

## **807 KAR 5:054. Small power production and cogeneration.**

RELATES TO: KRS Chapter 278, 18 C.F.R. 292.203, 292.204, 292.205, 292.206

STATUTORY AUTHORITY: KRS 278.040(3), 18 C.F.R. 292.203, 292.204, 292.205, 292.206

### **CERTIFICATION STATEMENT:**

**NECESSITY, FUNCTION, AND CONFORMITY:** Under Title II of the Public Utility Regulatory Policies Act of 1978, the Federal Energy Regulatory Commission (FERC) was required to adopt rules to encourage cogeneration and small power production by requiring electric utilities to sell electricity to qualifying cogeneration and small power production facilities and purchase electricity from such facilities. Section 210(f) of this Act requires the state regulatory authority with jurisdiction over electric utilities to implement the FERC rules. As the state regulatory authority for Kentucky, the Public Service Commission proposes to implement those rules.

### **Section 1. Definitions.**

- (1) "Avoided costs" means incremental costs to an electric utility of electric energy or capacity or both which, if not for the purchase from the qualifying facility, the utility would generate itself or purchase from another source.
- (2) "Back-up power" means electric energy or capacity supplied by an electric utility to replace energy ordinarily generated by a facility's own generation equipment during an unscheduled outage of the facility.
- (3) "Cogeneration facility" means equipment used to produce electricity and another form of useful energy which is used for industrial purposes or commercial heating or cooling purposes through sequential use of input energy and which facility meets criteria at 18 C.F.R. Part 292.203(b) and 292.205, as published in the Federal Register on March 20, 1980 (45 F.R. 17959).
- (4) "Interconnection costs" means the reasonable costs of connection, switching, metering, transmission, distribution, safety provisions and administrative costs incurred by the electric utility directly related to installation and maintenance of physical facilities necessary to permit interconnected operations with a qualifying facility, to the extent those costs are in excess of corresponding costs which the utility would have incurred if it had not engaged in interconnected operations but instead had generated an equivalent amount of electric energy itself or purchased an equivalent amount of electric energy or capacity or both from other sources. Interconnection costs do not include any costs included in calculation of avoided costs.
- (5) "Interruptible power" means electric energy or capacity supplied by an electric utility subject to interruption by the electric utility under specified conditions.
- (6) "Maintenance power" means electric energy or capacity supplied by an electric utility during scheduled outages of the qualifying facility.
- (7) "Purchase" means purchase of electric energy or capacity or both from a qualifying facility by an electric utility.
- (8) "Qualifying facility" means a cogeneration facility as defined in this administrative regulation, construction of which was commenced on or after November 9, 1978, or a small power production facility as defined in this administrative regulation, construction or substantial renovation of which was begun on or after November 9, 1978, neither of which is owned in equity interest greater than fifty (50) percent by a person primarily engaged in generation of electric power other than as described in these rules.
- (9) "Sale" means sale of electric energy or capacity or both by an electric utility to a qualifying facility.
- (10) "Small power production facility" means an arrangement of equipment for the production of electricity with capacity no greater than eighty (80) megawatts, which

equipment is located within a one (1) mile radius or, if hydroelectric facilities, on the same impoundment of water, and which equipment is powered at least seventy-five (75) percent by biomass, waste, renewable resources, or any combination thereof and not more than twenty-five (25) percent by coal or oil or natural gas or any combination thereof and which meets criteria at 18 C.F.R. Part 292.204 as published in the Federal Register on March 20, 1980 (45 F.R. 17959).

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

(12) "System emergency" means a condition on a utility's system which may result in imminent significant disruption of service to customers or may imminently endanger life or property.

Section 2. General. This administrative regulation sets forth the manner in which the Public Service Commission will discharge duties conferred upon it by Title II of the Public Utility Regulatory Policies Act of 1978.

Section 3. Applicability. This administrative regulation shall apply to any electric utility, subject to the jurisdiction of the commission, which purchases from or sells to any qualifying facility.

Section 4. Criteria for Qualifying Facility.

(1) Criteria for qualification of small power production facilities and cogeneration facilities constructed on or after November 9, 1978, are the same as those adopted by the Federal Energy Regulatory Commission including 18 C.F.R. Parts 292.203, 292.204, 292.205, and 292.206 as published in the Federal Register March 20, 1980 (45 F.R. 17959).

(2) The qualifying status of small power production facilities and cogeneration facilities, the construction of which was commenced prior to November 9, 1978, but which were not selling power to the interconnected utility under an existing contract as of November 9, 1978, will be determined under this administrative regulation on a case-by-case basis.

(3) Small power production facilities and cogeneration facilities constructed prior to November 9, 1978, but which were selling power to their interconnected utility under an existing contract on that date will not be considered qualifying facilities. Upon expiration of the power sales contract between a small power production or cogeneration facility and the electric utility, the commission will determine the qualifying status of the facility under this administrative regulation on a case-by-case basis.

Section 5.

(1)

(a) All electric utilities with annual retail sales greater than 500 million kilowatt hours shall provide data to the commission from which avoided costs may be derived not later than June 30, 1982, and not less often than every two (2) years thereafter unless otherwise determined by the commission.

(b) In the case of a utility required to purchase all of its electricity from a wholesale supplier by contract, the utility shall file the contracts under which its capacity and energy are purchased, in addition to data provided by the supplying utility required by subsection (2) of this section.

(2) Each electric utility as described in subsection (1) of this section shall file with the commission and shall maintain for public inspection the following data:

(a) 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 not more than 100 megawatts for systems with peak demand of 1,000 megawatts or more, and in blocks equivalent to

not more than ten (10) percent of system peak demands for systems with peak demand of less than 1,000 megawatts. Avoided costs shall be stated on a cents per kilowatt-hour basis during daily, seasonal peak and off-peak periods, by year, for the current calendar year, and each of the next five (5) years.

(b) The electric utility's plan for addition of capacity by amount and type, for purchases of firm energy and capacity, and for capacity retirements for each year during the succeeding ten (10) years.

(c) Estimated capacity costs at completion of planned capacity additions and planned capacity firm purchases, on the basis of dollars per kilowatt, and the associated energy cost of each unit, expressed in cents per kilowatt-hour. These costs shall be expressed separately for each individual unit and individual planned firm purchases.

(3)

(a) Any data submitted by an electric utility beginning with the scheduled June 30, 1982, data shall be subject to review by the commission.

(b) The electric utility has the burden of proof to justify the data it supplies.

#### Section 6. Electric Utility Obligations.

(1) Each electric utility shall purchase any energy and capacity which is made available from a qualifying facility except as provided in subsections (2) and (3) of this section.

(2) The qualifying facility's right to sell power to the utility shall be curtailed in periods when purchases from qualifying facilities will result in costs greater than those which the utility would incur if it generated an equivalent amount of energy instead of purchasing that energy.

(3) During any system emergency, an electric utility may discontinue:

(a) Purchases from a qualifying facility if such purchases would contribute to such emergency; or

(b) Sales to a qualifying facility if discontinuance is nondiscriminatory.

(4) Any utility which invokes subsection (2) of this section shall provide adequate notice to the qualifying facility. In addition, the commission may require the utility to furnish documentation within ten (10) working days after suspension occurs. If the utility fails to provide adequate notice or incorrectly identifies such a period, it will be required to reimburse the qualifying facility for energy or capacity or both available for delivery on a legally enforceable basis as if that period had not occurred.

(5) Rates for sale. An electric utility shall sell power to a qualifying facility upon request except as provided in subsection (3)(b) of this section. Rates for sale shall be just and reasonable, in the public interest and nondiscriminatory. Rates for sale which are based on accurate data and consistent system costing principles shall not be considered to discriminate against any qualifying facility to the extent that such rates apply to the utility's other customers with similar load or cost-related characteristics. If a utility provides back-up or supplementary power to a qualifying facility, then costs associated with that capacity reservation are properly recoverable from the qualifying facility.

(6) Obligation to interconnect.

(a) An electric utility is required to make any interconnection with a qualifying facility that is necessary for purchase and sale. Owners of qualifying facilities shall be required to pay for any additional interconnection costs to the extent that those costs are in excess of costs that the electric utility would have incurred if the qualifying facility's output had not been purchased. Payment shall be over a reasonable period of time, and terms of payment shall be a part of the contract between the electric utility and the qualifying facility.

(b) Each electric utility shall offer to operate in parallel with a qualifying facility, provided that the qualifying facility complies with applicable standards established in accordance with Section 7(6) of this administrative regulation.

## Section 7. Purchase of Output from Qualifying Facilities.

- (1) Qualifying facilities shall be permitted the option of either:
  - (a) Using output of the qualifying facility to supply their power requirements and selling their surplus; or
  - (b) Simultaneously selling their entire output to the interconnecting utility while purchasing their own requirements from that utility.
- (2) Rates for purchase of output of qualifying facility with design capacity of 100 kilowatts or less. Each electric utility shall prepare standard rates for purchases from qualifying facilities with a design capacity of 100 kilowatts or less. These rates shall be just and reasonable to the electric customer of the utility, in the public interest and nondiscriminatory. These rates shall be based on avoided costs after consideration of the factors listed in subsection (5)(a) of this section and shall be subdivided into an energy component and a capacity component.
  - (a) Rates for power offered on an "as available" basis shall be based on the purchasing utility's avoided energy costs estimated at time of delivery.
  - (b) Rates for power offered on all legally enforceable obligations shall be based at the option of the qualifying facility on either avoided costs at the time of delivery or avoided costs at the time the legally enforceable obligation is incurred. The capacity component shall be based on supply characteristics of qualifying facilities, and the aggregate capacity value of all 100 kilowatts or less facilities which supply power on a legally enforceable basis.
- (3) Electric utilities shall design and offer a standard contract to qualifying facilities with a design capacity of 100 kilowatts or less. This contract shall be subject to commission approval.
- (4) Rates for purchase of output of qualifying facility with design capacity over 100 kilowatts. Each electric utility shall provide a standard rate schedule for qualifying facilities with design capacity over 100 kilowatts. The rate schedule shall be based on avoided costs which shall be subdivided into an energy component and a capacity component. These rates shall be used only as the basis for negotiating a final purchase rate with qualifying facilities after proper consideration has been given to factors affecting purchase rates listed in subsection (5)(a) of this section. Negotiated rates shall be just and reasonable to the electric customer of the utility, in the public interest and nondiscriminatory. If the electric utility and qualifying facility cannot agree on the purchase rate, then the commission shall determine the rate after a hearing.
  - (a) Rates for power offered on an "as available" basis shall be based on the purchasing utility's avoided costs estimated at time of delivery.
  - (b) Rates for energy or capacity or both offered on a legally enforceable basis shall be based at the option of the qualifying facility on either avoided costs at the time of delivery or avoided costs at the time the legally enforceable obligation is incurred.
- (5) Factors affecting rates for purchase for all qualifying facilities. In determining the final purchase rate, the following factors shall be taken into account:
  - (a) Availability of capacity or energy from a qualifying facility during the system daily and seasonal peak. The utility should consider for each qualifying facility the ability to dispatch, reliability, terms of contract, duration of obligation, termination requirements, ability to coordinate scheduled outages, usefulness of energy and capacity during system emergencies, individual and aggregate value of energy and capacity, and shorter construction lead times associated with cogeneration and small power production.
  - (b) Ability of the electric utility to avoid costs due to deferral, cancellation, or downsizing of capacity additions, and reduction of fossil fuel use.
  - (c) Savings or costs resulting from line losses that would not have existed in the absence of purchases from a qualifying facility.

(6) Utility safety and system protection requirements. The qualifying facility shall provide adequate equipment to insure the safety and reliability of interconnected operations. This equipment shall be designed to protect interconnect operations between the qualifying facility and the electric utility grid. If the electric utility and qualifying facility cannot agree, then the qualifying facility may apply to the commission for a determination of adequate system protection.

(7) Additional services to be provided to qualifying facilities. Upon request by a qualifying facility each electric utility shall provide supplementary power, back-up power, maintenance power, and interruptible power. The commission may waive this requirement if the electric utility demonstrates that compliance with it would impair its ability to render adequate service to its other customers or would be unduly burdensome.

(8) Wheeling. The electric utility may wheel power to another utility if the qualifying facility approves. This provision shall not eliminate the responsibility of the interconnected electric utility to purchase power from the qualifying facility if the qualifying facility does not approve the wheeling transaction. The electric utility which agrees to purchase power shall pay to the qualifying facility its avoided cost connected with the transmission of this power adjusted for line losses.

(9) This administrative regulation is not intended to restrict voluntary agreements between qualifying facilities and electric utilities. All contracts between qualifying facilities and electric utilities shall be provided to the commission for its review.

(10) Disputes. The commission's inquiry and determination shall be limited to those parts of a proposed contract which are in dispute.

(8 Ky.R. 216; 837; eff. 4-7-1982; 16 Ky.R. 1478; 1945; eff. 3-8-1990; Crt eff. 3-27-2019; Crt eff. 3-23-2026.)