

TITLE 165. CORPORATION COMMISSION
CHAPTER 40. STANDARD TERMS OF PURCHASES
FROM PURCHASERS OF 100 KW OR LESS

PERMANENT RULES

UPDATED, EFFECTIVE 9-12-2014

Last Amended
The Oklahoma Register
Volume 31, Number 24
September 2, 2014 Publication
Pages 677 - 2558

Note: These rules are provided for the convenience of those who are affected by the jurisdiction of the Oklahoma Corporation Commission. Although the text of these rules is the same as the text of the rules on file in the Office of Administrative Rules, they are not the official version of the Oklahoma Administrative Code. Official rules are available from the Office of Administrative Rules of the Oklahoma Secretary of State.

**CHAPTER 40. STANDARD TERMS OF PURCHASES FROM
PURCHASERS OF 100 KW OR LESS**

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[Authority: 17 O.S., § 34.1]

[Source: Codified 12-31-91]

SUBCHAPTER 1 - GENERAL PROVISIONS

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165:40-1-1. Purpose

These terms and conditions of purchase of this Chapter were adopted by the Oklahoma Corporation Commission through Cause No. 27208, Order No. 326195, May 23, 1988, pursuant to Section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA) and Order No. 69 of the Federal Energy Regulatory Commission (FERC) as amended. This Chapter shall govern the supplying and delivering of power to the cooperative/utility's electric system by a small power producer or cogenerator (producer) of 100 kw or less who:

- (1) Is qualified under an approved purchase rate schedule.
- (2) Has made a proper purchase application.
- (3) Has executed a purchase agreement with the cooperative/utility.

165:40-1-2. Definitions

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Cogenerator" means a producer qualified under Section 201 of the Public Utility Regulatory Policies Act of 1978 as a cogeneration facility. A facility's power production capacity:

- (A) Must be used to produce both electrical and useful thermal energy for industrial commercial, heating or cooling purposes, through the sequential use of energy.
- (B) Must meet the applicable standards as to fuel use and efficiencies.
- (C) May not be owned by a person primarily engaged in the generation or sale of electrical power.
- (D) Shall be qualified by FERC.

"Commission" means the Oklahoma Corporation Commission.

"Consumer" means any person, firm, corporation, municipality, or agency or any political subdivision of the United States or the State of Oklahoma receiving electric service of any nature from the cooperative/utility. (Where or when it becomes necessary to designate the particular party who is the consumer/producer for any reason, the person who contracts for electric service or in whose name it is received shall be considered the consumer/producer.)

"Cooperative/utility" means the electric distributive cooperative/utility or the investor owned utility.

"Electricity" means electric power and energy produced, transmitted, distributed, or furnished by or delivered to the cooperative/utility.

"Force majeure" means a cause reasonably beyond the control of the party affected, such as, but without limitation to, injunction, strike of the party's employees, war, invasion, fire, accident, floods, backwater caused by floods, acts of God, or inability to obtain or ship essential services, materials, or equipment because of the effect of similar causes on the party's suppliers or carriers.

"Fraudulent use or sale of electricity" means any unauthorized use of the cooperative/utility electric service by the producer, or unauthorized use of producer generated electricity.

"Meter" means any device or devices used to measure or register electric power and energy.

"Premises" means any piece of land or real estate, or any building or other structure or portion thereof or any facility where electric energy is furnished to or delivered by a producer.

"Producer" means a small power producer or cogenerator.

"Prudent utility practices" means the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts (including but not limited to the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry prior thereto) known at the time the decision was made, would have been expended to accomplish the desired result at the lowest reasonable cost consistent with good business practices, reliability, safety, and expedition, taking into account the facts that the term "prudent utility practice" is not intended to be limited to the optimum practice, methods, or acts to the exclusion of all others, but rather to be a spectrum of possible practices, methods, or acts which could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety, and expedition. "Prudent utility practice" includes due regard for manufacturer's warranties and requirements of governmental agencies of competent jurisdiction.

"Small power producer" means a facility qualified under Section 201 of the Public Utility Regulatory Policies Act of 1978 as a small power production facility. A facility's power production capacity must be owned by the same person at the same location and be less than eighty (80) megawatts, must derive more than fifty percent (50%) of its total energy input from biomass, wastes, renewable resources, or any combination, may not derive more than twenty-five percent (25%) of its total energy from oil, natural gas, and/or coal, and the facility may not be owned by a person primarily engaged in the generation or sale of electrical power.

"Tariff" shall include every rate schedule, purchase rate schedule or provision thereof, service agreement, purchase agreement and all terms, conditions, rules, and regulations for furnishing electric service or purchasing electric energy.

165:40-1-3. Application of terms and conditions of purchase

(a) The terms and conditions of purchase of this Chapter, and any modifications thereof and additions thereto lawfully made, are applicable to all purchase applications, agreements, and rate schedules of producers defined in 165:40-1-1.

(b) Cooperative/utility shall receive and purchase and producer will furnish and sell either all energy produced or net energy in excess of producer's needs, as the producer shall choose.

(c) If producer is also a consumer, the applicable rate schedules for service, service agreement, and terms and conditions of service will continue to apply to such service, except as modified in this Chapter.

(d) The cooperative/utility may decline to serve a producer or prospective producer until such producer has complied with the rules and regulations of the Commission and any applicable federal, state, and municipal or other local laws and rules and regulations. The cooperative/utility may refuse to purchase from any producer for noncompliance with these terms and conditions of purchase or related purchase agreement and purchase rate schedule.

[Source: Amended at 10 Ok Reg 2641, eff 6-25-93]

165:40-1-4. Modification of terms and conditions of purchase

No agent, representative, or employee of the cooperative/utility shall have authority to modify the terms and conditions of purchase of this Chapter; provided, however, the cooperative/utility shall have the right to request amendment of these terms and conditions of purchase or to request additional terms and conditions of purchase as it may deem necessary from time to time, subject to the approval of the Commission.

165:40-1-5. Administration of purchase tariff

Each party shall designate one person as its representative for the purchase agreement. The representative shall carry out the provisions of the purchase tariff and provide liaison between the parties.

165:40-1-6. Dispute resolution

Dispute on any matter relating to the purchase tariff shall first be discussed by the representatives. If either party feels that the other party is not using their best efforts to amicably and properly resolve the dispute, that party shall have the right to submit the dispute to the Commission for mediation, hearing, or other resolution.

165:40-1-7. Notices

Any notice, demand, or request required or permitted to be given by either party to the other, and any instrument required or permitted to be tendered or delivered by either party to the other shall be so given, tendered, or delivered:

(1) For consumer/producers, in the same manner as specified in the terms and conditions of service.

(2) For producers, by depositing the same in any United States Post Office with postage prepaid, for transmission by certified or registered mail, addressed to the party, or personally delivered to the party, at the address furnished for the representative. Changes in such designation may be made by notice similarly given. Oral notices between the representatives will be sufficient if confirmed in writing.

SUBCHAPTER 3 - GENERAL REQUIREMENTS AND INFORMATION

PART 1 - BILLING AND PURCHASE AGREEMENTS

- 165:40-3-1 Application for purchase agreement
- 165:40-3-2 Selection of purchase rates or options
- 165:40-3-3 Extension of producer's system through public space
- 165:40-3-4 Billing for electric purchase
- 165:40-3-5 Testing of purchase meters upon request of producers
- 165:40-3-6 Adjustment of invoices for meter inaccuracy and incorrect billing

165:40-3-1. Application for purchase agreement

(a) Each producer, before interconnecting and before selling electric energy, shall make written application to the cooperative/utility to purchase the producer's electricity under the applicable purchase rates.

(b) A written purchase agreement, when signed by the producer and accepted and approved by the cooperative/utility, constitutes a contract. Each application for electric purchase shall be made in the true name of the producer.

(c) A single application for purchase cannot be made to apply to different locations, nor to cover more than one point of purchase at the same location to be used by the same producer, unless the cooperative/utility determines that the physical or electrical characteristics of the facility requires more than one point of purchase according to good engineering and operating practice.

(d) The contract is not transferable by the producer. A producer no longer desiring a purchase agreement on a premises must notify the cooperative/utility of his intent to discontinue. When there is a new occupant of the premises or a change in responsibility for operations, a new application for purchase must be made before purchase is begun.

(e) Any person who delivers electric energy into the cooperative/utility's system without having made application to sell such energy shall be liable to the cooperative/utility for payment thereof under the applicable rate schedule and for any damages caused thereby.

165:40-3-2. Selection of purchase rates or options

(a) The cooperative/utility's purchase rate schedules state the conditions under which the schedules are available.

(b) The cooperative/utility, at any time upon request, will determine for any producer the rates or other options best adapted to existing and anticipated electric purchase or service requirements as defined by the producer, but the producer shall always have the final responsibility for the choice between such applicable rates or options.

(c) The cooperative/utility's purchase rate schedules state the term or period of time for which each is established. A producer having selected a purchase rate or option may not apply for another purchase rate or option during the applicable term.

(d) A new producer will be given reasonable opportunity (normally not to exceed three (3) months time) to determine his purchase availability before definitely selecting the most favorable purchase rates and options.

165:40-3-3. Extension of producer's system through public space

For the purpose of obtaining a lower rate by receiving electric service or a higher rate by supplying electricity for purchase through one meter, the producer will not be permitted to extend or connect his electric wiring installation across or under a street, alley, or other public space in order to obtain connection with adjacent property, unless such extension is made pursuant to a special contract or filed rate schedule.

165:40-3-4. Billing for electric purchase

(a) **Consumer/producer.** Billing for electric purchase will be done in the same manner and by the same persons as is done for electric service to the same premises. Invoices for purchases will be prepared by the cooperative/utility and submitted at the same time to the consumer/producer as a separate statement or as a separate item on the bill for service. This procedure will be followed unless otherwise agreed upon between the producer and the cooperative/utility. Any charge for late payment for service will be made in accordance with the terms and conditions of service except that the amount will be calculated after netting for any amounts purchased.

(b) **Producer only.** Purchase meters shall be read by the producer at approximately monthly intervals at a time specified by the cooperative/utility. Invoices will be prepared by the producer. Cooperative/utility will normally make payment within its usual payment cycle. This procedure will be followed unless otherwise agreed upon between the producer and the cooperative/utility.

165:40-3-5. Testing of purchase meters upon request of producers

The cooperative/utility will test the accuracy of any producer's purchase meter in the same manner as for service meters under the terms and conditions of service.

165:40-3-6. Adjustment of invoices for meter inaccuracy and incorrect billing

Adjustment of invoices will be done in the same manner as under the terms and conditions of service.

PART 3 - CONTINUITY OF PURCHASES BY COOPERATIVE/UTILITY

165:40-3-10 Continuity and quality of electric connection

165:40-3-11 Effect of force majeure

165:40-3-12 Change of occupancy

165:40-3-13 Discontinuance of electric purchase

165:40-3-10. Continuity and quality of electric connection

(a) The cooperative/utility will use reasonable diligence to receive continuous electric delivery at the point of purchase with the producer within the voltage limits specified by applicable Chapters of this Title.

(b) It shall be the responsibility of the producer to install and maintain protective devices which will protect the producer's equipment or process during abnormal service conditions or the failure of part or all of the electric service.

(c) In order to make repairs to or changes in the cooperative/utility's facilities for supplying electric service or taking electric purchases, the cooperative/utility reserves the right, without incurring any liability therefore, to suspend purchase without notice to a producer for such periods as may be reasonably necessary. Insofar as is practicable, the interruption shall be made at a time which will cause least reasonable inconvenience to producers.

(d) The cooperative/utility also reserves the right to discontinue purchase from any producer, without advance notice, when a defective condition of wiring or equipment upon the premises of the producer results, or is likely to result in danger to life or property or interference with proper service to others. Upon becoming aware of any condition resulting in discontinuance of purchase, the cooperative/utility shall immediately take action to notify the affected producer. Electric purchase from the producer will not be resumed until the dangerous condition has been remedied to the satisfaction of the cooperative/utility.

(e) If such dangerous condition is the result of tampering with cooperative/utility equipment, the provisions in 165:40-3-23 shall also apply.

[Source: Amended at 10 Ok Reg 2641, eff 6-25-93]

165:40-3-11. Effect of force majeure

(a) Neither party to a purchase agreement shall be deemed to be in default if failure of performance is due to force majeure, except for the duty to make timely payments when due. The party unable to perform due to force majeure has the duty to notify the other party in writing as soon as practical of the nature and period of delay and shall exercise due diligence to remove the inability to perform, except with respect to settling labor disputes.

(b) If party's failure of performance is due to removable or remediable causes which it fails to remove or remedy with reasonable dispatch, party is not relieved of liability as a result of the force majeure event.

165:40-3-12. Change of occupancy

(a) When a producer elects to terminate purchase, the cooperative/utility is to be notified, either by telephone, if subsequently confirmed in writing, or in writing, as to the proposed effective date of such termination. The cooperative/utility will read the meter(s) as required by the terms and conditions of service.

(b) Leaving an interconnection to vacant premises does not constitute consent by the cooperative/utility for the new occupant of such premises to interconnect or deliver electric energy without making proper application for said purchase.

[Source: Amended at 10 Ok Reg 2641, eff 6-25-93]

165:40-3-13. Discontinuance of electric purchase

(a) The cooperative/utility may discontinue electric purchase from a producer for the reasons set forth below, after written notice stating the reason for such discontinuance has been given to the producer:

- (1) At any time service is discontinued under the terms and conditions of service.
- (2) If the producer refuses to provide cooperative/utility reasonable access to its equipment upon producer's premises.
- (3) Violation of any rule, regulation, or order of the Commission or noncompliance with any applicable federal, state, municipal, or other local laws, rules or regulations.
- (4) Violation of or noncompliance with any approved tariff or these terms and conditions of purchase.
- (5) Failure of the producer to make application for purchase.
- (6) Failure of the producer to make application for electric purchase in the true name of the producer for the purpose of avoiding payment of an unpaid obligation for electric service provided.

(b) The cooperative/utility may discontinue electric purchase from a producer without advance notice for any of the following reasons:

- (1) Existence of a dangerous or defective condition of wiring or equipment on producer's premises.
- (2) Fraudulent use or sale of electricity.
- (3) Tampering with the cooperative/utility's regulating and measuring equipment or other property.

(c) The cooperative/utility may discontinue purchase for nonpayment of a utility bill, net of purchases, in the same manner as for retail electric service.

(d) The fact that the cooperative/utility holds a deposit authorized by the terms and conditions of service will not prevent discontinuance of purchase pursuant to this Section.

(e) As soon as is practicable, after the condition has been remedied for which the producer's purchase was discontinued, the cooperative/utility shall restore purchase; provided, however, where purchase has been discontinued for fraudulent use or sale of electricity or for tampering with the cooperative/utility's regulating and measuring equipment or other property, the cooperative/utility may refuse to restore purchase until ordered to do so by the Commission.

(f) Whenever purchase has been discontinued for fraud or tampering as defined in this Section, the cooperative/utility may charge a reconnection fee of \$5.00 during normal working hours and \$10.00 during other hours, in addition to any charges under the retail terms and conditions of service. The producer must pay, or make arrangements for paying same, before purchase will be reconnected.

(g) Noncancellation of purchase does not waive right to cancel for future breach.

[Source: Amended at 10 Ok Reg 2641, eff 6-25-93]

PART 5 - RETAIL SALES BY COOPERATIVE/UTILITY

165:40-3-20 Exclusive use of cooperative/utility's electric service

165:40-3-21 Resale of the cooperative/utility's electric service

165:40-3-22 Deposits as security for payment of bills

165:40-3-23 Fraudulent use or sale of electricity

165:40-3-20. Exclusive use of cooperative/utility's electric service

The standard retail rate schedules for service, now on file and approved by the Commission, are based on exclusive use of cooperative/utility's service. Purchase under these terms and conditions and applicable purchase rate schedules is not a violation of those rate schedules.

165:40-3-21. Resale of the cooperative/utility's electric service

The producer will not resell the electricity purchased from the cooperative/utility or sell its own electricity to any other party.

165:40-3-22. Deposits as security for payment of bills

Any deposits required as security for payment of bills and any deposit procedures specified in the terms and conditions of service shall not be modified as a result of a purchase agreement.

165:40-3-23. Fraudulent use or sale of electricity

(a) In the event fraudulent use or sale of electricity or evidence of attempting fraudulent use or sale of electricity is discovered, or where the cooperative/utility's regulating or measuring equipment or other property has been tampered with, electric purchase may be discontinued by the cooperative/utility without advance notice to the producer.

(b) Unless otherwise ordered by the Commission, purchase from the producer will not be resumed until such producer shall have paid all bills including:

(1) The charge for the estimated amount of electricity fraudulently consumed or sold.

(2) The cost of replacement or repair of any damaged meter or associated equipment.

(3) The cost of installation of system protection facilities, or of relocation of the meter, if determined necessary by the cooperative/utility.

(4) All reconnection charges.

(c) If it has been shown to the satisfaction of the cooperative/utility that the producer or applicant for purchase had no connection with, or knowledge of, such fraudulent use or sale of electricity or such tampering, electric purchase may be resumed after the condition causing or permitting the fraudulent usage or sale has been corrected and such producer or applicant for purchase has paid for any unmetered service received.

PART 7 - LIABILITY AND RESPONSIBILITY FOR PROPERTY

165:40-3-30 Liability

165:40-3-31 Responsibility for cooperative/utility property

165:40-3-30. Liability

(a) Each party hereto shall indemnify and save the other party harmless from any loss or damage to the facilities of the other party due to the sole negligence of other party; provided however, that the producer shall provide, install, and maintain at his own expense all electrical wiring and apparatus, including any protective equipment, required either by the National Electrical Code and/or the applicable municipal code and with all requirements prescribed by any governmental authority having jurisdiction thereof, and compliance with such duty shall be a condition to liability of the company under this indemnity.

(b) Neither party is liable for revenue loss resulting from interruption or partial interruption of service.

(c) Should the producer dispute the interpretation by the cooperative/utility of the requirements of the National Electrical Code and/or any applicable municipal code, such producer may request the dispute be resolved by the Commission.

(d) The cooperative/utility reserves the right to refuse to connect to any wiring or apparatus which does not meet these requirements, and the cooperative/utility may, without advance notice, discontinue its connection with any producer's wiring or apparatus when a dangerous condition of wiring or equipment upon the premises of the producer is discovered.

[Source: Amended at 10 Ok Reg 2641, eff 6-25-93]

165:40-3-31. Responsibility for cooperative/utility property

(a) Notwithstanding any provisions of this Chapter to the contrary, the producer shall be responsible for all damage to, or loss of, the cooperative/utility's property located upon the producer's premises, unless occasioned by causes beyond the producer's control. The producer shall not authorize anyone to change, remove, or tamper with cooperative/utility's property.

(b) No regulating or measuring equipment or other property or equipment owned by the cooperative/utility, wherever situated, whether upon producer's premises or elsewhere, shall be tampered with or interfered with, either for the purpose of adjustment or otherwise.

SUBCHAPTER 5. INSTALLATION AND PARALLEL OPERATION

PART 1 - PRODUCER'S WIRING AND INTERCONNECTION

- 165:40-5-1 Producer's wiring and apparatus
- 165:40-5-2 Availability of electric interconnection
- 165:40-5-3 Single-phase and three-phase connection
- 165:40-5-4 Point of delivery of electric service
- 165:40-5-5 Meters
- 165:40-5-6 Relocation of meters
- 165:40-5-7 Ownership, design, operations, and maintenance
- 165:40-5-8 Plans and specifications
- 165:40-5-9 Inspections and tests
- 165:40-5-10 Access by cooperative/utility authorized agents
- 165:40-5-11 Disconnect and location of producer facilities

165:40-5-1. Producer's wiring and apparatus

(a) Interconnection agreements between an electric utility and a producer must include provisions which address subsections (b), (c) and (d) below:

(b) All apparatus and electrical wiring connected or to be connected to the cooperative/utility's distribution system point of delivery shall be at the producer's expense, and shall be installed and maintained in accordance with the requirements of the 2014 National Electrical Code, as adopted by the Commission in OAC 165:35, to the extent consistent with law, including state and federal statutes, orders, and regulations, and applicable municipal regulations, and with all requirements prescribed by governmental authority having jurisdiction thereof. In the event of a conflict between the National Electrical Code and an applicable municipal code, the latter shall govern. The cooperative/utility reserves the right to refuse to connect at the point of delivery to any wiring or apparatus which does not meet the requirements in (b) of this Section, and the cooperative/utility may, without advance notice, discontinue purchase from any producer when a defective condition of wiring or equipment upon the premises of the producer is discovered. In the event a producer desires to change the size of his electrical equipment and maintain his status, he shall notify the cooperative/utility in writing sufficiently in advance so that its meter and other equipment may be enlarged to properly handle the increased load or generation.

(c) Power inverter based apparatus utilized in the system to be connected to the cooperative/utility's distribution system point of delivery shall be UL 1741 listed or certified by a nationally recognized testing laboratory as being compliant with Underwriters Laboratory (UL) 1741, 2nd Revision standards before the system is connected to the cooperative/utility's distribution system point of delivery. Proof of this certification must be provided at the producer's expense. The cooperative/utility reserves the right to refuse to connect at the point of delivery to any apparatus which does not meet the requirements in (c) of this Section, and the cooperative/utility may, without advance notice, discontinue connection with any producer when a defective condition of equipment upon the premises of the producer is discovered.

(d) All relevant apparatus utilized in the system to be connected with the cooperative/utility's distribution system point of delivery shall be certified by a nationally recognized testing laboratory as compliant with the Institute of Electrical and Electronics

Engineers (IEEE) 1547 *Standard for Interconnecting Distributed Resources with Electric Power Systems* before the system is connected to the cooperative/utility's distribution system point of delivery. Proof of this certification must be provided at the producer's expense. The cooperative/utility reserves the right to refuse to connect at the point of delivery to any apparatus which does not meet the requirements in (d) of this Section, and the cooperative/utility may, without advance notice, discontinue connection with any producer when a defective condition of equipment upon the premises of the producer is discovered.

(e) Beginning December 31, 2014, and annually thereafter, each utility shall submit a Certification Letter to the Director of the Public Utility Division certifying that as of the date of the Certification Letter, the utility's interconnection agreements meet the requirements in (b), (c) and (d) of this Section, or if the interconnection agreements do not meet the requirements in (b), (c) and (d) the reason therefor.

[Source: Amended at 31 Ok Reg 1065, eff 9-12-2014]

165:40-5-2. Availability of electric interconnection

The type of electric interconnection which will be required of the producer will depend on and must be compatible with the location, size, and type of load to be served as well as the generating equipment and capacity. It is necessary that the producer obtain from the local office of the cooperative/utility the phase and voltage of the interconnection that will be furnished before proceeding with the purchase of generators or other equipment. Also, the point of purchase on the premises must be determined before the producer's wiring installation is made.

165:40-5-3. Single-phase and three-phase connection

(a) Producers shall normally be furnished single-phase or three-phase purchase under the corresponding provisions of electric service.

(b) Generation itself may represent a load, such as for some inductive wind generators. The class of service may be different than it would be without the generator load.

165:40-5-4. Point of delivery of electric service

The point of delivery for purchase shall be the same as the point of delivery for service for consumer/producers or a point similarly determined for producers only.

165:40-5-5. Meters

(a) All purchase meters and detents shall be furnished, installed, and maintained by the cooperative/utility, and remain its property. All meter bases, enclosures, and other associated equipment shall be furnished and owned by the cooperative/utility and maintained by the producer. Producer shall reimburse the cooperative/utility for all furnished meters, bases, and associated equipment.

- (b) No metering equipment shall be bypassed for any reason, without prior approval of the cooperative/utility.
- (c) Location of self-contained installations and instrument transformers shall be governed by the corresponding terms and conditions of service.

165:40-5-6. Relocation of meters

- (a) The cooperative/utility may, at its option and at its expense, relocate any meter.
- (b) In case of a relocation which is made necessary by the producer's conditions or actions, the producer shall, at his expense, relocate the metering equipment and service entrance facilities to a location agreeable to the cooperative/utility and the producer.
- (c) Under no circumstances shall any meter be moved or relocated except as authorized by the cooperative/utility.

165:40-5-7. Ownership, design, operations, and maintenance

- (a) Producer will, except as otherwise noted, design, construct, install, own, operate, and maintain all equipment required to generate and deliver energy and/or capacity specified in this Chapter.
- (b) Producer will further provide all necessary easements, licenses, and other rights to enable cooperative/utility to deliver, purchase, and sell.
- (c) Cooperative/utility may set reasonable requirements for the producer's facilities and equipment.

165:40-5-8. Plans and specifications

- (a) Producer will submit all equipment specifications to cooperative/utility for review prior to interconnection and as part of the application.
- (b) Producer will allow cooperative/utility to make facility description available and public to aid in evaluating performance.

165:40-5-9. Inspections and tests

- (a) The cooperative/utility shall have the right to inspect the producer's electric generating facilities, to be present at initial tests, to measure power factor at any time, to conduct such operating tests as are necessary to ascertain that the protective devices function properly, to review any data collected from such facilities at all reasonable times, and to independently monitor the aforesaid system and related energy regime.
- (b) The producer shall have the right to review and copy, at producer's expense, any data collected by the cooperative/utility.

165:40-5-10. Access by cooperative/utility authorized agents

The producer shall give authorized agents of the cooperative/utility permission to enter the producer's premises at all reasonable times for any purpose incidental to the purchasing of electricity, including tree trimming and tree removal. Refusal on the part of

the producer to provide reasonable access for the above purposes shall be deemed to be sufficient cause for discontinuance of service and/or purchase.

165:40-5-11. Disconnect and location of producer facilities

(a) Producer shall install, own, and maintain a disconnecting device at a location which shall at all times be accessible to cooperative/utility personnel.

(b) The producer shall be responsible for locating and installing all facilities in compliance with applicable laws codes, and regulations, and shall locate all such facilities sufficiently away from utility lines to avoid falling or making contact with utility lines.

PART 3 - COOPERATIVE/UTILITY FACILITIES

165:40-5-20 System extension, reinforcement, and protection facilities

165:40-5-21 Change of facility requirements

165:40-5-20. System extension, reinforcement, and protection facilities

(a) For consumer/producers the cooperative/utility will construct and maintain facilities in accordance with the standard extension policy contained in the terms and conditions of service. Calculations will be made on the estimated load including any generating load. The producer will reimburse the cooperative/utility for all facilities in excess of these amounts as provided for in the retail terms and conditions of service.

(b) Those who only produce electric energy will reimburse the cooperative/utility for all necessary system extension, reinforcement, and protection facilities.

165:40-5-21. Change of facility requirements

(a) The cooperative/utility shall have the right to change transformers and interconnection voltage when necessary.

(b) The producer shall make or bear the cost of changes in interconnection, protection, and reinforcement facilities necessary to meet changing system conditions and requirements.

PART 5 - OPERATING PROCEDURES

165:40-5-30 Reactive power

165:40-5-31 Operation procedure

165:40-5-32 Equipment which adversely affects electric service

165:40-5-30. Reactive power

(a) Producer will generate sufficient reactive power reasonably necessary to meet requirements of the service agreement.

- (b) Cooperative/utility may request new capacity and/or reactive power rating for facility if it is reasonably apparent they are no longer correct.
- (c) To the extent that producer's facility fails to achieve a power factor of at least eighty-five (85%) percent, producer shall pay for var support under the appropriate tariff.

165:40-5-31. Operating procedure

- (a) Producer and cooperative/utility shall develop mutually acceptable operating procedures and employ prudent utility practices.
- (b) Producer will have qualified personnel available to operate the cogeneration or small power production facility for testing at cooperative/utility request.

165:40-5-32. Equipment which adversely affects electric service

- (a) Many types of electric equipment can adversely affect the quality of electric service. This is true of all generating equipment. Close consultation between the producer and the cooperative/utility will be required before such equipment is interconnected and to remedy unsatisfactory operating conditions.
- (b) Producers whose use of or production of electricity is intermittent and subject to violent fluctuations may be served with other electrical loads or by a transformer dedicated solely to that equipment and served as a separate account. Producers contemplating the installation of such equipment must make specific prior arrangements with the cooperative/utility.
- (c) Producers contemplating the installation of electric equipment, whose performances may be adversely affected by voltage fluctuations and distorted 60 Hz. wave forms, must make specific prior arrangements with the cooperative/utility.
- (d) Producers found to be operating electric equipment which produces frequencies that result in interference or generate distorted wave forms into the 60 Hz. electric supply system, which adversely affects the operation of equipment owned by producer or by other consumers of the cooperative/utility or the cooperative/utility's system, shall be required to consult with the cooperative/utility and to eliminate the cause of the interference.
- (e) If it is determined by the cooperative/utility that remedial action is required to correct an adverse effect produced by the producer through use of any equipment causing such adverse effect, the cooperative/utility reserves the right to have the producer install, at the producer's expense, any system protection facilities necessary to reasonably limit such adverse effect.
- (f) In lieu of requesting the producer to install such system protection facilities, the cooperative/utility may, at its option, install additional facilities (which may or may not be dedicated solely to such producer) or other equipment specially designed to reasonably limit such adverse effect. The cost of these facilities will be paid for by the producer.

SUBCHAPTER 7 - STANDARD PURCHASE RATE SCHEDULE FOR POWER PRODUCERS OF 100 KW OR LESS

165:40-7-1 Area affected

| | |
|------------|---|
| 165:40-7-2 | Availability |
| 165:40-7-3 | Purchase option |
| 165:40-7-4 | Purchase rate (firm vs. non-firm) |
| 165:40-7-5 | Purchase rate (summer vs. winter) |
| 165:40-7-6 | Design, operation, and maintenance data |
| 165:40-7-7 | Rights of producer |
| 165:40-7-8 | Modifications |

165:40-7-1. Area affected

Standard purchase rate schedule for power producers of 100 Kw or less is effective in all territories served.

165:40-7-2. Availability

Standard purchase rate schedule for power producers of 100 Kw or less is available to cogenerators or small power producers who:

- (1) Have a maximum rated capacity of 100 KW or less.
- (2) Employ equipment compatible with the particular line segment of the cooperative/utility.
- (3) Sign a purchase agreement with the cooperative/utility.

165:40-7-3. Purchase option

Producer shall have the option of selling gross production of energy from the generating unit, or net production of energy after serving own load.

165:40-7-4. Purchase rate (firm vs. non-firm)

The purchase for firm vs. non-firm power will be set forth in the rate schedule as follows:

- (1) Firm power at _cents per kWh. Contracts may provide that if producer fails to provide firm power, as contracted, the producer shall reimburse the cooperative/utility for the difference between the firm and non-firm rate;
- (2) Non-firm power at _cents per kWh; or
- (3) Purchase rate described in 165:40-7-5.

165:40-7-5. Purchase rate (summer vs. winter)

The purchase rate for summer vs. winter power will be set forth in the rate schedule as follows:

- (1) Winter from _to_ at _cents per kWh.
- (2) Summer from _to_ at _cents per kWh.
- (3) Plus the fuel adjustment as calculated under the Commission order.

165:40-7-6. Design, operation, and maintenance data

In addition to the requirements of the terms and conditions of purchase, the producer shall maintain a diary of the facility including installation date, date and nature of any changes, non-routine maintenance and repair, and date and reason for any extended periods of non-generation, and such other information as is reasonably necessary to evaluate the facility and its potential impact on the cooperative/utility electrical system. The producer shall make such records available to the cooperative/utility and to the Commission.

165:40-7-7. Rights of producer

The producer has the right:

- (1) To generate in parallel with the cooperative/utility in a manner which does not degrade the integrity of the cooperative/utility's system. The cooperative/utility shall make reasonable effort to operationally accommodate the producer's facility.
- (2) To good faith negotiation with the cooperative/utility.
- (3) To bring complaint or dispute to the Commission for mediation, hearing, or other resolution.

165:40-7-8. Modifications

The purchase agreement, purchase rate schedules, and conditions of purchase may be changed from time to time as approved by the Commission. The purchase rates will change as additional information becomes available on avoided costs, reliability of technologies, and other pertinent factors.

SUBCHAPTER 9 - OPTIONAL NET ENERGY BILLING PURCHASE RATE

- 165:40-9-1 Area affected
- 165:40-9-2 Availability
- 165:40-9-3 Purchase rate

165:40-9-1. Area affected

Optional net energy billing purchase rate is effective in all territories served.

165:40-9-2. Availability

Optional net energy billing purchase rate is available to cogenerators or small power producers who:

- (1) Have an annual energy output of 25,000 kWh or less. In the case of a wind power producer, the estimated annual energy output of 25,000 kWh or less shall be determined using the American Wind Energy Association (AWEA) Annual Energy output formula (AWEA standard 1.1-1985, Section IV, paragraph 2) and a wind speed of 12 miles per hour.

- (2) Employ equipment compatible with the particular line segment of the cooperative/utility.
- (3) Sign a purchase agreement with the cooperative/utility.

165:40-9-3. Purchase rate

(a) For power produced in excess of on-site requirements, the producer will be compensated by the retail purchase meter running in reverse. The cooperative/utility shall bill the producer for the excess of energy supplied by the cooperative/utility over and above the energy supplied by the producer during each billing period according to the cooperative/utility's applicable retail rate schedule.

(b) When the energy supplied by the producer exceeds the energy supplied by the cooperative/utility during a billing period, the monthly charge and/or minimum bill of the retail rate schedule shall be billed by the cooperative/utility; the excess energy shall be provided at no charge to the cooperative/utility.

SUBCHAPTER 11 - METHOD OF CALCULATING PURCHASE RATES FOR THE STANDARD RATE SCHEDULE

165:40-11-1 Costs

165:40-11-2 Firm power purchase rates

165:40-11-3 Non-firm purchase rates

165:40-11-4 Seasonal purchase rates

165:40-11-1. Costs

All costs in calculating purchase rates for the standard rate schedule are in current dollars and shall be updated annually.

165:40-11-2. Firm power purchase rates

Annual firm power purchase rates will be calculated by the following method:

(1) The purchase rate (PR) will be equal to the sum of the capacity component (CC), the energy component (EC), and the fuel adjustment component (FA); thus, the equation being $PR = CC + EC + FA$.

(2) The initial capacity component (CC) will be equal to the average annual cost of the next unit of capacity or the next unit of capacity of the wholesale power supplier per kWh (CAP/KWH); thus, the equation being $CC = CAP/KWH$. The next unit of capacity may be equal to the average annual cost of a purchased power contract.

(3) In turn, the average annual cost of the next unit (CAP/KWH) is equal to the product of the initial total capital investment per KW (CI/KW) times annual carrying, fixed operation, and fixed maintenance and administrative expense per dollar of investment (ACI/CI) divided by the product of the hours in the year times the capacity utilization ratio. The initial capacity utilization ratio will be .60., resulting in $(CI/KW \times ACI/CI)/(8760 \times .60)$.

(4) The energy component (EC) shall equal the current average cost per kWh of fuel embedded in the base retail rates or the fuel imbedded in the base wholesale rates of the wholesale power supplier(s) (ER), and shall be changed if the base rate amounts change; plus, an amount equal to average variable generation operations and maintenance expense (OM) per kWh; plus, the savings in line loss. The savings will be calculated as five percent (5%) of energy charges, resulting in equation of $EC = ER + .05ER + OM$.

(5) The fuel adjustment component (FA) for each month shall be the current month's retail fuel adjustment for investor owned utilities or the current month's fuel adjustment of the wholesale power supplier(s) for distribution cooperatives.

(6) Firm power means energy delivered to the cooperative/utility with at least a sixty-five percent (65%) on-peak season capacity factor. The on-peak season is those hours specified as peak period in the cooperative/utility's retail tariffs or in the tariff of the wholesale power supplier. If not specified in either the retail or wholesale supplier tariffs, the on-peak season shall be 4:00 p.m. to 8:00 p.m., June through September.

165:40-11-3. Non-firm purchase rates

Non-firm power purchase rates shall be calculated as the energy component (EC) plus the fuel adjustment component as for firm power purchases. No capacity component shall be applied for non-firm power.

165:40-11-4. Seasonal purchase rated

Seasonal buy-back (purchase) rates may be selected in lieu of annual rates at the cooperative/utility's option if there are seasonal rates for standard retail service. If selected, the seasonal rates will be calculated as follows: the sum of the months in effect for each period times the rate for each period must equal twelve months times the annual rate, and the difference between the summer and winter rates for purchase must be the same as the difference between rates for service at the standard residential service rates. The following formula will calculate the summer purchase rate (SPR):

$$(SMO)(SPR) + (12 - SMO)(SPR - (SSR - WSR)) = 12(APR)$$

Where SPR = Summer purchase rate

SMO = Months summer service rate in effect

SSR = Summer service rate

WSR = Winter service rate

APR = Annual purchase rate