

§ 292.307

interconnection costs, which may include reimbursement over a reasonable period of time.

§ 292.307 System emergencies.

(a) *Qualifying facility 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.

§ 292.308 Standards for operating reliability.

Any State regulatory authority (with respect to any electric utility over which it has ratemaking authority) or nonregulated electric utility may establish reasonable standards to ensure system safety and reliability of interconnected operations. Such standards may be recommended by any electric utility, any qualifying facility, or any other person. If any State regulatory authority (with respect to any electric utility over which it has ratemaking authority) or nonregulated electric utility establishes such standards, it shall specify the need for such standards on the basis of system safety and reliability.

§ 292.309 Termination of obligation to purchase from qualifying facilities.

(a) After August 8, 2005, an electric utility shall not be required, under this part, to enter into a new contract or obligation to purchase electric energy from a qualifying cogeneration facility or a qualifying small power production facility if the Commission finds that the qualifying cogeneration facility or qualifying small power facility production has nondiscriminatory access to:

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(1)(i) Independently administered, auction-based day ahead and real time wholesale markets for the sale of electric energy; and

(ii) Wholesale markets for long-term sales of capacity and electric energy; or

(2)(i) Transmission and interconnection services that are provided by a Commission-approved regional transmission entity and administered pursuant to an open access transmission tariff that affords nondiscriminatory treatment to all customers; and

(ii) Competitive wholesale markets that provide a meaningful opportunity to sell capacity, including long-term and short-term sales, and electric energy, including long-term, short-term and real-time sales, to buyers other than the utility to which the qualifying facility is interconnected. In determining whether a meaningful opportunity to sell exists, the Commission shall consider, among other factors, evidence of transactions within the relevant market; or

(3) Wholesale markets for the sale of capacity and electric energy that are, at a minimum, of comparable competitive quality as markets described in paragraphs (a)(1) and (a)(2) of this section.

(b) For purposes of § 292.309(a), a renewal of a contract that expires by its own terms is a “new contract or obligation” without a continuing obligation to purchase under an expired contract.

(c) For purposes of § 292.309(a)(1), (2) and (3), with the exception of paragraph (d) of this section, there is a rebuttable presumption that a qualifying facility has nondiscriminatory access to the market if it is eligible for service under a Commission-approved open access transmission tariff or Commission-filed reciprocity tariff, and Commission-approved interconnection rules. If the Commission determines that a market meets the criteria of § 292.309(a)(1), (2) or (3), and if a qualifying facility in the relevant market is eligible for service under a Commission-approved open access transmission tariff or Commission-filed reciprocity tariff, a qualifying facility may seek to rebut the presumption of access to the market by demonstrating, *inter alia*,