**Section 430.80 Contractual Arrangements Between Qualifying Facilities and Utilities**

All qualifying facilities and utilities shall enter into a contractual arrangement regarding the terms and conditions of service and the rates for purchase and sale. A qualifying facility may elect one of the three contractual arrangements described in paragraphs (a), (b) and (c) below.

a) Standard Energy Rate. The utility's standard rate, required by Section 430.60, and the associated terms and conditions described in Section 430.40 shall constitute the basic contractual arrangement between a qualifying facility and a utility.

b) Negotiated Energy Rate.

1) Any qualifying facility and utility may negotiate a rate for purchase from the qualifying facility and other terms and conditions of service consistent with this Part. The contractual arrangements under a negotiated energy rate shall be nondiscriminatory with respect to service contracts entered into between the utility and its customers with similar load characteristics, without regard to whether such customers generate some or all of their own electricity.

2) Energy payments to the qualifying facility under a negotiated energy rate shall be adjusted, to the extent practicable, for the following items if it can be reasonably expected that the qualifying facility will produce, on the average, more than 73,000 kwh per month:

A) line losses – the contract shall take into account 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 utility generated or purchased an equivalent amount of energy;

B) reasonable scheduling of maintenance at the convenience of the utility;

C) the availability of energy during system daily and seasonal peak periods;

D) the willingness of the qualifying facility to allow the utility to dispatch the qualifying facility's generated energy at any given time and the ability of the utility to utilize such dispatching capability;

E) the historical and predicted reliability of the qualifying facility to provide energy during the periods described in (C) and (D) above;

F) agreement between the utility and the qualifying facility related to changes in ability of the qualifying facility and/or the utility to carry out the terms of the contract.

3) Each qualifying facility providing energy under this Section shall have the option of receiving avoided costs:

A) calculated at the time of delivery; or

B) estimated to occur during the contract term.

4) This election shall be made prior to the beginning of the contract term.

c) Negotiated Energy and Capacity Rate.

1) Any qualifying facility and utility may negotiate a rate for purchase from the qualifying facility which is based on the avoidance of capacity and energy costs by the utility. To qualify for this rate, the qualifying facility must enter into a legally enforceable contract to provide capacity that:

A) allows the utility to defer a capacity purchase from another source;

B) allows the utility to defer acquisition of a facility or delay construction;

C) allows the downsizing of an anticipated future addition; or

D) allows for the temporary sale of a portion of an anticipated future addition in capacity.

2) The payment for the capacity and energy purchases from the qualifying facility shall reflect the utility's total avoided cost for the capacity and energy supplied by the qualifying facility. Any qualifying facility who requests a negotiated energy and capacity rate shall provide to the utility that information necessary to allow the utility to determine the amount of capacity and energy avoidance which may occur. The utility shall inform the qualifying facility, after receipt of the necessary information, of the value to the utility of the capacity and energy to be supplied by the qualifying facility.

3) The following items shall, to the extent practicable, be taken into account in the determination of the negotiated rate for energy and capacity purchases:

A) the length of any contract term;

B) reasonable scheduling of maintenance;

C) the willingness and ability of the qualifying facility to provide firm capacity during system emergencies, and the historical performance of the qualifying facility in providing firm capacity during system emergencies;

D) the willingness and ability of the qualifying facility to provide firm capacity during system peaks and the historical performance of the qualifying facility in providing firm capacity during system peaks;

E) the historical and predicted reliability of the qualifying facility to provide capacity during the periods described in (C) and (D) above;

F) agreements between the utility and the qualifying facility related to changes in the ability of the qualifying facility and/or the utility to carry out the terms of the contract;

G) the date the qualifying facility first began providing capacity;

H) the historical and predicted reliability of qualifying facilities as a class or group to provide capacity during the periods described in (C) and (D) above;

I) on an annual basis, capacity payments to a qualifying facility shall not exceed the utility's actual avoided costs;

J) those items listed in Section 430.80(b)(2)(A-F).

4) Each qualifying facility providing energy and capacity under this Section shall have the option of receiving avoided costs:

A) calculated at time of delivery; or

B) estimated to occur during the contract term.

5) This election shall be made prior to the beginning of the contract term.

6) The contractual arrangements under a negotiated energy and capacity rate shall be nondiscriminatory with respect to service contracts entered into between the utility and its customers with similar load characteristics, without regard to whether such customers generate some or all of their own electricity.

d) The owner or operator of the qualifying facility shall be billed for all energy sold by the utility according to the applicable rate schedule, in accordance with the provisions of Sections 430.40(k) and 430.60(b).

e) In the case in which a rate for purchase from a qualifying facility is based upon estimates of avoided costs over the specific term of the contract, such rate does not violate this Part if the rate for such purchase differs from avoided costs at the time of delivery.