

§ 62-156. Power sales by small power producers to public utilities.

(a) In the event that a small power producer and an electric public utility are unable to mutually agree to a contract for the sale of electricity or to a price for the electricity purchased by the electric public utility, the Commission shall require the electric public utility to purchase the power, under rates and terms established as provided in subsection (b) or (c) of this section.

(b) At least every two years, the Commission shall determine the standard contract avoided cost rates to be included within the tariffs of each electric public utility and paid by electric public utilities for power purchased from small power producers, according to the following standards:

- (1) Standard Contract for Small Power Producers up to 1,000 kilowatts (kW). – The Commission shall approve a standard offer power purchase agreement to be used by the electric public utility in purchasing energy and capacity from small power producers subject to this subsection. Long-term contracts up to 10 years for the purchase of electricity by the electric public utility from small power producers with a design capacity up to and including 1,000 kilowatts (kW) shall be encouraged in order to enhance the economic feasibility of these small power production facilities; provided, however, that when an electric public utility, pursuant to this subsection, has entered into power purchase agreements with small power producers from facilities (i) in the aggregate capacity of 100 megawatts (MW) or more and (ii) which established a legally enforceable obligation after November 15, 2016, the eligibility threshold for that utility's standard offer shall be reduced to 100 kilowatts (kW).
- (2) Avoided Cost of Energy to the Utility. – The rates paid by an electric public utility to a small power producer for energy shall not exceed, over the term of the purchase power contract, the incremental cost to the electric public utility of the electric energy which, but for the purchase from a small power producer, the utility would generate or purchase from another source. A determination of the avoided energy costs to the utility shall include a consideration of the following factors over the term of the power contracts: the expected costs of the additional or existing generating capacity which could be displaced, the expected cost of fuel and other operating expenses of electric energy production which a utility would otherwise incur in generating or purchasing power from another source, and the expected security of the supply of fuel for the utilities' alternative power sources.
- (3) Availability and Reliability of Power. – The rates to be paid by electric public utilities for capacity purchased from a small power producer shall be established with consideration of the reliability and availability of the power. A future capacity need shall only be avoided in a year where the utility's most recent biennial integrated resource plan filed with the Commission pursuant to G.S. 62-110.1(c) has identified a projected capacity need to serve system load and the identified need can be met by the type of small power producer resource based upon its availability and reliability of power, other than for (i) swine or poultry waste for which a need is established consistent with G.S. 62-133.8(e) and (f) and (ii) hydropower small power producers with power purchase agreements with an electric public utility in effect as of July 27, 2017, and the renewal of such a power purchase agreement, if the hydroelectric small power producer's facility total capacity is equal to or less than five megawatts (MW).

(c) Rates to be paid by electric public utilities to small power producers not eligible for the utility's standard contract pursuant to subsection (b) of this section shall be established

through good-faith negotiations between the utility and small power producer, subject to the Commission's oversight as required by law. In establishing rates for purchases from such small power producers, the utility shall design rates consistent with the most recent Commission-approved avoided cost methodology for a fixed five-year term. Rates for such purchases shall take into account factors related to the individual characteristics of the small power producer, as well as the factors identified in subdivisions (2) and (3) of subsection (b) of this section. Notwithstanding this subsection, small power producers that produce electric energy primarily by the use of any of the following renewable energy resources may negotiate for a fixed-term contract that exceeds five years: (i) swine or poultry waste; (ii) hydropower, if the hydroelectric power facility total capacity is equal to or less than five megawatts (MW); or (iii) landfill gas, manure digester gas, agricultural waste digester gas, sewage digester gas, or sewer sludge digester gas.

(d) Notwithstanding any other provision of this section, an electric public utility shall not be required to enter into a contract with or purchase power from a small power producer if the electric public utility's obligation to purchase from such small power producers has been terminated pursuant to 18 C.F.R. § 292.309. (1979, 2nd Sess., c. 1219, s. 2; 2017-192, s. 1(b); 2019-132, s. 3(a).)