

COMMONWEALTH OF KENTUCKY  
BEFORE THE ENERGY REGULATORY COMMISSION

IN THE MATTER OF:

THE ADOPTION OF A SMALL POWER )  
PRODUCTION AND COGENERATION ) ADMINISTRATIVE  
REGULATION PURSUANT TO SECTION 210 ) CASE NO. 244  
OF PUBLIC UTILITY REGULATORY )  
POLICIES ACT )

ORDER

The Congress of the United States, by enacting Title II of the Public Utility Regulatory Policies Act of 1978 (PURPA), has determined that cogeneration and small power production are in the national interest. The development of these resources will lessen U.S. dependence on foreign oil and gas, improve U.S. balance of payments, and preserve the nation's fossil fuels for future generations. To encourage the development of this technology, the Congress provided a statutory framework in Section 210 of Title II to overcome the institutional and economic obstacles to its growth.

Title II of PURPA identified three major obstacles for those attempting to utilize cogeneration and small power production on an interconnected basis. First, electric utilities were not required to buy the electricity generated by the Qualifying Facilities (QF) at an appropriate purchase rate. Secondly, some electric utilities charged a discriminately high rate for backup service to these producers that supplied most of their own power. Finally, if cogenerators or small power producers were permitted to supply to the grid, then they ran the risk of being considered an electric utility and thus being subjected to federal and state regulation as an electric utility. With these obstacles firmly embedded in traditional regulation, the cost of producing electricity in most instances exceeded the benefits available to the cogenerator and small producers.

Section 210 was designed to overcome these obstacles. Section 210 (a) and (b) of PURPA supplies authority for the promulgation of rules by the Federal Energy Regulatory Commission

(FERC) requiring utilities to purchase the output of cogenerators and small power producers based on the incremental costs of alternative energy sources to interconnected electric utilities.

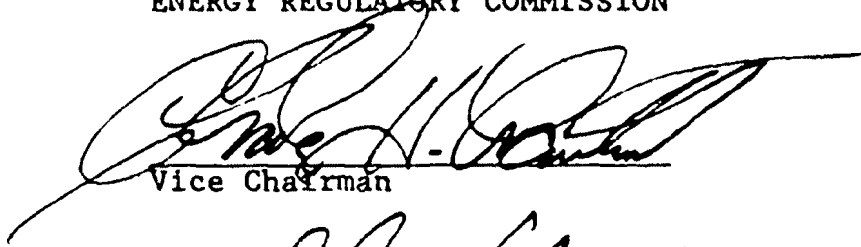
Sections 210 (a) and (c) require that rates for sale to cogenerators and small power producers be just, reasonable, and non-discriminatory. Section 210 (e) exempted qualifying utilities from certain Federal and State laws and regulations. Finally, FERC was to issue rules under Section 210 (f) for state regulatory agencies' implementation after notice and public hearing. The states were required to have commenced implementation of these procedures by March 20, 1981.

It is the intent of the Energy Regulatory Commission (ERC) to meet its legal obligations under Title II of PURPA. The PURPA legislation and the FERC rules provide a very narrow path for state compliance. It is necessary that a regulation provide incentives for the development of cogeneration and small power production without placing an undue burden on rate payers. It is therefore desirable that participants in the public hearings direct their comments toward the attached proposed regulation and how that regulation should be altered to achieve the desired results.

It is therefore ORDERED that a hearing is scheduled for March 6, 1981, at 10:00 a.m. Eastern Standard Time, in the Hearing Room of the Energy Regulatory Commission at its offices located on 730 Schenkel Lane, Frankfort, Kentucky 40601 to receive testimony and comments regarding the Commission's proposed rule for small power production and cogeneration.

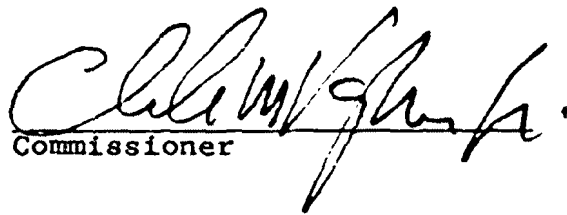
Done at Frankfort, Kentucky, this 10th day of February,  
1981.

ENERGY REGULATORY COMMISSION



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Vice Chairman



A handwritten signature in black ink, written over a horizontal line.

Commissioner

ATTEST:

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Secretary

Section 1. General. It is the purpose of this regulation to set forth the manner in which the Energy Regulatory Commission will discharge the duties conferred upon it by Title II of the Public Utility Regulatory Policies Act of 1978.

Section 2. Definitions. (1) "Commission" means the Kentucky Energy Regulatory Commission.

(2) "Qualifying facility" means a cogeneration facility as defined herein which is not selling power to the interconnected electric utility under contract as of November 9, 1978 or a small power production facility as defined herein which is not selling power to the interconnected electric utility under contract as of November 9, 1978 and neither of which is owned an equity interest greater than 50 percent by a person primarily engaged in generation of electric power other than as described in these rules.

(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 the sequential use of input energy and which facility meets criteria at Title 18 CFR Part 292.203(c) and 292.205, as published in the Federal Register on March 13, 1980 (45 F.R. 17959).

(4) "Small power production facility" means an arrangement of equipment for the production of electricity of capacity no greater than eighty megawatts, which equipment is located within a site of one-mile radius or, alternatively, at the same impoundment of water, and which equipment must be powered at least 50 per cent of biomass, waste, renewable resources, or any combination thereof, and not more than 25 per cent coal or oil or natural gas or any combination thereof, and which meets criteria at Title 18 CFR Part 292.204 as published in the Federal Register on March 13, 1980 (45 F.R. 17959).

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

(6) "Sale" means the sale of electric energy or capacity or both by an electric utility to a qualifying utility.

(7) "Avoided costs" means the incremental costs to an electric utility of electric energy and capacity which, but for the purchase from the qualifying facility or facilities, such utility would generate itself or purchase from another source.

(8) "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 the installation and maintenance of the physical facilities necessary to permit interconnected operations with a qualifying facility, to the extent such costs are in excess of the corresponding costs which the utility would have incurred if it had not engaged in interconnected operations, and

instead had generated an equivalent amount of electric energy or capacity from other sources. Interconnection costs do not include any costs included in the calculation of avoided costs.

(9) "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.

(10) "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.

(11) "Interruptible power" means electric energy or capacity supplied by an electric utility subject to interruption by the electric utility under specified conditions.

(12) "Maintenance power" means electric energy or capacity supplied by an electric utility during scheduled outages of the qualifying facility.

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

Section 3. Applicability. This regulation shall apply to any electric utility subject to the jurisdiction of the Energy Regulatory Commission which purchases or sells to any qualifying facility.

Section 4. Criteria for Qualified Facilities. (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 Title 18 CFR Part 292.203, 292.204, 292.205, 292.206 as published in the Federal Register March 13, 1980 (45 F.R. 17959).

(2) Small power production facilities and cogeneration facilities constructed prior to November 9, 1978, but which are not selling power to the interconnected utility under an existing contract shall be treated under these rules as a qualifying facility.

(3) Small power production facilities and cogeneration facilities constructed prior to November 9, 1978, which are currently selling power to an interconnected electric utility under an existing contract will not be covered by this regulation. Should a contract expire without being renegotiated, then a small power production or cogeneration facility shall be treated as a qualifying facility if they meet all other criteria.

Section 5. (1)(a) All electric utilities with retail sales greater than one billion kwh shall provide data to the Commission from which avoided costs may be derived not later than May 31, 1982 and not less often than every two years thereafter unless otherwise determined by the Commission. (b) All electric utilities with retail sales of less than one billion kwh shall provide data to the Commission from which avoided cost may be derived by May 31, 1981, May 31, 1982, and not less often than every two years thereafter unless otherwise determined by the Commission. If an electric utility is legally obligated to obtain all of its electric requirements from another utility,

then it shall file data as provided by its supplying electric utility.

(2) Each electric utility as described in paragraph 1 of Section 5 shall file with the Commission and shall maintain for public inspection, 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 purchase 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 10% of the system peak demands for systems of less than 1,000 megawatts. The avoided costs 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 five 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 ten (10) years.

(c) The estimated capacity costs at the completion of the 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 cent per kilowatt-hour. These costs shall be expressed separately for each individual unit and individual planned firm purchase.

(3) (a) Any data submitted by an electric utility beginning with the scheduled May 31, 1982 data shall be subject



to review by the Commission. A public hearing will be held within ninety (90) days of receipt of data to determine accuracy. The Commission will not schedule a hearing regarding data submitted prior to May 31, 1982 unless the accuracy of the data is challenged by a qualifying facility.

(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.

(2) The qualified producer's right to sell power to the utility shall be curtailed when purchases from qualifying facilities will result in costs greater than those which the utility would incur if it did not make such purchases but instead generated an equivalent amount of energy.

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

(a) purchasing from a qualifying facility if such purchase would contribute to such emergency; and/or

(b) sales to a qualifying facility, provided that such discontinuance is on a non-discriminatory basis.

(4) Any utility which invokes subsection 2 and/or 3 must provide adequate notice to the qualifying facility and to the Commission. In addition, if the Commission determines that it is necessary, then the utility must furnish documentation to the Commission within 14 days after the purchase suspension occurs.

If the Commission finds that the suspension was not justified, then the electric utility shall be ordered to pay the qualifying facility the contracted price plus a penalty which will be determined by the Commission.

(5) Rates for Sale. An electric utility is obligated to sell power to a qualifying facility upon request. The rates for sale must be just and reasonable, in the public interest and non-discriminatory. 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 other similar cost-related characteristics.

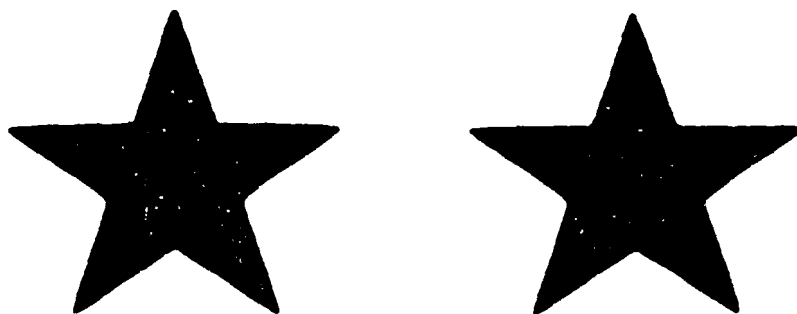
(6) Obligation to interconnect. (a) An electric utility is required to make any interconnection with a qualifying facility that is necessary for purchase and sale. Owners of qualified facilities shall be required to pay for any additional transmission or distribution costs, including: costs of metering, system protection, and safety equipment to the extent that such costs are in excess of those that the electric utility would have incurred if the qualified facility's output had not been purchased. Reimbursement shall be over a reasonable period of time and 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 subsection 5.

utility which

(2) Rates for Purchase of Output of Qualifying Facility. Each electric utility shall prepare standard rates for purchases from qualifying facilities with a design capacity of 100 kw or less. These rates shall be just and reasonable to the electric consumer of the electric utility and in the public interest plus they shall not discriminate against the qualifying facility. These rates shall be based on avoided costs. In determining the

# **CORRECTION**



***PRECEDING IMAGE HAS BEEN  
REFILMED  
TO ASSURE LEGIBILITY OR TO  
CORRECT A POSSIBLE ERROR***

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(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 subsection 5.

Section 7. Purchase of Output from Qualified Facilities.

(1) Owners of qualified facilities shall be allowed the option of either (a) using the output of their production facilities to supply their own requirements and selling their surplus or (b) selling their entire output to the connecting utility while purchasing their own requirements.

(2) Rates for Purchase of Output of Qualifying Facility. Each electric utility shall prepare standard rates for purchases from qualifying facilities with a design capacity of 100 kw or less. These rates shall be just and reasonable to the electric consumer of the electric utility and in the public interest plus they shall not discriminate against the qualifying facility. These rates shall be based on avoided costs. In determining the amount of capacity cost included, the electric utility should consider the 100 kw qualifying facilities as a group and not as an individual facility.

(3) Electric utilities shall design and offer a standard contract to qualified facilities under 100 kw. This contract shall be subject to a final approval and adoption by the Commission. The Commission reserves the right to require a standard contract for qualifying facilities over 100 kw.

(4)(a) Each electric utility shall prepare a standard rate schedule for qualifying facilities over 100 kw which offer power as available. This rate schedule shall be based on the avoided energy costs.

(b) Each electric utility shall prepare a standard schedule for qualifying facilities over 100 kw which offer firm power.

The rate schedule shall be based on avoided costs which shall be subdivided into an energy component and a capacity component. The energy component shall be identical to the rate schedule offered in subsection 4(a). The capacity rate shall be based on the next unit of production to come on line that is still postponable. Each utility and qualifying facility shall use this capacity rate as the basis for negotiating a contract. The percentage of the capacity rate a qualifying facility shall receive should vary according to availability of capacity during electric utility's daily and seasonal peak, ability of the electric utility to defer capacity, reliability of qualifying facility, and length of contract. If the electric utility and qualifying facility cannot agree on the purchase rate then the Commission shall determine the rate after an evidentiary hearing.

(5) Utility Safety and System Protection Requirements.

The qualified facility shall provide adequate equipment to insure the safety and reliability of interconnected operations. This equipment shall be designed to protect the interconnect operations between the qualifying facility and the electric utility grid. The operating reliability of the qualifying facility is not subject to such standards because the varying degrees of reliability shall be reflected in purchase rates. If the electric utility and qualifying facility cannot agree on reasonable protection, then the qualifying facility can apply to the Commission for its determination of adequate protection.

(6) Additional Services to be Provided to Qualifying Facilities. Upon request of a qualifying facility each electric utility shall provide: (a) supplementary power, (b) backup power, (c) maintenance power, and (d) interruptible power. The Commission may waive such requirement if the electric utility demonstrates that compliance with such requirement shall result in impairing an electric utility's ability to render adequate service to its other customers or place undue burden on the utility.

(7) Wheeling. The electric utility may wheel power to a third party if the qualifying facility extends its approval. This provision does not eliminate the responsibility of the interconnected electric utility to purchase power from qualifying facility if the qualifying facility does not provide its approval. The electric utility which agrees to purchase the power shall pay its avoided cost adjusted for line loss and transmission charges connected with the transmission of this power.

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

(9) Disputes. The Commission's inquiry and determination will be limited to those parts of a proposed contract which are in dispute.