

## CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.

### Subchapter J. COSTS, RATES AND TARIFFS.

#### DIVISION 1: RETAIL RATES.

##### §25.242. Arrangements Between Qualifying Facilities and Electric Utilities.

- (a) **Purpose.** The purpose of this section is to regulate the arrangements between qualifying facilities, retail electric providers with the price to beat obligation (PTB REPs), and electric utilities as required by federal and state law in a manner consistent with the development of a competitive wholesale power market.
- (b) **Application.** This section applies to all PTB REPs and to all electric utilities, including transmission and distribution utilities. The provisions of this section concerning purchase or sale of electricity between an electric utility and a qualifying facility do not apply to a transmission and distribution utility. This section does not apply to municipal utilities, river authorities, or electric cooperatives.
- (c) **Definitions.** The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:
- (1) **Avoided costs** -- The incremental costs to a PTB REP, or electric utility of electric energy, which, but for the purchase from the qualifying facility or qualifying facilities, such PTB REP or electric utility would generate itself or purchase from another source.
  - (2) **Back-up power** -- Electric energy or capacity supplied to replace energy or capacity ordinarily generated by a qualifying facility's own generation equipment during an unscheduled outage of the qualifying facility.
  - (3) **Cost of decremental energy** -- The cost savings to a utility associated with the utility's ability to back-down some of its units or to avoid firing units, or to avoid purchases of power from another source because of purchases of power from qualifying facilities.
  - (4) **Electric utility** -- For purposes of this section, an integrated investor-owned utility that has not unbundled in accordance with Public Utility Regulatory Act §39.051.
  - (5) **Firm power** -- From a qualifying facility, power or power-producing capacity that is available pursuant to a legally enforceable obligation for scheduled availability over a specified term.
  - (6) **Host utility** -- The utility with which the qualifying facility is directly interconnected.
  - (7) **Maintenance power** -- Electric energy or capacity supplied during scheduled outages of the qualifying facility.
  - (8) **Market price** -- The market-clearing price of energy (MCPE) in the balancing energy market for the Electric Reliability Council of Texas (ERCOT) congestion zone in which the power is produced, minus any administrative costs, including an appropriate share of ERCOT-assessed penalties and fees typically applied to power generators.
  - (9) **Non-firm power from a qualifying facility** -- Power provided under an arrangement that does not guarantee scheduled availability, but instead provides for delivery as available.
  - (10) **Parallel operation** -- A mode of operation which enables a qualifying facility to export automatically any electric capacity which is not consumed by the qualifying facility or the user of the qualifying facility's output. Parallel operation results in three possible states of operation at any point in time:
    - (A) The qualifying facility is generating an amount of capacity that is less than the customer's load. The customer is therefore a net consumer.
    - (B) The qualifying facility is generating an amount of capacity that is more than the customer's load. The customer is therefore a net producer.
    - (C) The qualifying facility is generating an amount of capacity that is equal to the customer's load. The customer is therefore neither a net producer nor a net consumer.
  - (11) **Purchase** -- The purchase of electric energy or capacity or both from a qualifying facility by a PTB REP or electric utility.

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- (12) **Purchasing utility** -- The electric utility that is purchasing a qualifying facility's capacity and/or energy.
  - (13) **Quality of firmness of a qualifying facility's power** -- The degree to which the capacity offered by the qualifying facility is an equivalent quality substitute for firm purchased power or an electric utility's own generation. At a minimum the following factors should be considered in determining quality of firmness:
    - (A) reliability of generation and interconnection;
    - (B) forced outage rate;
    - (C) availability during peak periods;
    - (D) the terms of any contract or other legally enforceable obligation, including, but not limited to, the duration of the obligation, performance guarantees, termination notice requirements, and sanctions for noncompliance;
    - (E) maintenance scheduling;
    - (F) availability for system emergencies, including the ability to separate the qualifying facility's load from its generation;
    - (G) the individual and aggregate value of energy and capacity from qualifying facilities on the electric utility's system;
    - (H) other dispatch characteristics;
    - (I) reliability of primary and secondary fuel supplies used by the qualifying facility; and
    - (J) impact on utility system stability.
  - (14) **Retail electric provider with the price to beat obligation (PTB REP)** -- A REP that makes available a PTB pursuant to PURA §39.202.
  - (15) **Sale** -- The sale of electric energy or capacity or both supplied to a qualifying facility.
  - (16) **Supplementary power** -- Electric energy or capacity regularly used by a qualifying facility in addition to that which the facility generates itself.
  - (17) **System emergency** -- A condition on a utility's system that is likely to result in imminent significant disruption of service to customers or is imminently likely to endanger life or property.
  - (18) **Transmission and distribution utility (TDU)** -- As defined in §25.5 of this title (relating to Definitions).
- (d) **Negotiation and filing of rates.**
- (1) **Negotiated rates or terms.** Nothing in this section shall:
    - (A) limit the authority of any PTB REP or electric utility or any qualifying facility to agree to a rate for any purchase, or terms or conditions relating to any purchase, which differs from the rate or terms or conditions that would otherwise be required by this section; or
    - (B) affect the validity of any contract entered into between a qualifying facility and a PTB REP or electric utility for any purchase before the adoption of this section.
  - (2) **Filing of rates.** All rates for sales to qualifying facilities, contractual or otherwise, shall be contained in the schedule of rates of the electric utility filed with the commission.
- (e) **Availability of electric utility system cost data.**
- (1) **Applicability.** Paragraph (2) of this subsection applies to large electric utilities whose total sales of electric energy for purposes other than resale exceeded 500 million kilowatt-hours during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year. Paragraph (3) of this subsection applies to all other electric utilities.

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- (2) **Data request for large electric utilities.** Large utilities shall file the following data:
- (A) the estimated avoided cost on the electric utility's system, solely with respect to the energy component, for various levels of purchases from qualifying facilities. Such levels of purchases shall be stated in blocks of one, ten and 100 megawatts or not more than 10% of the system peak demand for systems of less than 1,000 megawatts. The avoided cost shall be stated on a cents-per-kilowatt-hour basis, during daily and seasonal peak and off-peak periods, by year, for the current calendar year and each of the next nine years.
  - (B) the electric utility's plan for the addition of capacity by amount and type, for purchases of firm energy and capacity, and for capacity retirements for each year during the succeeding nine years.
  - (C) for the current year and each of the next nine years, the estimated capacity costs at completion of the planned capacity additions and planned capacity purchases, on the basis of dollars-per-kilowatt, and the associated energy costs of each unit, expressed in cents per kilowatt-hour. These costs shall be expressed in terms of individual generating units and of individual planned firm purchases. Such information shall be submitted in accordance with the Federal Energy Regulatory Commission Regulations, 18 Code of Federal Regulations, §292.302 and shall be sufficient for qualifying facilities to reasonably estimate the utility's avoided cost. Accompanying each filing pursuant to this rule shall be a detailed explanation of how the data was determined, including sources and assumptions employed.
- (3) **Special requirements for small electric utilities.** Affected utilities shall, upon request:
- (A) provide to an interested person comparable data to that required under paragraph (2) of this subsection to enable qualifying facilities to estimate the electric utility's avoided costs; or
  - (B) with regard to an electric utility that is legally obligated to obtain all its requirements for electric energy and capacity from another electric utility, provide to an interested person the data of its supplying utility and the rates at which it currently purchases such energy and capacity.
- (4) **Filing date.** By February 15 each year, large electric utilities shall file with the commission and shall maintain for public inspection the data set forth in paragraph (2) of this subsection.
- (f) **PTB REP and electric utility obligations.**
- (1) **Obligation to purchase from qualifying facilities.**
    - (A) In accordance with this subsection and subsection (g) of this section, each PTB REP and electric utility shall purchase any energy that is made available from a qualifying facility:
      - (i) directly to the PTB REP or electric utility; or
      - (ii) indirectly to the PTB REP or electric utility in accordance with paragraph (4) of this subsection.
    - (B) Each electric utility shall purchase energy from a qualifying facility with a design capacity of 100 kilowatts or more within 90 days of being notified by the qualifying facility that such energy is or will be available, provided that the electric utility has sufficient interconnection facilities available. If an agreement to purchase energy is not reached within 90 days after the qualifying facility provides such notification, the agreement, if and when achieved, shall bear a retroactive effective date for the purchase of energy delivered to the electric utility correspondent with the 90th day following such notice. If the electric utility determines that adequate interconnection facilities are not

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available, the electric utility shall inform the qualifying facility within 30 days after being notified for distribution interconnection, or within 60 days for transmission interconnection, giving the qualifying facility a description of the additional facilities required as well as cost and schedule estimates for construction of such facilities. If an agreement to purchase energy is not reached upon completion of construction of the interconnection facilities or 90 days after notification by the qualifying facility that such energy is or will be available, the agreement, if and when achieved, shall bear a retroactive effective date for the purchase of energy delivered to the electric utility correspondent with the time of interconnection or the 90th day, whichever is later. Nothing in this subsection shall be construed in a manner that would preclude a qualifying facility from notifying and contracting for energy with a utility for sale of energy prior to 90 days before delivery of such energy.

- (C) Each PTB REP shall purchase energy from a qualifying facility with a design capacity of 100 kilowatts or more within a timely fashion after being notified by the qualifying facility that such energy is or will be available.
- (2) **Obligation to sell to qualifying facilities.** In accordance with subsection (k) of this section, each electric utility shall sell any energy and capacity requested to any qualifying facility located within the electric utility's service area. Each PTB REP shall also sell any energy requested to any qualifying facility; however, those sales shall be at market based rates. Nothing shall restrict the ability of any qualifying facility to purchase energy from any REP.
- (3) **Interconnection.** Interconnection by a qualifying facility is addressed by Subchapter I, Division 1, of this chapter (relating to Transmission and Distribution) if the interconnection is to a transmission system and by §25.211 of this title (relating to Interconnection of On-site Distributed Generation) if the interconnection is to a distribution system, except if the interconnection is regulated by the Federal Energy Regulatory Commission.
- (4) **Transmission to other electric utilities.** Transmission service provided by an electric utility in the ERCOT power region to a qualifying facility shall be governed by Subchapter I of this chapter.
- (5) **PTB REP and scheduling with qualifying facilities.** A PTB REP shall use dynamic resource scheduling or responsibility transfer in ERCOT with any qualifying facility that requests such scheduling, as permitted by ERCOT. The PTB REP's cost of using dynamic resource scheduling or responsibility transfer attributable solely to purchases from qualifying facilities shall be charged to qualifying facilities that use such scheduling. If a qualifying facility uses static scheduling, the qualifying facility shall bear the costs for any imbalances resulting from the qualifying facility's failure to submit a schedule or to comply with the schedule.
- (g) **Rates for purchases from a qualifying facility.**
- (1) Rates for purchases of energy and capacity from any qualifying facility shall be just and reasonable to the customers of the electric utility or PTB REP and in the public interest, and shall not discriminate against qualifying cogeneration and small power production facilities.
- (2) Rates for purchases of energy and capacity from any qualifying facility shall not exceed avoided cost. Rates for purchase shall be based upon a market-based determination of avoided costs over the specific term of the contract or other legally enforceable obligation, the rates for such purchase do not violate this subsection if the rates for such purchase differ from avoided cost at the time of delivery. Payments which do not exceed avoided cost shall be found to be just and reasonable operating expenses of the electric utility.

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- (3) A QF may agree to commit, on a day-ahead basis, to deliver firm power for the next day to a PTB REP. Rates for purchase of this power shall be based on prices for the day that the power was actually delivered as reported or published in an independent third party index or survey of trades of commonly traded power products in ERCOT, provided that the index or survey is ERCOT-specific and is based upon enough transactions to represent a liquid market, and the commitment to deliver shall correspond with the relevant hours of delivery of those products.
- (h) **Standard rates for purchases from qualifying facilities with a design capacity of 100 kilowatts or less.**
- (1) There shall be included in the tariffs of each electric utility standard rates for purchases from qualifying facilities with a design capacity of 100 kilowatts or less. The rates for purchases under this paragraph:
- (A) shall be consistent with subsection (g) of this section, as it concerns purchases from a qualifying facility;
- (B) shall consider the aggregate capacity value provided by multiple qualifying facilities with a design capacity of 100 kilowatts or less; and
- (C) may differentiate among qualifying facilities using various technologies on the basis of the supply characteristics of the different technologies.
- (2) Terms and conditions unique to qualifying facilities with a design capacity of 100 kilowatts or less such as metering arrangements, safety equipment requirements, liability for injury or equipment damage, access to equipment and additional administrative costs, if any, shall be included in a standard tariff.
- (3) The standard tariff shall offer at least the following options:
- (A) parallel operation with interconnection through a single meter that measures net consumption;
- (i) net consumption for a given billing period shall be billed in accordance with the standard tariff applicable to the customer class to which the user of the qualifying facility's output belongs;
- (ii) net production will not be metered or purchased by the utility and therefore there will be no additional customer charge imposed on the qualifying facility;
- (B) parallel operation with interconnection through two meters with one measuring net consumption and the other measuring net production;
- (i) net consumption for a given billing period shall be billed in accordance with the standard tariff applicable to the customer class to which the user of the qualifying facility's output belongs;
- (ii) net production for a given billing period shall be purchased at the standard rate provided for in paragraph (1)(A) and (B) of this subsection;
- (C) interconnection through two meters with one measuring all consumption by the customer and the other measuring all production by the qualifying facility;
- (i) all consumption by the customer for a given billing period shall be billed in accordance with the standard tariff applicable to the customer class to which the customer would belong in the absence of the qualifying facility;
- (ii) all production by the qualifying facility for a given billing period shall be purchased at the standard rate provided for in paragraph (1)(A) and (B) of this subsection.

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- (4) In addition, each electric utility shall offer qualifying facilities using renewable resources with an aggregate design capacity of 50 kilowatts or less the option of interconnecting through a single meter that runs forward and backward.
    - (A) Any consumption for a given billing period shall be billed in accordance with the standard tariff applicable to the customer class to which the user of the qualifying facility's output belongs.
    - (B) Any production for a given billing period shall be purchased at the standard rate provided for in paragraph (1)(A) of this subsection.
    - (C) This option is not available if a contract for interconnection or the purchase of electricity is executed after December 31, 2008.
  - (5) Interconnection requirements necessary to permit interconnected operations between the qualifying facility and the utility and the costs associated with such requirements shall be dealt with in a manner consistent with Subchapter I of this chapter.
  - (6) The rates, terms and conditions contained in the standard tariff for qualifying facilities with a design capacity of 100 kilowatts or less shall be subject to review and revision by the commission.
  - (7) Except for qualifying facilities subject to §25.217 of this title (relating to Distributed Renewable Generation) requirements for the provision of insurance under this subsection shall be of a type commonly available from insurance carriers in the region of the state where the customer is located and for the classification to which the customer would belong in the absence of the qualifying facility. An enhancement to a standard homeowner's or farm and ranch owner's policy containing adequate liability coverage and having the effect of adding the electric utility as an additional insured or named insured is one means of satisfying the requirements of this paragraph. Such policies shall in each instance be on a form approved or promulgated by the Texas Department of Insurance and issued by a property or casualty insurer licensed to do business in the State of Texas.
- (i) **Tariffs setting out the methodologies for purchases of nonfirm power from a qualifying facility.** Tariffs setting out the methodologies for purchases of nonfirm power from a qualifying facility shall be filed with the commission based on one of the following approaches:
- (1) Rates for purchases of nonfirm power may, by agreement of both the electric utility and the qualifying facility, be based on the utility's average avoided energy costs. Administrative, billing, and metering costs shall be recovered through a monthly customer charge to the qualifying facility.
  - (2) PTB REPs and QFs may mutually agree to rates for purchases of nonfirm power that differ from the rates described in paragraph (4) of this subsection. Any such agreements shall be made on a nondiscriminatory basis. Such agreements may include provisions to prevent the potential for arbitrage.
  - (3) Rates for purchases of nonfirm power may, at the option of the qualifying facility, be based on the full cost at the time of delivery of decremental energy that would have been incurred by the electric utility had the qualifying facility not been in operation.
    - (A) The following factors should be considered in the calculation of the cost of decremental energy:
      - (i) fuel costs;
      - (ii) variable operating and maintenance costs;
      - (iii) line losses;
      - (iv) heat rates;

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- (v) cost of purchases from other sources;
  - (vi) other energy-related costs;
  - (vii) capacity costs, if, as a class, qualifying facilities providing nonfirm energy offer some predictable capacity; and
  - (viii) for short term energy purchases, the time and quantity of energy furnished.
- (B) If practical, the avoided cost should be determined by calculating by time period, using the utility's economic dispatch model (or comparable methodology), the difference between the cost of the total energy furnished by both the qualifying facility and the utility, computed as though the energy furnished by the qualifying facility had been furnished by the utility, and the actual cost of energy furnished by the utility.
- (C) The economic dispatch model should take into consideration the following factors:
- (i) fuel costs;
  - (ii) variable operating and maintenance costs;
  - (iii) line losses;
  - (iv) heat rates;
  - (v) purchased power opportunity;
  - (vi) system stability; and
  - (vii) operating characteristics.
- (D) Time periods should be hourly if the utility has an automated economic dispatch model available; otherwise the shortest reasonable time period for which costs can be determined should be used.
- (E) Administrative, billing, and metering costs shall be recovered through a monthly customer charge to the qualifying facility.
- (4) Rates for purchases of nonfirm power shall be based on the market price of energy at the time of sale from the QF unless other arrangements have been made in accordance with paragraph (2) of this subsection. Administrative, billing, and metering costs shall be recovered through a monthly customer charge to the qualifying facility. Such agreements may include provisions to prevent the potential for arbitrage.
- (j) **Periods during which purchases not required.**
- (1) Any PTB REP or electric utility which gives notice to each affected qualifying facility in time for the qualifying facility to cease delivery of energy or capacity to the PTB REP, or electric utility will not be required to purchase electric energy or capacity during any period during which, due to operational circumstances, including resource ramp rate limitations that could cause imbalances or the amount of energy put by the QF exceeds the PTB REP's load, purchases from qualifying facilities will result in costs greater than those which the electric utility would incur if it did not make such purchases, but instead generated an equivalent amount of energy itself, provided, however, that this subsection does not override contractual obligations of the PTB REP or electric utility to purchase from a qualifying facility.
  - (2) Any PTB REP or electric utility which fails to give notice to each affected qualifying facility in time for the qualifying facility to cease the delivery of energy or capacity to the PTB REP or electric utility will be required to pay the same rate for such purchase of energy or capacity as would be required had the period of greater costs not occurred.
  - (3) A claim by PTB REP or an electric utility that such a period has occurred or will occur is subject to such verification by the commission either before or after the occurrence.

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**(k) Rates for sales to qualifying facilities.**

- (1) General rules.
  - (A) Rates for sales to qualifying facilities shall be just and reasonable and in the public interest, and shall not discriminate against any qualifying facility in comparison to rates for sales to other customers served by the electric utility. Rates for standby or other supplementary service shall be based on the amount of capacity contracted for between the qualifying facility and the electric utility, and shall not penalize electric utilities that also purchase power from qualifying facilities. The need for and cost responsibility for special equipment or system modifications shall be determined by application of Subchapter I of this chapter.
  - (B) Rates for sales that are based on accurate data and consistent system-wide costing principles shall not be considered to discriminate against any qualifying facility to the extent that such rates apply to the electric utility's other customers with similar load or other cost-related characteristics.
- (2) Additional services to be provided to qualifying facilities.
  - (A) Upon request of a qualifying facility within its service area, each electric utility shall provide:
    - (i) supplementary power;
    - (ii) back-up power;
    - (iii) maintenance power; and
    - (iv) interruptible power.
  - (B) An electric utility shall not be required to provide supplementary power, back-up power, or maintenance power to a qualifying facility if the commission finds that provision of such power will:
    - (i) impair the electric utility's ability to render adequate service to its customers; or
    - (ii) place an undue burden on the electric utility.
- (3) Rates for sales of back-up power and maintenance power. The rate for sales of back-up power or maintenance power:
  - (A) shall not be based upon an assumption (unless supported by factual data) that forced outages or other reductions in electric output by all qualifying facilities on an electric utility's system will occur simultaneously, or during the system peak, or both; and
  - (B) shall take into account the extent to which scheduled outages of the qualifying facilities can be usefully coordinated with scheduled outages of the utility's facilities.

**(l) System emergencies.**

- (1) **Qualifying facility obligation to provide power during system emergencies.** A qualifying facility shall be required to provide energy or capacity to an electric utility during a system emergency only to the extent:
  - (A) provided by agreement between such qualifying facility and electric utility; or
  - (B) ordered under the Federal Power Act, §202(c).
- (2) **Discontinuance of purchases and sales during system emergencies.** During any system emergency, an electric utility may discontinue:
  - (A) purchases from a qualifying facility if such purchases would contribute to such emergency; and

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- (B) sales to a qualifying facility, provided that such discontinuance is on a nondiscriminatory basis.

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- (m) **Enforcement.** A proceeding to resolve a dispute between an electric utility, PTB REP and a qualifying facility arising under this section may be instituted by filing of a petition with the commission. Electric utilities, PTB REPs, and qualifying facilities are encouraged to engage in alternative dispute resolution prior to the filing of a complaint.