

**199—15.5(476) Rates for purchases from qualifying facilities by rate-regulated electric utilities.**

**15.5(1) Rates for purchases.** Rates for purchases shall:

- a. Be just and reasonable to the electric consumer of the electric utility and in the public interest; and
- b. Not discriminate against qualifying cogeneration and small power production facilities.

Nothing in these rules requires any electric utility to pay more than the avoided costs, as set forth in these rules, for purchases.

**15.5(2) Relationship to avoided costs.** For purposes of this subrule, “new capacity” means any purchase from a qualifying facility, construction of which was commenced on or after November 9, 1978.

A rate for purchases satisfies this rule if the rate equals the avoided costs determined after consideration of the factors set forth in subrule 15.5(6); except that a rate for purchases other than from new capacity may be less than the avoided cost if the commission determines that a lower rate is consistent with subrule 15.5(1) and is sufficient to encourage cogeneration and small power production.

Unless the qualifying facility and the utility agree otherwise, rates for purchases shall conform to this rule regardless of whether the electric utility making purchases is simultaneously making sales to the qualifying facility.

In the case in which the rates for purchases are based upon estimates of avoided costs over the specific term of the contract or other legally enforceable obligation, the rates for purchases do not violate this rule if the rates for the purchases differ from avoided costs at the time of delivery.

**15.5(3) Standard rates for purchases.** Electric utilities will file and maintain with the commission tariffs specifying standard rates for purchases from qualifying facilities with a design capacity of 100 kilowatts (kW) or less. These tariffs may differentiate between qualifying facilities using various technologies on the basis of the supply characteristics of the different technologies. All utilities shall include a seasonal differential in these rates for purchases to the extent avoided costs vary by season. All utilities shall make available time of day rates for those facilities with a design capacity of 100 kW or less, provided that the qualifying facility shall pay, in addition to the interconnection costs set forth in these rules, all additional costs associated with the time of day metering.

The standard rates set forth in this rule shall indicate what portion of the rate is attributable to payments for the utility’s avoided energy costs, and what portion of the rate, if any, is attributable to payments for capacity costs avoided by the utility. If no capacity credit is provided in the standard tariff, a qualifying facility may petition the commission for an allowance of the capacity credit. The petition shall be handled by the commission as a contested case proceeding, and the burden of proof shall be on the qualifying facility to demonstrate that capacity credit is warranted in the case in question.

**15.5(4) Other purchases.** Rates for purchases from qualifying facilities with a design capacity of greater than 100 kW shall be determined in contested case proceedings before the commission unless the rates are otherwise agreed upon by the qualifying facility and the utility involved.

**15.5(5) Purchases “as available” or pursuant to a legally enforceable obligation.** Each qualifying facility shall have the option either:

a. To provide energy as the qualifying facility determines the energy to be available for the purchases, in which case the rates for the purchases shall be based on the purchasing utility’s avoided costs calculated at the time of delivery; or

b. To provide energy or capacity pursuant to a legally enforceable obligation for the delivery of energy or capacity over a specified term, in which case the rates for the purchases shall, at the option of the qualifying facility exercised prior to the beginning of the specified term, be based on either: the avoided costs calculated at the time of delivery; or the avoided costs calculated at the time the obligation is incurred.

**15.5(6) Factors affecting rates for purchases.** In determining avoided costs, the following factors shall, to the extent practicable, be taken into account:

a. The prevailing rates for capacity or energy on any interstate power grid with which the utility is interconnected.

b. The incremental energy costs or capacity costs of the utility itself or utilities in the interstate power grid with which the utility is interconnected.

c. The time of day or season during which capacity or energy is available, including:

- (1) The ability of the utility to dispatch the qualifying facility;
  - (2) The expected or demonstrated reliability of the qualifying facility;
  - (3) The terms of any contract or other legally enforceable obligation, including the duration of the obligation, termination notice requirement and sanctions for noncompliance;
  - (4) The extent to which scheduled outages of the qualifying facility can be usefully coordinated with scheduled outages of the utility's facilities;
  - (5) The usefulness of energy and capacity supplied from a qualifying facility during system emergencies, including the qualifying facility's ability to separate its load from its generation; and
  - (6) The individual and aggregate value of energy and capacity from qualifying facilities on the electric utility's system.
- d.* The costs or savings resulting from variations in line losses from those that would have existed in the absence of purchases from the qualifying facility, if the purchasing electric utility generated an equivalent amount of energy itself.

**15.5(7)** *Periods during which purchases are not required.* An electric utility will not be required to purchase electric energy or capacity during any period during which, due to operational circumstances, purchases from qualifying facilities will result in costs greater than those that the utility would incur if it did not make the purchases, but instead generated an equivalent amount of energy itself; provided, however, that the electric utility seeking to invoke this subrule must notify each affected qualifying facility within a reasonable amount of time to allow the qualifying facility to cease the delivery of energy or capacity to the electric utility.

*a.* An electric utility that fails to comply with the provisions of this subrule will be required to pay the usual rate for the purchase of energy or capacity from the facility.

*b.* A claim by an electric utility that such a period has occurred or will occur is subject to verification by the commission.

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