 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.

(6) The process outlined in subsections (4) and (5) will continue until both the qualifying facility and public utility agree as to the terms of the draft standard power purchase agreement, i.e., neither the qualifying facility nor 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 and 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 that include the terms included in this section and are consistent with the other sections in this division.

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

(2) The total term of a standard power purchase agreement is the construction period followed by the purchase period. 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.

(3) The construction period of a standard power purchase agreement begins on the date the power purchase agreement is executed by both parties and ends on the day before the scheduled commercial on-line date specified in the power purchase agreement.

(4) The purchase period begins on the scheduled commercial on-line date specified in the power purchase agreement or as modified if modified under other rules in this division. The purchase period of a standard power purchase agreement includes a fixed-price term and may also include a non-fixed price term that begins after the fixed-price term.

Note: The scheduled commercial on-line date may be delayed by Unexcused 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.

(5) A qualifying facility electing to sell output at fixed prices may select a fixed-price term of up to 15 years, subject to the reduction specified in subsection (6) for a construction period that exceeds three years and may select a non-fixed price term of up to five years.

(4)(6) A qualifying facility may specify a scheduled commercial on-line date for a standard power purchase agreement consistent with the following:

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

(b) Anytime between three years and four years after the effective date of the power purchase agreement, provided that the fixed-price term is reduced one day for every day of the construction period that extends the three-year anniversary of the execution date, with the reduction taken from the end of the fixed-price term.

~~(b) Anytime later than three years after the date of agreement execution if the qualifying facility establishes that a later scheduled commercial on-line date is reasonable and the utility agrees.~~

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 on-line date and will end after 14 years and 6 months.

(c) A qualifying facility entering into a standard power purchase agreement may not select a scheduled commercial on-line date more than four years from the effective date.

(5) Unless otherwise excused under the power purchase agreement, the utility is authorized to issue a Notice of Default if the qualifying facility does not meet the scheduled commercial on-line date in the standard power purchase agreement. If a Notice of Default is issued for failure to meet the scheduled commercial on-line date in the power purchase agreement, the qualifying facility has one year in which to cure the default for failure to meet the scheduled commercial on-line date, during which the public utility may collect damages for failure to deliver. Damages are equal to the positive different between the utility's replacement power costs less the prices in the standard power purchase agreement during the period of default, plus costs

reasonably incurred by the utility to purchase replacement power and additional transmission charges, if any, incurred by the utility to deliver replacement power to the point of delivery.

(6) Modification of Scheduled Commercial On-line Date. Anytime within six (6) months after the effective date of a standard power purchase agreement, the qualifying facility may terminate the power purchase agreement or modify the scheduled commercial on-line date in the power purchase agreement, subject to the limitations in subsection (4) above, and subject to any damages incurred by the purchasing public utility related to the modification.

(7) Extension of Scheduled Commercial On-line Date:

(a) The scheduled commercial on-line date in a standard power purchase agreement may be extended at any point during the construction period for Excused Delay or Force Majeure. An extension of the scheduled commercial on-line date under this subsection is not subject to the four-year limitation or reduced purchase term for a construction period over three years specified in subsection (4).

(b) With the consent of the purchasing public utility, the scheduled commercial on-line date in a power purchase agreement may be extended at any point during the construction period, subject to the four-year limitation and reduction to purchase term for construction periods over 36 months specified in subsection (4).

(8) Point of Delivery. The qualifying facility may propose the Point of Delivery. The purchasing public utility must agree to the Point of Delivery before it is included in the power purchase agreement. The purchasing public utility may not unreasonably withhold agreement.

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

(8) An X 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)~~ (10) 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.

(11) Security A qualifying facility entering into a standard power purchase agreement need not post security for the public utility's benefit in the event of default by the qualifying facility, provided that the qualifying facility states in writing and warrants in the power purchase agreement:

(a) Neither the qualifying facility nor any of its principal equity owners is or has within the past two (2) years been the debtor in any bankruptcy proceeding, is unable to pay its bills in the ordinary course of its business, or is the subject of any legal or regulatory action, the result of which could reasonably be expected to impair the qualifying facility's ability to own and operate the Facility in accordance with the terms of the standard power purchase agreement.

(b) The qualifying facility has not at any time defaulted in any of its payment obligations for electricity purchases from the purchasing public utility.

(c) The qualifying facility is not in default under any of its agreements and is current on all of its financial obligations, including construction related financial obligations.

(d) The qualifying facility owns and will continue to own for the term of the power purchase agreement, all right, title and interest in and to the Facility, free and clear of all liens and encumbrances related to third-party financing of the Facility.

(12) If a qualifying facility is unable to satisfy the criteria in subsection (11), the qualifying facility must provide security, upon request of the purchasing public utility, using the qualifying facility's choice of the following methods.

(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, 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, the qualifying facility will, within 15 days, restore the Default Security as if no such deduction had occurred.

(c) Senior Lien. Before the scheduled commercial operation date, the qualifying facility will grant the purchasing public utility a senior, unsubordinated lien on the Facility and its assets as security for the performance under the power purchase agreement by executing, acknowledging, and delivering a security agreement and a deed of trust or mortgage, in a recordable form (each in a form satisfactory to the purchasing utility in the reasonable exercise of its discretion). Pending delivery of the senior lien to the purchasing public utility, the qualifying facility shall not cause or permit the Facility or its assets to be burdened by liens or other encumbrances that would be superior to the purchasing public utility's, other than workers', mechanics', suppliers' or similar liens, or tax liens in each case arising in the ordinary course of business that are either not yet due and payable or that have been released by means of a performance bond posted within eight (8) calendar days of the commencement of any proceeding to foreclose the lien.

(d) Step-in rights. The qualifying facility shall agree in writing that the purchasing utility has step-in rights the event of a default by the qualifying facility, subject to the following:

- (A) Prior to any termination of the power purchase agreement due to an event of default of the qualifying facility, the purchasing utility shall have the right, but not the obligation, to possess, assume control of, and operate the Facility as agent for Seller (in accordance with Seller's rights, obligations, and interest under the power purchase agreement). The qualifying facility shall not grant any person, other than the lending institution providing financing to the qualifying facility for construction of the Facility ("Facility Lender"), a right to possess, assume control of, and operate the Facility that is equal to or superior to PacifiCorp's right under this subsection.
- (B) The purchasing public utility shall give the qualifying facility ten calendar days' notice in advance of contemplated exercise of the purchasing utility's step-in rights. Upon such notice, the qualifying facility shall collect and have available at a convenient central location at the Facility all documents, contracts, book, manuals, reports, and records required to construct, operate, and maintain the Facility in accordance with Prudent Electrical Practices.
- (C) Upon such notice, the purchasing utility, its employees, contractors, or designated third parties will have the unrestricted right to enter the Facility for the purpose of constructing and/or operating the Facility. Upon its receipt of the purchasing utility's notice, the qualifying facility will appoint the purchasing public utility as the qualifying facility's attorney-in-fact for the exclusive purpose of executing such documents and taking such other actions the purchasing utility may reasonably deem necessary or appropriate in the exercise of its step-in rights. During any period that the purchasing utility is in possession of and constructing or operating the Facility, no proceeds other than other monies attributed to operation of the Facility shall be remitted to or otherwise provided to the qualifying facility the qualifying facility has cured any event of default.



- (D) During any period that the purchasing public utility is in possession of or operating the Facility, the qualifying facility shall retain legal title to and ownership of the Facility and the purchasing public utility shall assume possession, operation, and control solely as agent for the qualifying facility.
- (E) In the event the purchasing public utility is in possession and control of the Facility for an interim period, the qualifying facility shall resume operation and the purchasing utility will relinquish its right to operate when the qualifying facility demonstrates to the public utility's satisfaction that the qualifying facility will remove the grounds that original gave rise to the public utility's right to operate the Facility.
- (F) In the event the purchasing public utility is in possession and control of the Facility for an interim period, the Facility Lender, or any nominee or transferee thereof, may foreclose and take possession of and operate the Facility and the purchasing utility shall relinquish its right to operate when the Facility Lender or any nominee or transferee thereof, requests such relinquishment.
- (G) The purchasing public utility's exercise of its step-in rights shall not be deemed an assumption by the purchasing utility of any liability attributable to the qualifying facility. If at any time after exercising its step-in rights the public utility elects to return possession and operation to the qualifying facility, the purchasing utility shall provide the qualifying facility at least 15 calendar days' notice of the date the purchasing utility intends to return possession and operation. Upon receipt of such notice, the qualifying facility shall take all measures necessary to resume possession and operation of the Facility on the date indicated in the notice..
- (13) Insurance requirements. 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 "B+" by A.M. Best Company.
  - (b) The coverage will be for both 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.
- ~~(a)~~ (14) All contracts between a qualifying facility and a public utility for energy, or energy and capacity must include language ~~that which~~ substantially conforms to the following: This agreement is subject to the jurisdiction of those governmental agencies and courts having control over either party or this agreement. The public utility's compliance with the terms of this contract is conditioned on the qualifying facility submitting to the public utility and to the

Public Utility Commission of Oregon, before the date of initial operation, certified copies of all local, state, and federal licenses, permits, and other approvals required by law.

(b) Under subsection ~~(2)(a)~~ (14) of this rule, the public utility shall bear no obligation to identify which approvals are required by law, or to verify the approvals were properly obtained, or that the project is maintained pursuant to the terms of the approvals.

(15) To ensure system safety and reliability of interconnected operations, all interconnected qualifying facilities must be constructed and operated in accordance with all applicable federal, state, and local laws and regulations.

*[Note: Subsections 14 and 15 are moved from OAR 860-029-0020/Obligations of Qualifying Facilities because they were out of place in that rule.]*

**860-029-XXXX [New Rule #4]  
Commercial Readiness Requirements**

(1) A qualifying facility may not commence commercial operation any sooner than 90 days before the scheduled commercial on-line date unless the public utility consents to early operation.

(2) Prior to commencing commercial operation, new qualifying facilities must conduct start-up testing under subsection (3) and both new and existing qualifying facilities must complete the commercial readiness review process as described under subsection (4).

(3) Start-Up Testing.

(a) The qualifying facility must provide no less than one (1) business day's written notice when commencing start-up testing and must provide ten (10) business days' written notice to the purchasing public utility prior to selling test energy to the purchasing public utility.

(b) The qualifying facility shall use best efforts to schedule and deliver test energy to the purchasing public utility. The qualifying facility shall be entitled to compensation received for test energy at the purchasing utility's Index Rate for similar types of energy deliveries.

(c) The qualifying facility may schedule and deliver test energy to the purchasing public utility pursuant to the scheduling procedures set forth in OAR 860-029-XXXX. The qualifying facility shall pay any costs or additional expenses that are required for the purchasing utility to receive Test Energy, including procurement of any necessary capacity costs or reserves.

(d) Prior to the commercial operation date, for a period of up to ninety (90) days, the purchasing public utility will pay the qualifying facility for test energy delivered under subsections (1)-(3) at the public utility's Index Price for off-peak hours.

(e) The required start-up testing depends on the nature of the qualifying facility. The start-up testing requirements must be included in the power purchase agreement. The following requirements may be used as a template for start-up testing requirements.

(A) Required factory testing includes such checks and tests necessary to determine that the Facility equipment systems and subsystems have been properly manufactured and installed, function properly, and are in a condition to permit safe and efficient start-up of the Facility. which may include but are not limited to (as applicable):

- (i) pressure tests of all steam system equipment,
- (ii) calibration of all pressure, level, flow, temperature and monitoring instruments,
- (iii) operating tests of all valves, operators, motor starters and motor,
- (iv) alarms, signals, and fail-safe or system shutdown control tests,
- (v) insulation resistance and point-to-point continuity tests,
- (vi) bench tests of all protective devices,
- (vii) tests required by manufacturer of equipment, and
- (viii) complete pre-parallel checks with PGE.

(B) Required start-up tests are those checks and tests necessary to determine that all features and equipment, systems, and subsystems have been properly designed, manufactured, installed and adjusted, function properly, and are capable of operating simultaneously in such condition that the Facility is capable of continuous delivery into PGE's electrical system, which may include but are not limited to (as applicable):

- (i) turbine/generator mechanical runs including shaft, vibration, and bearing temperature measurements,
- (ii) running tests to establish tolerances and inspections for final adjustment of bearings, shaft run-outs,
- (iii) brake tests,
- (iv) energization of transformers,
- (v) synchronizing tests (manual and auto),
- (vi) stator windings dielectric test,
- (vii) armature and field windings resistance tests,
- (viii) load rejection tests in incremental stages from 5, 25, 50, 75 and 100 percent load,
- (ix) heat runs,
- (x) tests required by manufacturer of equipment,
- (xi) excitation and voltage regulation operation tests,
- (xii) open circuit and short circuit,
- (xiii) saturation tests,
- (xiv) governor system steady state stability test,
- (xv) phase angle and magnitude of all PT and CT secondary voltages and currents to protective relays, indicating instruments and metering,
- (xvi) auto stop/start sequence,

- (xvii) level control system tests, and
- (xviii) completion of all state and federal environmental testing requirements.

(4) Commercial Readiness Process. A qualifying facility must complete the following commercial readiness process before the qualifying facility begins commercial operation.

(a) The qualifying facility must provide a Notice of Commercial Readiness to the purchasing public utility, accompanied by the following:

- (A) documentation showing that the qualifying facility has retail electric service for the Facility,
- (B) manufacturer's and engineering documentation that establishes the Nameplate Capacity of the Facility,
- (C) a certificate executed by an authorized agent of the qualifying facility attesting that all mechanical and electrical equipment of the Facility has been completed to enable the Facility to deliver energy in a safe manner,
- (D) a certificate of insurance evidencing that qualifying facility has met the insurance requirements of 860-029-0120(x),
- (E) verification from the Transmission Provider that the Facility maintains its Network Resource designation,
- (F) a certificate executed by an authorized agent of the qualifying facility attesting that all licenses, permits, determinations and approvals necessary for the qualifying facility's operations have been obtained from applicable federal, state or local authorities, including, but not limited to, evidence of the Required Facility Documents and qualifying facility's status as a certified Qualifying Facility,
- (G) a certificate from an officer of qualifying facility stating that the qualifying facility is not in violation of or subject to any liability under any Requirements of Law,
- (H) a fully executed and effective Generation Interconnection Agreement and a certificate executed by an authorized agent of the qualifying facility attesting that any and all interconnection upgrades and testing requirements necessary to enable the Facility to be safely connected to the purchasing utility's electrical system have been completed as required under the Generation Interconnection Agreement (as terms are defined in the Generation Interconnection Agreement).
- (I) evidence that the qualifying facility is a certified qualifying facility.

***[Note to stakeholders: Staff does not intend to eliminate any exceptions to the commercial readiness requirements that are currently available for very small QFs. These exceptions still need to be inserted. Staff would like input on whether additional exceptions are appropriate for very small QFs.]***

(b) The purchasing public utility has ten (10) business days from receipt of the qualifying facility's Notice of Commercial Readiness and accompanying documentation to respond with a written acceptance of or rejection of the Notice of Commercial Readiness. A rejection must have a reasonable basis and be accompanied by written description of the requirements for commercial operation that the public utility reasonably believes have not been achieved.

(c) If the purchasing utility rejects the Notice of Commercial Readiness under subsection (4)(b), the qualifying facility must take action necessary to satisfy the deficiencies identified by the public utility. When the qualifying facility has completed the necessary actions, it must submit another Notice of Commercial Operation to the public utility for review.

(d) The notice and review process described in subsections (2)-(4) above will continue until the public utility has accepted the Notice of Commercial Operation in writing.

(e) The commercial readiness requirements will be achieved on the date the matters identified in the public utility's deficiency notice have been addressed to the public utility's reasonable satisfaction.

(f) If the public utility does not provide a written response to the qualifying facility's Notice of Commercial Operation within ten (10) business days, the commercial readiness requirements will be deemed as achieved ten (10) business days after the purchasing utility's receipt of the Notice of Commercial Readiness.

*[Note to AR 631 Stakeholders: Staff to insert rule related to ability to change size after commercial operation].*

#### **860-029-XXXX [New Rule #5]**

##### **Delivery and Purchase**

(1) Commencing on the scheduled commercial on-line date 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 qualifying facility may also deliver, and the purchasing public utility shall receive and purchase, imbalance energy delivered at the Point of Delivery, subject to subsection (3), when:

(a) the delivery of imbalance energy results from the qualifying facility's purchase of energy imbalance ancillary service required by the transmission provider(s) to ensure there is no mismatch between energy scheduled by the Facility and the real-time production of the Facility,

(b) the transmission provider(s) require(s) the qualifying facility to schedule deliveries of Net Output in one (1) megawatt hour increments, and

(c) The qualifying facility is not attempting to sell the purchasing public utility energy less than, or in excess of, its Net Output.

*[Note the AR 631 Parties: Staff will insert rules related to purchase of excess energy (energy that exceeds scheduled amounts). Utilities will be required to purchase excess energy at index rate.]*

(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.

#### **860-029-XXXX [New Rule #6]**

##### **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 #7]**

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

- (a) failure to begin power deliveries by scheduled commercial on-line date,
- (b) failure to provide 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,
- (g) failure to satisfy applicable Minimum Availability Guarantee for two (2) consecutive years,
- (h) failure to satisfy applicable Minimum Delivery Guarantee for three (3) consecutive years,
- (i) failure to receive or purchase all or part of Net Output, or
- (j) failure to timely provide a notice of early termination under OAR 860-029-XXX [New Rule #1].

(2) Unless otherwise excused under the 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 on-line date.

(b) If a Notice of Default is issued under subsection (1)(b), (1)(c), (1)(d), 1(e), 1(f), or 1(i), the non-defaulting party has ninety (90) days in which to cure the event of default.

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

(4) Imposition of damages.

(a) The public utility may collect damages after issuing a Notice of Default under subsection (1)(a), (1)(d), or (1)(f). Damages are equal to the positive difference between the utility's replacement power costs less the prices in the standard power purchase agreement during the period of default, plus costs reasonably incurred by the utility to purchase replacement power and RECs, and any incremental transmission charges incurred by the utility to deliver replacement energy. The invoice for such amount must include a written statement explaining in reasonable detail the calculation of such amount.

(b) The public utility may collect damages after issuing a Notice of Default under subsections (1)(g) or (1)(h) as specified in OAR 860-029-0129(x) and (x).

(c) A qualifying facility may collect damages if the purchasing public utility fails to receive or purchase all or part of the Net Output required to be purchased and such failure is not excused by the qualifying facility's failure to perform under or comply



with its obligations under the power purchase agreement. Damages are an amount equal to the qualifying facility's cost to cover multiplied by the amount of Net Output not purchased.

- (d) 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 the 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 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 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 in a commercially reasonable manner and provide to the qualifying facility a written statement explaining in reasonable detail the calculation of Termination Damages. Termination damages are due by qualifying facility within twenty (20) Business Days after receipt of the written statement of Termination Damages 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.
- (10) Security. If the 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 #8]**

**Violations**

The following events may constitute a Violation of the power purchase agreement:

- (a) Failure to provide timely notice of planned outages.
- (b) Failure to provide timely notice of scheduled maintenance.
- (c) Failure to provide timely notice of Forced Outage.
- (d) Failure to adhere to Scheduling Requirement
- (e) Failure to provide timely notice of material adverse event.
- (f) Failure to grant purchasing utility access rights upon reasonable prior notice.

*(2) Remedies for violations [Making certain failures “violations” as opposed to “defaults” is intended to address QFs’ concerns that PPAs may be terminated for issues that do not substantially impact the generation and sale of energy. Potential remedies are financial penalties or possibly, the opportunity for the purchasing utility to issue a notice of default if a QF has x number of violations in a certain time period. Staff would like to hear input on this idea.]*

**860-029-XXXX [New Rule #9]**

**Operation and Control**

(1) General. The qualifying facility will operate the Facility within its control in accordance with all applicable federal, state, and local laws and regulations to ensure system safety and reliability of interconnected operations. Qualifying Facility must operate, maintain and repair the Facility in accordance with:

- (a) applicable and mandatory standards, criteria and formal guidelines of FERC, NERC, any RTO, and any other Electric System Authority and any successors to the functions thereof;
- (b) permits and Required Facility Documents,
- (c) any applicable Generation Interconnection Agreement;
- (d) all Requirements of Law; and
- (e) requirements of the power purchase agreement.

(3) Coordination with System. The qualifying facility's delivery of electricity to purchasing public utility under 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.

(4) Planned Outages.

(a) The qualifying facility must provide the purchasing public utility with an annual forecast of Planned Outages for each Contract Year of the purchase period at least one month, but no more than three months, before the first day of that Contract 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 Contract 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.

(5) Maintenance Outages.

(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.

(6) Forced Outages. 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.

(7) Notice of Emergency Deratings and Outages. 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.

(8) Scheduling Cooperation and Standards.

*[Comment to AR 631 stakeholders: Need comment/input on the rules related to scheduling, forecasting.]*

(a) With respect to any and all scheduling requirements, the qualifying facility must cooperate with the public utility with respect to scheduling Net Output, and both the qualifying facility and public utility will designate authorized representatives to communicate with regard to scheduling and related matters arising under a power purchase agreement. Each Party must comply with the applicable variable resource standards and criteria of any applicable Electric System Authority, as applicable.

(b) If a purchasing public utility is deemed by an RTO to be financially responsible for a qualifying facility's performance under the Generation Interconnection Agreement due to the qualifying facility's lack of standing as a "scheduling coordinator" or other RTO-recognized designation, qualification or otherwise, then the qualifying facility must promptly take all actions necessary to acquire such RTO-recognized standing (or must contract with a third party who has such RTO-recognized standing) so that the public utility is no longer responsible for the qualifying facility's performance under the Generation Interconnection Agreement or RTO requirement.

(9) Forecasting. The following requirements apply for intermittent qualifying facilities.

(a) Long-Range Forecasts. The qualifying facility must, by December 1st of each year during the Total Term (except for the last year), provide an annual update to the expected long-term monthly/diurnal mean net energy and net capacity factor estimates (12 X 24 profile) for the Total Term. Seller must prepare such forecasts utilizing a renewable energy resource prediction model or service that is satisfactory to the public utility in the exercise of its reasonable discretion and comparable in accuracy to models or services commonly used in the industry. The forecasts provided by the qualifying facility must comply with all applicable Electric System Authority tariff procedures, protocols, rules and testing as necessary and as may be modified from time to time.

(b) Day-Ahead Forecasts and Updates. At the qualifying facility's expense, the purchasing public utility will solicit and obtain from a qualified renewable energy production forecasting vendor forecast data and information with respect to the Facility, including day-ahead and real-time forecasting services and provision of real-time meteorological data necessary for compliance with applicable Electric System Authority procedures, protocols, rules and testing. Upon request by the public utility the qualifying facility must provide a 24-hour telephone number that the public utility may contact to determine the then-current status of the Facility. The public utility will present the qualifying facility with an invoice and documentation supporting the costs of obtaining such forecasting data. The qualifying facility must pay the amount stated on the invoice within fifteen (15) days of receipt. The public utility reserves the right to change the forecasting vendor in its sole discretion during the Term.

#### **860-029-0XXX [New Rule #10]**

#### **Billings, Computations, and Payments**

- (1) On or before the tenth (10th) day following the end of each calendar month, the qualifying facility must deliver to the purchasing public utility an invoice showing the qualifying facility's computation of Net Output delivered to the Point of Delivery during such month. When calculating the invoice, the qualifying facility must provide computations showing the portion of Net Output that was delivered during On-Peak Hours and the portion of Net Output that was delivered during Off-Peak Hours.
- (2) Upon the purchasing public utility's receipt of an invoice under subsection (1), the purchasing public utility must send to the qualifying facility, on or before the later of the twentieth (20th) day following receipt of such invoice or the thirtieth (30th) day following the end of each month, payment for the qualifying facility's deliveries of Net Output.
- (3) Either the qualifying facility or purchasing public utility may offset any payment due under this Agreement against amounts owed by the other Party pursuant under the power purchase agreement. Either the qualifying facility's or purchasing utility's exercise of recoupment and set off rights will not limit the other remedies available to such Party under the power purchase agreement.
- (4) Any amounts not paid when due under the power purchase agreement will bear interest at the Contract Interest Rate from the date due until paid.

- (5) Either the qualifying facility or purchasing utility, in good faith, disputes any amount due under an invoice provided under the power purchase agreement, such Party must notify the other Party of the specific basis for the dispute and, if the invoice shows an amount due, must pay that portion of the invoice that is undisputed on or before the due date. Any such notice of dispute must be provided within two (2) years of the date of the invoice in which the error first occurred. If any amount disputed by such Party is determined to be due the other Party, or if the Parties resolve the payment dispute, the amount due must be paid within five (5) Business Days after such determination or resolution, along with interest at the Contract Interest Rate from the date due until the date paid.
- (6) Each Party to a power purchase agreement, through its authorized representatives, has the right, at its expense upon reasonable notice and during normal business hours, to examine and copy the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made under the power purchase agreement or to verify the other Party's performance of its obligations under same.
- (7) Upon request, each Party must provide to the other Party statements evidencing the quantities of Net Output delivered at the Point of Delivery or Point of Interconnection. If any statement is found to be inaccurate, a corrected statement will be issued and, subject to subsection (5), any amount due one Party to the other Party as a result of the corrected statement will be promptly paid including the payment of interest at the Contract Interest Rate from the date of the overpayment or underpayment to the date of receipt of the reconciling payment.

### **860-029-0130**

#### **Nonstandard Power Purchase Agreements**

- (1) Each public utility must offer nonstandard avoided cost rates and nonstandard power purchase agreements to all qualifying facilities directly or indirectly interconnected with the public utility.
- (2) Qualifying facilities have the unilateral right to select a purchase term of up to 20 years for a power purchase agreement. Qualifying facilities electing to sell firm output at fixed prices have the unilateral right to a fixed-price term of up to 15 years.
- (3) A qualifying facility may specify a scheduled commercial on-line date consistent with the following:
  - (a) Anytime within three years from the date of agreement execution;
  - (b) Anytime later than three years after the date of agreement execution if the qualifying facility establishes to the utility that a later scheduled commercial on-line date is reasonable and necessary and the utility agrees.
- (4) The qualifying facility will be determined to be providing firm energy or capacity if the contract requires delivery of a specified amount of energy or capacity over a specified term and

includes sanctions for noncompliance under a legally enforceable obligation. For a qualifying facility providing firm energy or capacity:

(a) The utility and the qualifying facility should negotiate the time periods when the qualifying facility may schedule outages and the advance notification requirement for such outages, using provisions in the utility's partial requirements tariffs as guidance.

(b) The qualifying facility should be required to make best efforts to meet its capacity obligations during the utility system emergencies.

(c) The utility and the qualifying facility should negotiate security, default, damage and termination provisions that keep the utility and its ratepayers whole in the event the qualifying facility fails to meet its obligations under the contract.

(d) Delay of commercial operation should not be a cause of termination if the utility determines at the time of contract execution that it will be resource sufficient as of the qualifying facility scheduled commercial operation date specified in the power purchase agreement. The utility may impose damages.

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

(5) An "as-available" obligation for delivery of energy, including deliveries in excess of nameplate rating or the amount committed in the power purchase agreement should be treated as a non-firm commitment. Non-firm commitment should not be subject to minimum delivery requirements, default damages for construction delay or under-delivery, default damages for the qualifying facility choosing to terminate the power purchase agreement early, or default security for these purposes.

(6) For qualifying facilities unable to establish creditworthiness, the utility must at a minimum allow the qualifying facility to choose either a letter of credit or cash escrow for providing default security. When determining security requirements, the utility should take into account the risk associated with the qualifying facility based on such factors such as its size and type of supply commitments. Default security methodologies specified in the utility's standard power purchase agreements are a useful starting point for negotiations for nonstandard power purchase agreements.

(7) Qualifying facilities may either contract with the purchasing utility for a "surplus sale" or for a "simultaneous purchase and sale" provided, however, that the qualifying facility's selection of either contractual arrangement is not inconsistent with any retail tariff provision of the purchasing utility then in effect or any agreement between the qualifying facility and the purchasing utility.

(a) Contracts for surplus sale and for simultaneous purchase and sale will be available to qualifying facilities regardless of whether they qualify for standard power purchase agreements and rates or non-standard power purchase agreements and rates. However, the "simultaneous

purchase and sale" is not available to qualifying facilities not directly connected to the purchasing utility's electrical system.

(b) The negotiation parameters and guidelines should be the same for both surplus sale and simultaneous purchase and sale contracts.

(c) The avoided cost calculations by utilities do not require adjustment solely as a result of the selection of either surplus sale or simultaneous purchase and sale arrangements.