

Title 23. Public Utilities and Regulated Industries
Chapter XVI. Arkansas Public Service Commission
Subchapter A. Generally
Part 454. Cogeneration Rules

Codification Notes. This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"ADMINISTRATIVE HISTORY OF THE COGENERATION RULES

Docket	Date	Order No.	Subject Matter of Docket/Order
81-071-F	02-18-83	7	Creation, adoption, and promulgation of the Cogeneration Rules.
81-071-F	06-15-83	8	Publication of Cogeneration Rules on 8 x 11 Inch paper, including change to Section 3.4 (b) (6)."

Subpart 1. General Provisions

23 CAR § 454-101. General rule.

Terms defined in the Public Utility Regulatory Policies Act of 1978 shall have the same meaning for purposes of this part as they have under the Public Utility Regulatory Policies Act of 1978, unless further defined.

Authority. Arkansas Code §§ 23-3-701, 23-3-703.

Codification Notes. This section was promulgated as Section 1.1(A) of the Cogeneration Rules prior to codification in the Code of Arkansas Rules.

The Public Utility Regulatory Policies Act of 1978 was enacted by Pub. L. No. 95-617.

23 CAR § 454-102. Definitions.

The following definitions apply for purposes of this part:

(1) "Avoided costs" means the incremental costs to an electric utility of electric energy or capacity or both that, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source;

(2) "Backup power" means electric energy or capacity supplied by an electric utility during an unscheduled outage of a qualifying facility to replace energy ordinarily generated by the facility's own generation equipment;

(3) "Capacity" means the load for which a generating unit or generating station is rated either by the user or the manufacturer;

(4) "Case-by-case negotiation" means the process of sequential negotiation of specific contractual agreements between a qualifying facility and an electric utility;

(5) "Commission" means the Arkansas Public Service Commission;

(6)(A) "Dispatch" means under the operating control of an integrated electric system dispatcher.

(B) This includes the scheduling of energy transactions with connecting electric utilities or other connecting electric generating sources;

(7) "Firm energy" means electric energy associated with firm power;

(8) "Firm power" means power or power-producing capacity intended to be available at all times during the period covered by a commitment, even under severe conditions;

(9) "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;

(10) "Interruptible power" means electric energy or capacity supplied by an electric utility that is subject to interruption by the electric utility under specified conditions;

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

(12) "Power" means the time rate of generating, transferring, or using electric energy, usually expressed in kilowatts;

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

(14) "Qualifying facility" means a cogeneration facility or a small power production facility that is a qualifying facility under Subpart 2 of this part;

(15) "Rate" means:

(A) Any:

(i) Price, rate, charge, or classification made, demanded, observed, or received with respect to the sale or purchase of electric energy or capacity; or

(ii) Rule, regulation, or practice respecting any such rate, charge, or classification; and

(B) Any contract pertaining to the sale or purchase of electric energy or capacity;

(16) "Sale" means the sale of electric energy or capacity or both by an electric utility to a qualifying facility;

(17) "Supplementary power" means electric energy or capacity regularly supplied by an electric utility to a qualifying facility for regular use in addition to the energy that the facility generates itself;

(18) "System dispatcher" means the individual who is in charge of the organizational unit whose function it is to match the utility's system generation to the demand or load requirements of the utility's customers and others subject to a number of constraints, including but not limited to the following:

(A) The availability and cost of fuel;

(B) The availability of transmission capability;

(C) The balancing of generation for system reliability;

(D) The economy of purchased power; and

(E) The economy of power sales within and outside of the system;

(19) "System emergency" means a condition on a utility's system that is:

(A) Likely to result in imminent significant disruption of service to customers; or

(B) Imminently likely to endanger life or property; and

(20) "Telemetry" means the system of metering and communications devices that enables the system dispatcher to instantaneously monitor or, in the case of two-way communications, to control, the output of a remote generating unit.

Authority. Arkansas Code §§ 23-3-701, 23-3-703.

Codification Notes. This section was promulgated as Section 1.1(B) of the Cogeneration Rules prior to codification in the Code of Arkansas Rules.

Subpart 2. Qualifying Cogeneration and Small Power Production Facilities

23 CAR § 454-201. Scope.

This subpart applies to the criteria for, and the manner of, becoming a qualifying small power production facility and a qualifying cogeneration facility under Sections 3(17)(C) and 3(18)(B), respectively, of the Federal Power Act, as amended by Section 201 of the Public Utility Regulatory Policies Act of 1978.

Authority. Arkansas Code §§ 23-3-701, 23-3-703.

Codification Notes. This section was promulgated as Section 2.1 of the Cogeneration Rules prior to codification in the Code of Arkansas Rules.

The Federal Power Act was enacted as Pub. L. No. 66-280.

The Public Utility Regulatory Policies Act of 1978 was enacted as Pub. L. No. 95-617.

23 CAR § 454-202. Definitions.

For purposes of this subpart:

- (1) "Biomass" means any organic material not derived from fossil fuels;
- (2) "Bottoming-cycle cogeneration facility" means a cogeneration facility in which the energy input to the system is first applied to a useful thermal energy process, and the reject heat emerging from the process is then used for power production;
- (3) "Cogeneration facility" means equipment used to produce electric energy and forms of useful thermal energy, such as heat or steam, used for industrial, commercial, heating, or cooling purposes, through the sequential use of energy;
- (4) "Energy input", in the case of energy in the form of natural gas or oil, is to be measured by the lower heating value of the natural gas or oil;
- (5) "Electric utility holding company" means a holding company, as defined in Section 2(a)(7) of the Public Utility Holding Company Act of 1935, 15 U.S.C. § 79b(a)(7) [repealed], that owns one (1) or more electric utilities, as defined in Section 2(a)(3) of Public Utility Holding Company Act of 1935, 15 U.S.C. § 79b(a)(3) [repealed], but does not include any holding company that is exempt by rules or orders adopted or issued pursuant to Section 3(a)(3) or 3(a)(5) of the Public Utility Holding Company Act of 1935, 15 U.S.C. § 79c(a)(5) [repealed];
- (6) "Natural gas" means either:
 - (A) Unmixed natural gas; or
 - (B) Any mixture of natural gas and artificial gas;
- (7) "Oil" means:
 - (A) Crude oil;
 - (B) Residual fuel oil;
 - (C) Natural gas liquids; or
 - (D) Any refined petroleum products;
- (8) "Supplementary firing" means an energy input to the cogeneration facility used only in the:
 - (A) Thermal process of a topping-cycle cogeneration facility; or
 - (B) Electric generation process of a bottoming-cycle cogeneration;

(9) "Topping-cycle cogeneration facility" means a cogeneration facility in which the:

(A) Energy input to the facility is first used to produce useful power output; and

(B) Reject heat from power production is then used to provide useful thermal energy;

(10) "Total energy input" means the total energy of all forms supplied from external sources;

(11) "Total energy output" of a topping-cycle cogeneration facility means the sum of the useful power output and useful thermal energy output;

(12) "Useful power output" of a cogeneration facility means the electric or mechanical energy made available for use, exclusive of any such energy used in the power production process;

(13) "Useful thermal energy output" of a topping-cycle cogeneration facility means the thermal energy:

(A) Made available for use in any industrial or commercial process; or

(B) Used in any heating or cooling application;

(14) "Utility geothermal small power production facility" means a small power production facility that uses geothermal energy as the primary energy resource and of which more than fifty percent (50%) is owned either by:

(A) An electric utility or utilities, electric utility holding company or companies, or any combination thereof; or

(B) Any company fifty percent (50%) or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote by an electric utility, electric utility holding company, or any combination thereof; and

(15) "Waste" means by-product materials other than biomass.

Authority. Arkansas Code §§ 23-3-701, 23-3-703.

Codification Notes. This section was promulgated as Section 2.2 of the Cogeneration Rules prior to codification in the Code of Arkansas Rules.

15 U.S.C. § 79 et seq. was repealed by Pub. L. No. 109-58.

23 CAR § 454-203. General requirements for qualification.

(a) **Small power production facilities.** A small power production facility is a qualifying facility if it meets the:

- (1) Maximum size criteria specified in 23 CAR § 454-204(a);
- (2) Fuel use criteria specified in 23 CAR § 454-204(b); and
- (3) Ownership criteria specified in 23 CAR § 454-206.

(b) **Cogeneration facilities.** A cogeneration facility, including any diesel and dual fuel cogeneration facility, is a qualifying facility if it meets:

- (1) Any applicable operating and efficiency standards specified in 23 CAR § 454-205(a) and (b); and
- (2) The ownership criteria specified in this subpart.

Authority. Arkansas Code §§ 23-3-701, 23-3-703.

Codification Notes. This section was promulgated as Section 2.3 of the Cogeneration Rules prior to codification in the Code of Arkansas Rules.

23 CAR § 454-204. Criteria for qualifying small power production facilities.

(a) **Maximum size.** The power production capacity of the facility for which qualification is sought, together with the capacity of any other facilities that use the same energy resources, are owned by the same person, and are located at the same site, may not exceed eighty megawatts (80 MW).

(b) **Method of calculation.**

(1) For purposes of this subsection, facilities are considered to be located at the same site as the facility for which qualification is sought:

(A) If they are located within one (1) mile of the facility for which qualification is sought; and

(B) For hydroelectric facilities, if they use water from the same impoundment for power generation.

(2) For purposes of making the determination in subdivision (b)(1) of this section, the distance between facilities shall be measured from the electrical generating equipment of a facility.

(3) The Arkansas Public Service Commission may modify the application of subdivision (b)(2) of this section for good cause.

(c) Fuel use.

(1) The primary energy source of the facility must be biomass, waste, renewable resources, geothermal resources, or any combination thereof, and more than seventy-five percent (75%) of the total energy input must be from these sources.

(2) Any primary energy source that, on the basis of its energy content, is fifty percent (50%) or more biomass shall be considered biomass.

(3) Use of oil, natural gas, and coal by a facility may not, in the aggregate, exceed twenty-five percent (25%) of the total energy input of the facility during any calendar year period.

Authority. Arkansas Code §§ 23-3-701, 23-3-703.

Codification Notes. This section was promulgated as Section 2.4 of the Cogeneration Rules prior to codification in the Code of Arkansas Rules.

23 CAR § 454-205. Criteria for qualifying cogeneration facilities.

(a) Operating and efficiency standards for topping-cycle facilities.

(1) **Operating standard.** For any topping-cycle cogeneration facility, the useful thermal energy output of the facility must, during any calendar year period, be no less than five percent (5%) of the total energy output.

(2) **Efficiency standard.**

(A) For any topping-cycle cogeneration facility for which the energy input, except for emergency or start-up uses, is natural gas or oil, and the installation of which began on or after March 13, 1980, the useful power output of the facility plus one-half (1/2) the useful thermal energy output, during any calendar year period, must:

(i) Subject to subdivision (a)(2)(A)(ii) of this section, be no less than forty-two-and-one-half percent (42.5%) of the total energy input of natural gas and oil to the facility; or

(ii) If the useful thermal energy output is less than fifteen percent (15%) of the total energy output of the facility, be no less than forty-five percent (45%) of the total energy input of natural gas and oil to the facility.

(B) For any topping-cycle cogeneration facility not subject to subdivision (a)(2)(A) of this section, there is no efficiency standard.

(b) **Efficiency standards for bottoming-cycle facilities.**

(1) For any bottoming-cycle cogeneration facility for which any of the energy input as supplementary firing is natural gas or oil, and the installation of which began on or after March 13, 1980, the useful power output of the facility must, during any calendar-year period, be no less than forty-five percent (45%) of the energy input of natural gas and oil for supplementary firing.

(2) For any bottoming-cycle cogeneration facility not covered by subdivision (b)(1) of this section, there is no efficiency standard.

(c) **Waiver of criteria.** The Arkansas Public Service Commission may waive any of the requirements of subsections (a) and (b) of this section upon a showing that the facility will produce significant energy savings.

Authority. Arkansas Code §§ 23-3-701, 23-3-703.

Codification Notes. This section was promulgated as Section 2.5 of the Cogeneration Rules prior to codification in the Code of Arkansas Rules.

23 CAR § 454-206. Ownership criteria.

(a) **General rule.** A cogeneration facility or small power production facility may not be owned by a person primarily engaged in the generation or sale of electric power, other than electric power solely from cogeneration facilities or small power production facilities.

(b) **Ownership test.**

(1) For purposes of this section, a cogeneration or small power production facility shall be considered to be owned by a person primarily engaged in the generation or sale of electric power if more than fifty percent (50%) of the equity interest in the facility is held by:

- (A) An electric utility or utilities;
- (B) An electric utility holding company or companies; or
- (C) Any combination thereof.

(2) If a wholly or partially owned subsidiary of an electric utility holding company has an ownership interest in a facility, the subsidiary's ownership interest shall be considered as ownership by an electric utility or electric utility holding company.

(c) **Exceptions.** For purposes of this section, a company shall not be considered to be an electric utility company if it is:

(1) A subsidiary of an electric utility holding company that is exempt by rule or order adopted or issued pursuant to Section 3(a)(3) or 3(a)(5) of the Public Utility Holding Company Act of 1935, 15 U.S.C. § 79c(a)(3) [repealed], (a)(5) [repealed]; or

(2) Declared not to be an electric utility company by rule or order of the Securities and Exchange Commission pursuant to Section 2(a)(3)(A) of the Public Utility Holding Company Act of 1935, 15 U.S.C. § 79b(a)(3)(A) [repealed].

Authority. Arkansas Code §§ 23-3-701, 23-3-703.

Codification Notes. This section was promulgated as Section 2.6 of the Cogeneration Rules prior to codification in the Code of Arkansas Rules.

15 U.S.C. § 79 et seq. was repealed by Pub. L. No. 109-58.

23 CAR § 454-207. Procedures for obtaining qualifying status.

(a) **Qualification.** A small power production facility or cogeneration facility that meets the criteria for qualification set forth in 23 CAR § 454-203 is a qualifying facility, ipso facto.

(b) **Optional screening procedure by electric utilities.**

(1) **General information from all facilities.** Subsection (a) of this section notwithstanding, an electric utility may require the following information, in writing, from a facility purporting to be a qualifying small power production facility or cogeneration facility (see also 23 CAR § 454-401(b)(2)(A)):

- (A) The name and address of the applicant and location of the facility;
- (B) A brief description of the facility, including a statement indicating whether such facility is a small power production facility or a cogeneration facility;
- (C) The primary energy source used or to be used by the facility;
- (D) The power production capacity of the facility; and
- (E) The percentage of ownership by any:
 - (i) Electric utility;
 - (ii) Electric utility holding company; or
 - (iii) Subsidiary of either.

(2) **Additional information from small power producers.** An electric utility may require the following additional information from a small power producer:

- (A) The location of the facility in relation to any other small power production facilities:
 - (i) Located within one (1) mile of the facility; and
 - (ii) Owned by the applicant facility that uses the same energy source;

and

(B) Information identifying any planned usage of:

- (i) Natural gas;
- (ii) Oil; or
- (iii) Coal.

(3) Additional information from cogeneration facilities:

(A) A description of the cogeneration system, including whether the facility is a topping or bottoming cycle and sufficient information to determine that any applicable requirements of 18 C.F.R. § 292.205 will be met; and

(B) The date installation of the facility began or will begin.

(c) Optional certification procedure.

(1)(A) If an electric utility refuses to treat a facility as a qualifying facility, the facility may file an application for certification as a qualifying facility with the Arkansas Public Service Commission.

(B) The application shall:

(i) Allege that the facility is a qualifying facility as defined by this part;

and

(ii) Contain the same information listed in subsection (b) of this

section.

(2)(A) Within ninety (90) days of the filing of an application for certification, the Arkansas Public Service Commission shall issue an order:

(i) Granting or denying the application; or

(ii) Setting the matter for hearing.

(B) Any order denying certification shall identify the specific requirements that were not met.

(C) If no order is issued within ninety (90) days of the filing of a complete application, the application shall be deemed to have been granted.

(d) Revocation of qualifying status.

(1) Because the Federal Energy Regulatory Commission may revoke the qualifying status of a qualifying facility that has been certified under this section if such facility fails to comply with any of the statements contained in its application for Federal

Energy Regulatory Commission certification, notice of the revocation must be received by the Arkansas Public Service Commission no later than thirty (30) days after revocation of qualifying status by the Federal Energy Regulatory Commission.

(2) Because a small power producer or cogenerator may apply to the Federal Energy Regulatory Commission for a determination that the proposed alteration or modification of a Federal Energy Regulatory Commission-certified qualifying facility will not result in a revocation of qualifying status, notice of any change in status of a certified qualifying facility must be received by the Arkansas Public Service Commission no later than thirty (30) days after the change in status is determined.

Authority. Arkansas Code §§ 23-3-701, 23-3-703.

Codification Notes. This section was promulgated as Section 2.7 of the Cogeneration Rules prior to codification in the Code of Arkansas Rules.

Subpart 3. Arrangements Between Utilities and Qualifying Cogenerators and Small Power Production Facilities

23 CAR § 454-301. Scope.

(a) **Applicability.** This subpart applies to the regulation of sales and purchases between qualifying facilities and electric utilities.

(b) Case-by-case negotiations.

(1) Except as specified by a standard tariff (23 CAR § 454-304(c)), utilities will conduct case-by-case negotiations with qualifying facilities to establish the specific arrangements between the electric utility and the qualifying facility.

(2) The arrangements addressed in case-by-case negotiations between electric utilities and qualifying facilities shall include and be guided by the provisions made in 23 CAR §§ 454-302 – 454-308.

(3) Nothing in subdivision (b)(2) of this section shall be construed to limit the consideration or inclusion of any other factors within the arrangements negotiated between electric utilities and qualifying facilities.

(c) **Negotiated rates or terms.** Nothing in this subpart:

(1) Limits the authority of any electric utility or any qualifying facility to agree to a rate for any purchase, or terms or conditions relating to any purchase, that differ from the rate or terms or conditions that would otherwise be required by this subpart;

or

(2) Affects the validity of any contract entered into between a qualifying facility and an electric utility for any purchase.

Authority. Arkansas Code §§ 23-3-701, 23-3-703.

Codification Notes. This section was promulgated as Section 3.1 of the Cogeneration Rules prior to codification in the Code of Arkansas Rules.

23 CAR § 454-302. Availability of electric utility system cost data.

(a) **Applicability.** The following utilities shall be subject to the provision of this section:

- (1) Entergy Arkansas;
- (2) Southwestern Electric Power Company;
- (3) Empire District Electric Company;
- (4) Oklahoma Gas & Electric Company; and
- (5) Arkansas Electric Cooperative Corporation.

(b) **General rule.**

(1) The electric utilities listed in subsection (a) of this section shall file with the Arkansas Public Service Commission and maintain for inspection the following data:

(A)(i) 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.

(ii) Such levels of purchases shall be stated in:

(a) Blocks of not more than one hundred megawatts (100 MW) for systems with peak demand of one thousand megawatts (1,000 MW) or more; and

(b) Blocks equivalent to not more than ten percent (10%) of the system peak demand for systems of less than one thousand megawatts (1,000 MW).

(iii) 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 (5) years;

(B) The electric utility's plan for:

(i) The addition of capacity by amount and type;

(ii) Purchases of firm energy and capacity; and

(iii) Capacity retirements for each year during the succeeding ten (10) years; and

(C)(i) The estimated capacity costs at completion of the planned capacity additions and planned capacity firm purchases, on the basis of dollars per kilowatt, and the associated energy costs of each unit, expressed in cents per kilowatt hour.

(ii) These costs shall be expressed in terms of individual generating units and of individual planned firm purchases.

(2)(A) Said data shall be filed with the Arkansas Public Service Commission in Docket 81-071-F not later than June 30, 1982, and every two (2) years thereafter.

(B) Such data will be for a period ending December 31 of the year preceding the due date of the information.

(c) Additional data requested by qualifying facilities.

(1) A qualifying facility may request an electric utility to provide system cost data in addition to the data required by subsection (b) of this section.

(2) The electric utility:

(A) Shall make a good faith effort to supply the requested data; and

(B) May bill the qualifying facility for the cost of supplying the data.

(3) Before honoring the data request, the electric utility may require the facility to provide it with the information listed in 23 CAR § 454-207(b).

(d) Filing the terms of agreements between utilities and facilities.

(1) Each electric utility shall file with the Arkansas Public Service Commission the terms and conditions of each agreement made with any qualifying facilities to interconnect, buy, or sell service.

(2) Said information shall be filed in Docket 81-071-F.

(e) Arkansas Public Service Commission review.

(1) Any data submitted by an electric utility under this section shall be subject to review by the Arkansas Public Service Commission.

(2) In any such review, the electric utility is obligated to justify its data.

Authority. Arkansas Code §§ 23-3-701, 23-3-703.

Codification Notes. This section was promulgated as Section 3.2 of the Cogeneration Rules prior to codification in the Code of Arkansas Rules.

23 CAR § 454-303. Electric utility obligations.

(a) **Obligation to purchase from qualifying facilities.** Each electric utility shall purchase, in accordance with 23 CAR § 454-304, any energy and capacity that is made available from a qualifying facility, either:

(1) Directly to the electric utility; or

(2) Indirectly to the electric utility in accordance with subsection (d) of this section.

(b) **Obligation to sell to qualifying facilities.** Each electric utility shall sell to any qualifying facility, in accordance with 23 CAR § 454-305, any energy and power requested by the qualifying facility.

(c) Obligation to interconnect.

(1)(A) Subject to subdivision (c)(2) of this section, any electric utility shall make such interconnections with any qualifying facility as may be necessary to accomplish purchase or sales under this subpart.

(B) The obligation to pay for any interconnection costs shall be determined in accordance with 23 CAR § 454-306.

(2) No electric utility is required to interconnect with any qualifying facility if, solely by reason of purchase or sales using the interconnection, the electric utility would become subject to regulation as a public utility under Part II of the Federal Power Act.

(d) Transmission to other electric utilities.

(1) If a qualifying facility agrees, an electric utility that would otherwise be obligated to purchase energy or capacity from such a qualifying facility may transmit the energy or capacity to any other electric utility, provided that such transmitting utility may, at its sole option, interrupt or modify said transmission service if, in its opinion, such service would jeopardize or degrade its system or service to other customers.

(2)(A) Any electric utility within the jurisdiction of the Arkansas Public Service Commission to which such energy or capacity is transmitted shall purchase such energy or capacity under this subpart as if the qualifying facility were supplying energy or capacity directly to such electric utility.

(B) The rate for purchase by the electric utility under the jurisdiction of the Arkansas Public Service Commission to which such energy is transmitted:

(i) Shall be adjusted up or down to reflect line losses pursuant to 23 CAR § 454-304; and

(ii) Shall not include any charges for transmission.

(C) The qualifying facility may be charged by the transmitting utility for transmission of energy or capacity from a qualifying facility to another utility.

(e) **Parallel operation.** Each electric utility shall offer to operate in parallel with a qualifying facility, provided that the qualifying facility complies with any applicable standards established in accordance with 23 CAR § 454-308.

Authority. Arkansas Code §§ 23-3-701, 23-3-703.

Codification Notes. This section was promulgated as Section 3.3 of the Cogeneration Rules prior to codification in the Code of Arkansas Rules.

The Federal Power Act was enacted as Pub. L. No. 66-280.

23 CAR § 454-304. Rates for purchases.

(a) Rates for purchases.

(1) Rates for purchase 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.

(2) Nothing in this subpart requires any electric utility to pay more than the avoided costs for purchases.

(b) Relationship to avoided costs.

(1) For purposes of this subsection, "new capacity" means any purchase from capacity of a qualifying facility, the construction of which was commenced on or after November 9, 1978.

(2) Subject to subdivision (b)(4) of this section, a rate for purchases satisfies the requirements of subsection (a) of this section if the rate equals the avoided costs determined after consideration of the factors set forth in subsection (e) of this section.

(3) Rates for purchases from new capacity shall be in accordance with subdivision (b)(2) of this section, regardless of whether the electric utility making such purchases is simultaneously making sales to the qualifying facility.

(4)(A) Purchases from facilities whose construction commenced earlier than November 9, 1978, may be ten percent (10%) less than avoided cost.

(B) However, such purchases are not allowed if the utility simultaneously sells power to the qualifying facility.

(5) 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 such purchases do not violate this subpart if the rates for such purchases differ from avoided costs at the time of delivery.

(6) Whenever a utility is required to make payments for purchases from a qualifying facility, which payments include avoided capacity costs, then any rates for purchase of energy from such qualifying facility shall be based upon the same capacity assumed for purposes of calculating the avoided capacity cost.

(c) Standard rates for purchases.

(1) There shall be put into effect, with respect to each electric utility, standard rates for purchases from qualifying facilities with a design capacity of one hundred kilowatts (100 kW) or less.

(2) There may be put into effect standard rates for purchases from qualifying facilities with a design capacity of more than one hundred kilowatts (100 kW).

(3) The standard rates for purchases under this subsection:

(A) Shall be consistent with subsections (a), (b), and (e) of this section;

(B) Shall use estimates of avoided costs based on the assumed total output of qualifying facilities of less than one hundred kilowatts (100 kW) that are expected to offer their output for sale during the next twelve (12) months; and

(C) May differentiate among qualifying facilities using various technologies on the basis of the supply characteristics of the different technologies.

(4) The electric utility shall provide justification and support for the assumed output of qualifying facilities of less than one hundred kilowatts (100 kW) that is used in the calculation of avoided costs for the standard tariff (see subdivision (c)(3)(C) of this section).

(5)(A) Standard tariffs will provide qualifying facilities under one hundred kilowatts (100 kW) with the option of either selling only the facility's output net of its own use to the utility or selling its entire output and simultaneously purchasing its requirement from the utility.

(B) Should the qualifying facility elect the option of simultaneous purchases and sales, it will be expected to pay any additional interconnection costs as specified in 23 CAR § 454-306.

(d) Purchases "as available" or pursuant to a legally enforceable obligation. Each qualifying facility shall have the option either:

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

(2) 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 such purchases shall, at the option of the qualifying facility exercised prior to the beginning of the specified term, be based on either:

(A) The avoided costs calculated at the time of delivery;

(B) The avoided costs calculated at the time the obligation is incurred; or

(C) Any other specific conditions agreed to in the legally enforceable obligation.

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

(1) The data provided pursuant to 23 CAR § 454-302, including review of any such data;

(2) The availability of capacity or energy from a qualifying facility during the system daily and seasonal peak periods, including:

(A) The ability of the utility to dispatch the qualifying facility;

(B) The expected or demonstrated reliability of the qualifying facility;

(C) The terms of any contract or other legally enforceable obligation,

including the:

(i) Duration of the obligation;

(ii) Termination notice requirement; and

(iii) Sanction for noncompliance;

(D) The extent to which scheduled outages of the qualifying facility can be usefully coordinated with scheduled outages of the utility's facilities;

(E) The usefulness of energy and capacity supplied from a qualifying facility during system emergencies, including its ability to separate its load from its generation;

(F) The individual and aggregate value of energy and capacity from qualifying facilities on the electric utility's system; and

(G) The smaller capacity increments and the shorter lead times available with additions of capacity from qualifying facilities;

(3) The relationship of the availability of energy or capacity from the qualifying facility as derived in subdivision (e)(2) of this section, to the ability of the electric utility to avoid costs, including the deferral of capacity additions and the reduction of fossil fuel use; and

(4) The costs or savings resulting from variations in line losses from those that would have existed in the absence of purchases from a qualifying facility, if the purchasing electric utility:

(A) Generated an equivalent amount of energy itself; or

(B) Purchased an equivalent amount of electric energy or capacity.

(f) Periods during which purchases are not required.

(1) Any electric utility that gives notice pursuant to subdivision (f)(2) of this section 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 such purchases, but instead generated an equivalent amount of energy itself.

(2) Any electric utility seeking to invoke subdivision (f)(1) of this section must notify, in accordance with applicable Arkansas law or rule, each affected qualifying facility in time for the qualifying facility to cease the delivery of energy or capacity to the electric utility.

(3) Any electric utility that fails to comply with the provisions of subdivision (f)(2) of this section will be required to pay the same rate for such purchase of energy or capacity as would be required had the period described in subdivision (f)(1) of this section not occurred.

(4) A claim by an electric utility that such a period has occurred or will occur is subject to such verification by the Arkansas Public Service Commission as it determines is necessary or appropriate, either before or after the occurrence.

Authority. Arkansas Code §§ 23-3-701, 23-3-703.

Codification Notes. This section was promulgated as Section 3.4 of the Cogeneration Rules prior to codification in the Code of Arkansas Rules.

23 CAR § 454-305. Rates for sales.

(a) General rules.

(1) Rates for sales:

(A) Shall be just and reasonable and in the public interest; and

(B) Shall not discriminate against any qualifying facility compared with rates for sales to other customers served by the electric utility.

(2) 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 utility's other customers with similar load or other cost-related characteristics.

(b) Additional services to be provided to qualifying facilities. Upon request of a qualifying facility, each electric utility shall provide:

(1) Supplementary power;

(2) Backup power;

(3) Maintenance power; and

(4) Interruptible power.

(c) Rates for sales of backup and maintenance power.

(1) The rates for sales of backup 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 in an electric utility's system will occur simultaneously, 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.

(2) The utility may establish different rates for supplying these services to nonqualifying facilities if such differentiation is:

(A) Empirically justified; and

(B) Supported by utility findings on factors such as the diversity of outages.

Authority. Arkansas Code §§ 23-3-701, 23-3-703.

Codification Notes. This section was promulgated as Section 3.5 of the Cogeneration Rules prior to codification in the Code of Arkansas Rules.

23 CAR § 454-306. Interconnection costs.

(a) **Obligation to pay.** Each qualifying facility shall be obligated to pay any interconnection costs estimated on a nondiscriminatory basis with respect to other customers with similar load characteristics.

(b) **Reimbursement of interconnection costs.**

(1) Each utility shall make provisions in its standard tariff (see 23 CAR § 454-304) or the case-by-case legally binding obligations with qualifying facilities for the repayment of interconnection costs.

(2) The utility shall provide the alternatives of either:

(A) Complete payment at the inception of service; or

(B) Periodic payments over a term of not less than two (2) years wherein such payments provide for the amortization of interconnection costs as well as a return to the utility equal to its pretax marginal cost of capital.

(3) In addition, the qualifying facility will reimburse the utility for any recurring interconnection and administrative costs.

Authority. Arkansas Code §§ 23-3-701, 23-3-703.

Codification Notes. This section was promulgated as Section 3.6 of the Cogeneration Rules prior to codification in the Code of Arkansas Rules.

23 CAR § 454-307. System emergencies.

(a) **Qualifying facilities' 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:

(1) Provided by agreement between such qualifying facility and electric utility;

or

(2) Ordered under Section 202(c) of the Federal Power Act.

(b) **Discontinuance of purchases and sales during system emergencies.**

During any system emergency, an electric utility may discontinue:

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

(2) Sales to a qualifying facility provided that such discontinuance is on a nondiscriminatory basis.

Authority. Arkansas Code §§ 23-3-701, 23-3-703.

Codification Notes. This section was promulgated as Section 3.7 of the Cogeneration Rules prior to codification in the Code of Arkansas Rules.

The Federal Power Act was enacted as Pub. L. No. 66-280.

23 CAR § 454-308. Standards for operating reliability.

(a) **Interconnection plan.**

(1)(A) Each utility shall establish and make available for inspection guidelines for ensuring safe and reliable operation of interconnected qualifying facilities.

(B) It may also require an interconnection plan from the qualifying facility to facilitate qualifying facility/utility negotiations.

(2) Upon receipt of the interconnection plan, the utility shall provide the qualifying facility with a:

(A) Cost proposal identifying the interconnection costs; and

(B) List of contract issues to be addressed in the negotiations.

(b) Inspection.

(1) No utility may unreasonably refuse to inspect its portion of the interconnection equipment nor may a utility unreasonably delay the performance of its portion of any such inspection.

(2)(A) The electric utility may require that the qualifying facility's equipment be certified by a local inspection authority for compliance with the requirements of the electric utility's guidelines and the negotiated interconnection plan.

(B) Such requirement by the electric utility shall not constitute endorsement of design, strength, effectiveness, plan, adequacy, or capacity, nor shall such requirement imply a warranty of safety, durability, or reliability of the qualifying facility.

(c) Provision of equipment and safety. The qualifying facility shall:

(1) Provide, install, and maintain at its own expense all electrical wiring and apparatus, including any protective equipment required either by the American National Standards Institute's ANSI C2 National Electrical Safety Code and/or any applicable municipal code; and

(2) Comply with all requirements prescribed by any governmental authority having jurisdiction thereof, with compliance of such duty being a condition to any liability of the utility.

(d) Right of refusal to connect.

(1) The utility may:

(A) Reserve the right to refuse to connect to any wiring or apparatus that does not meet the requirements referred to in subsection (c) of this section; and

(B) Without advance notice, discontinue its connection with the qualifying facility's wiring or apparatus when a dangerous condition of wiring or equipment upon the premises of the qualifying facility is discovered.

(2) Notwithstanding the utility's right to refuse interconnection as recited in subdivision (d)(1) of this section, no action by the utility to interconnect shall be interpreted as being an approval of or acquiescence in the design or installation of the equipment of the qualifying facility.

(e) **Interconnection switch.** There shall be an interconnection switch, installed and maintained at the expense of the qualifying facility that is capable of being locked open, and such switch shall be available and accessible to the utility to ensure that the connecting circuit may be positively de-energized.

(f) **Operating procedures.** The qualifying facility and the utility will develop engineering and operating guides and procedures for the safe interconnection of the facility to the utility's system.

Authority. Arkansas Code §§ 23-3-701, 23-3-703.

Codification Notes. This section was promulgated as Section 3.8 of the Cogeneration Rules prior to codification in the Code of Arkansas Rules.

Subpart 4. Procedures for the Conduct of Negotiations Between Electric Utilities and Qualifying Cogeneration and Small Power Production Facilities — Procedures for Appeal to the Arkansas Public Service Commission

23 CAR § 454-401. Procedures for negotiation.

(a) Applicability.

(1) This section applies to the conduct of negotiations on a case-by-case basis between electric utilities and qualifying facilities.

(2) It does not apply to any qualifying facilities that elect to adopt a standard tariff available from the electric utility.

(b) **General rule.** To ensure the timely progress in the case-by-case negotiation of arrangements between an electric utility and a qualifying facility, the parties are to conduct negotiations in a manner that is consistent with the following procedural steps and schedules:

(1)(A) Any party wishing to initiate negotiations with an electric utility shall send a written notification via certified mail to the designated utility.

(B) The notification should contain the following information:

(i) The name, address, and responsible individual of the owner of the potential qualifying facility;

(ii) A general description of the proposed facility;

(iii) A general statement of the type of relationship that the potential qualifying facility wishes to enter into with the utility, e.g., duration, level of sales for energy, capacity; and

(iv)(a) The nature of any specific data or information that the potential qualifying facility would like to inspect (see 23 CAR § 454-302, generally).

(b) Any and all costs of supplying or generating such data or information shall be recovered from the qualifying facility and not from the utility's ratepayers;

(2) Within thirty (30) days of the receipt of the initial notification provided by the potential qualifying facility, the electric utility shall:

(A) Acknowledge receipt of the potential qualifying facility's notification and advise the qualifying facility of the estimated cost of supplying the data requested pursuant to subdivision (b)(1)(B)(iv) of this section, provided that once a potential qualifying facility initiates negotiations under this subsection with an electric utility, the utility may require the potential qualifying facility to furnish the information listed by 23 CAR § 454-207(b), optional screening procedure by electric utilities;

(B) Supply the required requested data or information to the potential qualifying facility;

(C) Designate a responsible individual to direct all interactions between the electric utility and the potential qualifying facility, and inform the potential qualifying facility of that person's identity; and

(D) Designate a time and place not later than forty-five (45) days after receipt of the initial notification to hold a first negotiation session; and

(3) The electric utility and potential qualifying facility will meet as often as possible to allow the conclusion of negotiations within one hundred fifty (150) days of the initial notification of the utility by the potential qualifying facility.

Authority. Arkansas Code §§ 23-3-701, 23-3-703.

Codification Notes. This section was promulgated as Section 4.1 of the Cogeneration Rules prior to codification in the Code of Arkansas Rules.

23 CAR § 454-402. Procedures for appeal.

(a) Applicability.

(1) Any potential qualifying facility that has met the procedural requirements set forth in 23 CAR § 454-401(b) and has not concluded or renewed a specific binding legal obligation with the electric utility for the purchase of its power or has not elected to adopt a standard tariff at the end of such negotiations may appeal to the Arkansas Public Service Commission for relief.

(2) The procedure for appeal to the Arkansas Public Service Commission, set out in this section, shall not limit any rights to appeal, to file complaints, or to participate in proceedings that a qualifying facility may have under other applicable rules or laws.

(b) **General rule.** To ensure the timely conclusion of an agreement between a potential qualifying facility and an electric utility, a potential qualifying facility meeting the requirements of subsection (a) of this section may appeal to the Arkansas Public Service Commission by the following procedure:

(1)(A) The potential qualifying facility shall send a formal notification of its intent to appeal to both the Arkansas Public Service Commission and the electric utility via certified mail.

(B) The notification of intent to appeal should include the following information:

(i) A summary of the facts related to the negotiation of the potential qualifying facility and the electric utility, including all notifications and correspondence;

(ii) A statement of the potential qualifying facility's opinion as to the reasons that negotiations with the electric utility could not be completed; and

(iii) A statement of the terms and conditions that the potential qualifying facility would propose in a final agreement with the electric utility;

(2) The Arkansas Public Service Commission will set a hearing date to occur within twenty (20) days of its receipt of the application for appeal, should it find that the potential qualifying facility complied with the procedures specified in 23 CAR § 454-401(b);

(3) The electric utility and potential qualifying facility shall present relevant verbal argument and written briefs before the Arkansas Public Service Commission at the designated hearing;

(4)(A) The Arkansas Public Service Commission will issue an order on its determination of the appropriate terms and conditions for arrangements between the potential qualifying facility and the electric utility.

(B) This order must be issued within thirty (30) days of the end of the hearing;

(5)(A) The Arkansas Public Service Commission order will be binding on the electric utility.

(B) The potential qualifying facility has ten (10) days to accept the terms of the Arkansas Public Service Commission order; and

(6)(A)(i) If the potential qualifying facility accepts the terms of the Arkansas Public Service Commission order, the electric utility has twenty (20) days from such acceptance to present a legally binding obligation incorporating the terms and

conditions of the Arkansas Public Service Commission's order to the potential qualifying facility for signature and formal agreement.

(ii) The Arkansas Public Service Commission shall receive copies and be notified of this agreement.

(B) Should the potential qualifying facility not accept the terms and conditions determined by the Arkansas Public Service Commission, the qualifying facility must both reinitiate its proposal to the electric utility as described in 23 CAR § 454-401(b) and show a significant change in the basic facts and/or its proposal before the Arkansas Public Service Commission will consider any future appeal.

Authority. Arkansas Code §§ 23-3-701, 23-3-703.

Codification Notes. This section was promulgated as Section 4.2 of the Cogeneration Rules prior to codification in the Code of Arkansas Rules.

Subpart 5. Arkansas Public Service Commission Jurisdiction

23 CAR § 454-501. Exemption of qualifying facilities from all other Arkansas utility regulation.

All qualifying facilities are exempted from all other Arkansas state utility laws and rules, other than those promulgated herein, respecting the:

- (1) Rates of electric utilities; and
- (2) Financial and organizational regulation of electric utilities.

Authority. Arkansas Code §§ 23-3-701, 23-3-703.

Codification Notes. This section was promulgated as Section 5.1 of the Cogeneration Rules prior to codification in the Code of Arkansas Rules.

23 CAR § 454-502. Application for Arkansas Public Service Commission judgment on jurisdiction.

(a) Any potential qualifying facility may file an application for a ruling by the Arkansas Public Service Commission on the jurisdiction of the Arkansas Public Service Commission over the proposed qualifying facility.

(b) If the potential qualifying facility is seeking certification from the Arkansas Public Service Commission of its status as a qualifying facility, the facility shall follow the procedure prescribed by 23 CAR § 454-207.

(c) The applicant must provide any such additional data that the Arkansas Public Service Commission deems necessary for its consideration.

(d) The Arkansas Public Service Commission shall provide a ruling of its jurisdiction within ninety (90) days of the initial filing.

Authority. Arkansas Code §§ 23-3-701, 23-3-703.

Codification Notes. This section was promulgated as Section 5.2 of the Cogeneration Rules prior to codification in the Code of Arkansas Rules.

23 CAR § 454-503. Exemption from Arkansas Public Service Commission jurisdiction.

(a) Any potential qualifying facility that is determined to be subject to the Arkansas Public Service Commission's jurisdiction in 23 CAR § 454-501 may apply to the Arkansas Public Service Commission for a waiver from such jurisdiction.

(b) The application for the waiver shall include the information identified in 23 CAR § 454-501(2) as well as a description of the potential effects of such a waiver on the general public and on electricity consumers in particular.

(c) Public notice shall be given of the application for a waiver, and a thirty-day waiting period will be provided for the receipt of public comments.

(d) Within twenty (20) days of the end of the public comment period, the Arkansas Public Service Commission will either grant or deny the requested waiver.

Authority. Arkansas Code §§ 23-3-701, 23-3-703.

Codification Notes. This section was promulgated as Section 5.3 of the Cogeneration Rules prior to codification in the Code of Arkansas Rules.

Subpart 6. Recovery of Costs of Purchases from a Qualifying Facility by an Electric Utility

23 CAR § 454-601. Recovery of costs.

All costs, net of costs associated with interconnection or otherwise recovered from the qualifying facility incurred by an electric utility for purchases of power from a qualifying facility pursuant to a standard tariff or legally enforceable obligation shall be recovered by the electric utility as a cost of purchased power to be reflected in the rates charged to the customers of the electric utility.

Authority. Arkansas Code §§ 23-3-701, 23-3-703.

Codification Notes. This section was promulgated as Section 6 of the Cogeneration Rules prior to codification in the Code of Arkansas Rules.