

DEPARTMENT OF BUDGET AND FINANCE

Amendment and Compilation of Chapter 6-74

Hawaii Administrative Rules

March 20, 1998

SUMMARY

1. '6-74-1 is amended.
2. "6-74-3 to 6-74-6 are amended.
3. "6-74-8 to 6-74-11 are amended.
4. "6-74-12 to 6-74-14 are added.
5. '6-74-15 is amended.
6. "6-74-17 to 6-74-26 are amended.
7. "6-74-29 to 6-74-31 are added.
8. Chapter 74 is compiled.

HAWAII ADMINISTRATIVE RULES

TITLE 6

DEPARTMENT OF BUDGET AND FINANCE

CHAPTER 74

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AND COGENERATION

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SUBCHAPTER 1

GENERAL PROVISIONS

'6-74-1 Definitions. As used in this chapter, unless the context clearly requires otherwise:

'6-74-1

"Avoided costs" means the incremental or additional costs to an electric utility of electric energy or firm capacity or both which costs the utility would avoid by purchase from the qualifying facility.

"Avoided energy costs" means the energy costs consisting of cost of fuel and generation operating and maintenance costs as a minimum with fuel inventory, working cash, line loss costs considered when presented in a specific proposal from a qualifying facility to the electric utility.

"Back-up power" means electric energy or capacity supplied by an electric utility to replace energy ordinarily generated by a facility's own generation equipment during an unscheduled outage of the facility.

"Commission" means the public utilities commission of the State.

"Electric generating capacity" means the generating capacity of the qualifying facility as determined from the sum of the nameplate capacities on all electric generators installed at the qualifying facility.

"Emergency capacity" means capacity requested by and made available to an electric utility under utility dispatch by a qualifying facility, above and beyond the firm capacity agreed to.

"FERC" means the United States Federal Energy Regulatory Commission.

"Firm capacity" means the scheduled amounts of capacity in kilowatts (kw) which a qualifying facility has a legally enforceable obligation to make available to an electric utility under utility dispatch within particular time periods, and which the electric utility

agrees to accept.

"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

'6-74-1

interconnected operations with a qualifying facility, to the extent such costs are in excess of the corresponding costs which the electric utility would have incurred if it had not engaged in interconnected operations, but instead generated an equivalent amount of electric energy itself or purchased an equivalent amount of electric energy or capacity from other sources. Interconnection costs do not include any costs included in the calculation of avoided costs.

"Legally enforceable obligation" means a binding contract for purchase, which has been approved by the commission.

"Minimum purchase rate" means the avoided energy costs determined in accordance with this chapter as in effect on the date that a legally enforceable obligation between the qualifying facility and utility becomes effective and the rate shall remain constant thereafter for the period of the contract. Where there is no contract in excess of one year, the minimum purchase rate shall be one hundred per cent of the avoided energy costs in effect on the date the qualifying facility delivers energy to the utility.

"Purchase" means the purchase of electric energy or capacity or both from a qualifying facility by an electric utility.

"Qualifying facility" means a cogeneration facility or a small power production facility which is a qualifying facility under '6-74-4 and subpart 2 of the regulations of the FERC regarding qualifying cogeneration and small power production facilities, 18 C.F.R. Part 292.

"Rate" means any price, rate, charge, or classification made, demanded, observed, or received with respect to the sale or purchase of electric energy or capacity, or any rule or practice respecting that rate, charge, or classification, or any contract pertaining to the sale or purchase of electric energy or capacity.

"Sale" means the sale of electric energy or capacity or both by an electric utility to a qualifying facility.

"State" means the State of Hawaii.

'6-74-3

"Supplementary power" means electric energy or capacity supplied by an electric utility, regularly used by a qualifying facility in addition to that which the facility generates itself.

"System emergency" means a condition on a utility's system which is likely to result in imminent significant disruption of service to customers or is imminently likely to endanger life or property.

"Utility dispatch" means the sole and absolute right of the electric utility, through supervisory equipment or otherwise, to control, from moment to moment, within the limits of sound engineering practices, the rate of delivery of energy, firm capacity and emergency capacity offered by a qualifying facility and accepted by the electric utility. [Eff 2/18/82; am and comp 5/2/85; am and comp] (Auth: HRS '269-6) (Imp: HRS '269-27.2)

SUBCHAPTER 2

QUALIFYING COGENERATION AND SMALL POWER PRODUCTION FACILITIES

'6-74-2 Scope. This subchapter applies to the criteria for and manner of becoming a qualifying small power production facility and a qualifying cogeneration facility. [Eff 2/18/82; am and comp 5/2/85; comp] (Auth: HRS '269-6) (Imp: HRS '269-27.2)

'6-74-3 Definitions. As used in this chapter, unless the context clearly requires otherwise:

"Biomass" means any organic material not derived from fossil fuels.

'6-74-3

"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 production of electric energy.

"Cogeneration facility" means equipment used to produce electric energy and forms of useful thermal energy (heat or steam), used for industrial, commercial, heating, or cooling purposes, through the sequential use of energy.

"Electric utility holding company" means a holding company defined in '2(a)(7) of the Public Utility Holding Company Act of 1935, 15 U.S.C. '79b(a)(7), which owns one or more electric utility companies, as defined in '2(a)(3) of that Act, 15 U.S.C. '79b(a)(3), but does not include any holding company which is exempt by rule or order adopted or issued pursuant to "3(a)(3) or 3(a)(5) of the Public Utility Holding Company Act of 1935, 15 U.S.C. '79c(a)(3) or '79c(a)(5).

"Natural gas" means either natural gas unmixed, or any mixture of natural gas and artificial gas not derived from oil.

"Oil" means crude oil, residual fuel oil, natural gas liquids, or refined petroleum products, including any gas derived therefrom.

"Supplementary firing" means an energy input to the cogeneration facility used only in the facility, or only in the electric energy generating process of a bottoming-cycle

cogeneration facility.

"Topping-cycle cogeneration facility" means a cogeneration facility in which the energy input to the facility is first used to produce useful power output to produce electricity, and the reject heat from power production is then used to provide useful thermal energy.

"Total energy input" means the total energy of all forms supplied from external sources.

"Total energy output" of a topping-cycle cogeneration facility is the sum of the useful power output and useful thermal energy output.

'6-74-5

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

"Useful thermal energy output" of a topping cycle cogeneration facility means the thermal energy made available for use in any industrial or commercial process, or used in any heating or cooling application.

"Waste" means by-product materials other than biomass. [Eff 2/18/82; am and comp 5/2/85; am and comp] (Auth: HRS '269-6) (Imp: HRS '269-27.2)

'6-74-4 General requirements for qualification. (a) A small power production facility is a qualifying facility if it meets the:

- (1) Maximum size criteria specified in '6 74 5(a);
- (2) Fuel use criteria specified in '6-74-5(b); and
- (3) Ownership criteria specified in '6-74-7.

(b) A cogeneration facility is a qualifying facility if it meets:

(1) Any applicable operating and efficiency standards specified in '6-74-6(a), (b), (c), and (d); and

(2) The ownership criteria specified in '6-73-7.

(c) For purposes of qualification of a cogeneration facility for exemption from incremental pricing, a cogeneration facility must qualify under '6-74-6(c). [Eff 2/18/82; am and comp 5/2/85; am and comp] (Auth: HRS '269-6) (Imp: HRS '269-27.2)

'6-74-5 Criteria for qualifying small power production facilities. (a) The electric power

'6-74-5

production capacity of the facility for which qualification is sought, together with the capacity of any other facilities which use the same energy resource, shall be:

- (1) Owned by the same person;
- (2) Located at the same site; and
- (3) Eighty megawatts or less.

(b) For purposes of subsection (a), facilities are considered to be located at the same site as the facility for which qualification is sought if they are located within one mile of the facility for which qualification is sought and, for hydroelectric facilities, if they use water from the same impoundment for electric power generation.

(c) For purposes of making the determination in subsection (b), the distance between facilities shall be measured from the electrical generating equipment of a facility.

(d) The commission may modify the application for subsections (a), (b), and (c) for good cause.

(e) The primary energy source of the facility shall be biomass, waste, renewable resources, solar, wind, geothermal, or any combination thereof, and more than seventy-five per cent of the total energy input shall be from these sources.

(1) Any primary energy source which, on the basis of its energy content, is fifty per cent or more biomass, shall be considered biomass.

(2) Use of oil, natural gas, and coal by a facility may not, in the aggregate, exceed twenty-five per cent of the total energy input of the facility during any calendar year period. [Eff 2/18/82; am and comp 5/2/85; am and comp] (Auth: HRS '269-6) (Imp: HRS '269-27.2)

'6-74-6 Criteria for qualifying cogeneration facilities. (a) For any topping-cycle cogeneration

'6-74-6

facility, the useful thermal energy output of the facility during any calendar year period, shall be not less than five per cent of the total energy output.

(b) For any topping-cycle cogeneration facility for which any of the energy input 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 the useful thermal energy output, during any calendar year period, shall:

(1) Subject to paragraph (2), be not less than 42.5 per cent of the total energy input of natural gas and oil to the facility; or

(2) If the useful thermal energy output is less than fifteen per cent of the total energy output of the facility, be not less than forty-five per cent of the total energy input of natural gas and oil to the facility.

(c) For any topping-cycle cogeneration facility not subject to subsection (b), there is no

efficiency standard.

(d) 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 during any calendar year period, shall be not less than forty-five per cent of the energy input of natural gas and oil for supplementary firing. For all other bottoming-cycle cogeneration facilities, there is no efficiency standard.

(e) The commission may waive any of the requirements of this section upon a showing that the facility will produce significant energy savings.

[Eff 2/18/82; am and comp 5/2/85; am and

comp] (Auth: HRS '269-6) (Imp: HRS '269-27.2)

'6-74-7

'6-74-7 Ownership criteria. (a) A cogeneration facility or small power production facility shall 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) 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 per cent of the equity interest in the facility is held by an electric utility or utilities, or by an electric utility holding company or companies, or any combination thereof. If a wholly or partially owned subsidiary of an electric utility or electric utility holding company has an ownership interest of a facility, the subsidiary's ownership interest shall be considered as ownership by an electric utility or electric utility holding company. [Eff 2/18/82; am and comp 5/2/85; comp] (Auth: HRS '269-6) (Imp: HRS '269-27.2)

'6-74-8 Qualification status. (a) A small power production facility or cogeneration facility which meets the criteria for qualification set forth in '6-74-4 is a qualifying facility.

(b) The owner or operator of any facility qualifying under this section shall furnish notice to the FERC, commission, any electric utility located on the same island as the qualifying facility, and to any other electric utility to which the qualifying facility proposes to supply energy, or capacity, or both providing the information set forth in '6 74 9(b), (c), and (d).

(c) The approval granted to a qualifying facility is to the facility and not the owner or operator. The purchase of all or part of the qualifying facility output by an operator for internal use does not void the qualifying facility status.

'6-74-9

[Eff 2/18/82; am and comp 5/2/85; am and comp
HRS '269-27.2)

] (Auth: HRS '269-6) (Imp:

'6-74-9 Optional procedure for obtaining qualification status. (a) Pursuant to the provisions of this section, the owner or operator of the facility or any electric utility may file with the commission an application for commission determination of the qualifying status of a facility; provided that any grant or denial by the FERC of an application to the FERC for certification that the facility is a qualifying facility shall control, and the commission shall not determine a facility's qualifying status if an application for FERC certification of that facility is pending at the time of application under this paragraph or has been granted or denied by the FERC.

(b) The application shall contain the following information:

- (1) The name and address of the applicant and location of the facility;
- (2) A brief description of the facility, including a statement indicating whether the facility is a small power production facility or a cogeneration facility;
- (3) The primary energy source used or to be used by the facility;
- (4) The power production capacity of the facility; and
- (5) The percentage of ownership by any electric utility or by any electric utility holding company, or by any person owned by either.

(c) An application by a small power producer for commission determination of qualifying status shall contain the following additional information:

- (1) The location of the facility in relation to any other small power production facilities

'6-74-9

located within one mile of the facility, owned by the applicant which uses the same energy source; and

- (2) Information identifying any planned usage of gas, oil, or coal.

(d) An application by a cogenerator for commission determination of qualifying status shall contain the following additional information:

- (1) 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 under '6-74-6 will be met; and

- (2) The date on which installation of the facility began, or will begin.

(e) Within ninety days of the filing of an application, the commission shall issue an order determining the qualifying status of the facility or setting the matter for hearing. Any order determining that the facility is not a qualifying facility shall identify the specific requirements which were not met. If no order is issued within ninety days of the filing of the complete application, the facility shall be deemed a qualifying facility.

(f) Applications for determination of a facility's qualifying status filed under this section shall be served on any electric utility located on the same island as the facility and any other electric utility to which the qualifying facility proposes to supply energy, or capacity, or both. Any person desiring to be heard or objecting to the granting of qualifying status shall file a petition to intervene or protest with the commission in accordance with the applicable provisions of chapter 6-61. [Eff 2/18/82; am and comp 5/2/85; am and comp] (Auth: HRS '269-6) (Imp: HRS '269-27.2)

'6-74-10 Notice requirements for facilities of five hundred kw or more. An electric utility is not

'6-74-14

required to purchase electric energy from a facility with a design capacity of five hundred kw or more until ninety days after the facility notifies the utility pursuant to this section that it is a qualifying facility, or ninety days after the facility has applied to the commission under '6-74-9 or the FERC under FERC rules regarding qualifying cogeneration and small power production facilities, 18 C.F.R. Part 292. [Eff 2/18/82; am and comp 5/2/85; am and comp] (Auth: HRS '269-6) (Imp: HRS '269-27.2)

'6-74-11 Revocation of qualifying status. (a) The commission may revoke its determination of the qualifying status of a qualifying facility if the facility fails to comply with any of the statements contained in its application to the commission pursuant to '6-74-9.

(b) Prior to undertaking any substantial alteration or modification of a qualifying facility which has been determined to be a qualifying facility under '6-74-8 or 6-74-9, a small

power producer or cogenerator or any electric utility may apply to the commission for a determination that the proposed alteration or modification will not result in a revocation of a qualifying status.

[Eff 2/18/82; am and comp 5/2/85; am and

comp] (Auth: HRS '269-6) (Imp: HRS '269-27.2)

'6-74-12 to 14 (Reserved)

'6-74-15

SUBCHAPTER 3

ARRANGEMENTS BETWEEN ELECTRIC UTILITIES AND
QUALIFYING COGENERATION AND SMALL POWER
PRODUCTION FACILITIES UNDER SECTION 210
OF THE PUBLIC UTILITY REGULATORY
POLICIES ACT OF 1978, 16 USC '824A-3

'6-74-15 Scope. (a) This subchapter applies to the regulation of sales and purchases between qualifying facilities and electric utilities in the State.

(b) Nothing in this subchapter:

(1) Prohibits an electric utility or any qualifying facility to agree to a rate for any purchase, or terms or conditions relating to any purchase, which differ from the rate or terms or conditions which would otherwise be required by this subchapter; or

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

(c) If the electric utility and qualifying facility fail to reach an agreement on the rate or terms of purchase within seventy-five days after the qualifying facility first offers to sell energy or capacity to the electric utility, the electric utility, within fourteen days, shall submit a petition to the commission requesting a hearing on the matter. If the electric utility fails to submit the petition within the prescribed time period, the qualifying facility may petition the commission for a hearing on the matter. Upon the application of the electric utility or the qualifying facility and for good cause, the commission may waive or modify the time periods prescribed in this subsection.

(d) To constitute an offer to sell within the meaning of subsection (c), the offer must be bona fide, in writing, and contain specific prices and

'6-74-17

specific terms and conditions of all essential elements generally found in power purchase contracts. The electric utility, upon request, shall furnish to the qualifying facility a list of the elements, the specific terms and conditions of which the electric utility considers essential to be included in the offer to sell.

(e) When a petition is filed pursuant to subsection (c), the commission may:

(1) Dismiss the petition, if it finds that the qualifying facility's offer is incomplete in any material respect;

(2) Resolve the differences between the parties; or

(3) Provide such directions, instructions, or rulings as appropriate, and order the parties to resume negotiations.

(f) The commission shall decide on the petition filed pursuant to subsection (c) within 120 days of the filing of the petition; provided that the commission, for good cause, may modify the time limit. [Eff 2/18/82; am and comp 5/2/85; am and

comp] (Auth: HRS '269-6) (Imp: HRS '269-27.2)

'6-74-16 Availability of electric utility system cost data; applicability. Section 6-74-17 applies to each electric utility, if the total sales of electric energy by the utility for purposes other than resale exceeded five hundred million kilowatt-hours during any calendar year. [Eff 2/18/82; am and comp 5/2/85; comp] (Auth: HRS '269-6) (Imp: HRS '269-27.2)

'6-74-17 Availability of electric utility system cost data; general rule. (a) To make available data from which avoided costs may be derived, not later than June 30, 1982, and not less often than every two

'6-74-17

years thereafter, each regulated electric utility described in '6-74-16 shall provide to the commission, and shall maintain for public inspection at its administrative office the following data:

(1) The estimated avoided cost of the electric utility's system, solely with respect to the energy component, for various levels of purchases from qualifying facilities. Such levels of purchases shall be stated in blocks of not more than one hundred megawatts, for systems with peak demand of one thousand megawatts or more, and in blocks, equivalent to not more than ten per cent of the system peak demand, for systems with peak demand of less than one thousand megawatts. The avoided costs shall be stated on a cents per kilowatt-hour basis, during daily peak and off-peak periods, by year, for the current calendar year and each of the next five years. The utility shall specify whether the costs are current costs or projected costs;

(2) The electric utility's plan for the addition of capacity or load management facilities, or both by amount and type, for purchases of firm, and for capacity retirements for each year during the succeeding ten years; and

(3) The estimated capacity or load management facilities or both 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 operating at its most efficient point, expressed in cents per kilowatt hour. These costs shall be expressed in terms of individual generating units and of individual planned firm purchases. The utility shall specify whether costs are current costs or projected costs.

'6-74-18

(b) Each electric utility shall submit avoided energy costs consisting of cost of fuel, which shall be computed based on the latest composite fuel price stated in cents per million BTU multiplied by the heat rate per million BTU per net kilowatt hour. The subtotal is then adjusted for the power factor adjustment in cents per net kilowatt hours plus the generation operating and maintenance costs in cents per net kilowatt hour multiplied by the hour-weighting factor for on-peak and off-peak periods. The heat rate, power factor adjustment and generation operating and maintenance costs shall be derived from the electric utility's last rate increase approval by the commission.

(c) The data required to be provided by this section shall not, in itself, determine any rate for purchase under '6-74-22, except for the purpose of establishing the minimum purchase rate. All of the factors set forth in '6-74-23 shall be considered in determining any rate for purchase. [Eff 2/18/82; am and comp 5/2/85; am and comp]
(Auth: HRS '269-6) (Imp: HRS '269-27.2)

'6-74-18 Availability of electric utility system cost data; special rule for small electric utilities. (a) Each electric utility shall:

(1) Provide comparable data to that required under '6-74-17 as is reasonably available to enable qualifying facilities to estimate the electric utility's avoided costs for periods described in '6 74-17;

(2) With regard to an electric utility which is legally obligated to obtain all its requirements for electric energy and capacity from another electric utility, provide the data of its supplying utility and the rates at which it currently purchases such energy and capacity; and

'6-74-18

(3) Submit comparable data as required under '6 74-17, when the electric utility files an application for increase, particularly with respect to the calculation of avoided energy costs, to enable qualifying facilities to estimate the electric utility's avoided costs for the periods described in '6-74-17.

(b) If any such electric utility fails to provide information required in subsection (a) within one hundred twenty days of a request, the qualifying facility may apply to the commission for an order requiring that the information be provided. If, after receiving such a request for data, the electric utility applies for commission determination of the qualifying status of the facility pursuant to '6-74-8, the time for providing such information shall be suspended until the commission determines such status. [Eff 2/18/82; am and comp 5/2/85; am and

comp] (Auth: HRS '269-6) (Imp: HRS '269-27.2)

'6-74-19 Availability of electric utility system cost data; substitution of alternative

method. After public notice in the area served by the electric utility, and after opportunity for public comment, the commission may require data different than those which are otherwise required by "6-74-17 and 6-74-18 if it determines that avoided costs can be derived from that data. [Eff 2/18/82; am and comp 5/2/85; am and

comp] (Auth: HRS '269-6) (Imp: HRS '269-27.2)

'6-74-20 Availability of electric utility system cost data; PUC commission review. (a) Any data submitted by an electric utility under "6 74-17 to 6 74-19 shall be subject to review by the commission.

'6-74-21

(b) In any such review, the electric utility has the burden of coming forward with justification for its data. [Eff 2/18/82; am and comp 5/2/85; am and comp] (Auth: HRS '269-6) (Imp: HRS '269-27.2)

'6-74-21 Electric utility obligations under this subchapter. (a) Subject to the qualifications set forth in this chapter, each electric utility shall purchase, in accordance with "6-74-22 to 6 74 24, any energy and capacity which is made available from a qualifying facility:

(1) Directly to the electric utility; or

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

(b) Each electric utility shall sell to any qualifying facility, in accordance with '6 74 25,

any energy and capacity requested by the qualifying facility.

(c) Any electric utility shall make any interconnection with any qualifying facility as may be necessary to accomplish purchases or sales under this subchapter. The obligation to pay for any interconnection costs shall be determined in accordance with '6-74-26. However, no electric utility is required to interconnect with any qualifying facility if, solely by reason for purchases or sales over the interconnection, the electric utility would become subject to regulation as a public utility under part II of the Federal Power Act, 16 USC '791a.

(d) If a qualifying facility agrees, an electric utility which would otherwise be obligated to purchase energy or capacity from the qualifying facility may transmit the energy or capacity to any other electric utility. Any electric utility to which the energy or capacity is transmitted shall purchase the energy or capacity under this subchapter as if the qualifying facility were supplying energy or capacity directly to

'6-74-21

that electric utility. The rate for purchase by the electric utility to which the energy is transmitted shall be adjusted up or down to reflect line losses pursuant to '6-74-23(4) and shall not include any charges for transmission.

(e) 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 [section] '6 74-28. [Eff 2/18/82; am and comp 5/2/85; am and comp] (Auth: HRS '269-6) (Imp: HRS '269-27.2)

'6-74-22 Rates for purchases. (a) Rates for purchases shall:

(1) Be just and reasonable to the electric consumer of the electric utility and in the public interest;

(2) Not discriminate against qualifying cogeneration and small power production

facilities; and

(3) Be not less than one hundred per cent of avoided cost for energy and capacity purchases to be determined as provided in '6-74-23 from qualifying facilities and not less than the minimum purchase rate.

(b) There shall be placed into effect with respect to each electric utility, standard rates for purchases from qualifying facilities with a design capacity of one hundred kilowatts or less. The standard rates for purchases under this subsection:

(1) Shall be consistent with subsection (a) and '6-74-23; and

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

(c) Each qualifying facility shall have the option either:

'6-74-22

(1) To provide energy as the qualifying facility determines that energy to be available for those purchases, in which case the rates for such purchases shall be based on the purchasing utility's avoided energy costs calculated at the time of delivery, determined after consideration of the factors set forth in '6-74-23; 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 those purchases, at the option of the qualifying facility exercised prior to the beginning of the specified term, shall be based on either:

(A) The avoided costs calculated at the time of delivery, determined after consideration of the factors set forth in '6-74-23; or

(B) The avoided costs calculated at the time the obligation is incurred, determined after consideration of the factors set forth in '6 74 23.

As used in this subsection:

"Calculated at the time of delivery" means calculated using the basic projections and assumptions used to develop the system cost data provided by an electric utility pursuant to '6-74-17 and 6 74 18 most closely preceding the actual time of delivery; and

"Calculated at the time the obligation is incurred" means calculated using the basic projections and assumptions used to develop the system cost data provided by an electric utility pursuant to "6 74-17 and 6-74-18 most closely preceding the effective date of any legally enforceable obligation for purchase. [Eff 2/18/82; am and comp 5/2/85; am and

comp] (Auth: HRS '269-6) (Imp: HRS '269-27.2)

'6-74-23

'6-74-23 Factors affecting rates for purchase. In determining avoided costs for a specific proposal from a qualifying facility, with or without a legally enforceable obligation, the following factors, to the extent practicable, shall be taken into account:

- (1) The data provided pursuant to "6 74 17 to 6-74-19, including the commission 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 and any contract or other legally enforceable obligation, including the duration of the obligation, termination notice requirement and sanctions for non compliance;
 - (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 extent to which the capacity or energy will be available.

(3) The relationship of the availability of energy or capacity from the qualifying facility as derived in paragraph (2), to the ability of the electric utility to avoid

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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 generated an equivalent amount of energy itself or purchased an equivalent amount of electric energy or capacity. [Eff 2/18/82; am and comp 5/2/85; am and comp] (Auth: HRS '269-6) (Imp: HRS '269-27.2)

'6-74-24 Periods during which purchases not required. (a) Any electric utility which gives notice pursuant to subsection (b) shall not be required to purchase electric energy or capacity during any period during which, due to operational circumstances, purchases from any qualifying facility will result in costs greater than those which the utility would incur if it did not make those purchases, but instead generated an equivalent amount of energy itself.

(b) Any electric utility seeking to invoke subsection (a) shall provide each affected qualifying facility with at least twenty-four hours advance oral or written notice of any period described in subsection (a) to allow the qualifying facility to cease the delivery of energy or capacity to the electric utility.

(c) Any electric utility which fails to comply with the provisions of subsection (b) shall be required to pay the same rate for such purchase of energy or capacity or would be required had the period described in subsection (a) not occurred.

(d) A claim by an electric utility that such a period has occurred or will occur is subject

to verification by the commission as the commission determines necessary or appropriate, either before or

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after the occurrence. [Eff 2/18/82; am and comp 5/2/85; am and comp] (Auth: HRS '269-6) (Imp: HRS '269-27.2)

'6-74-25 Rates for sales. (a) Rates for sale:

- (1) Shall be just and reasonable and in the public interest; and
 - (2) Shall not discriminate against any qualifying facility in comparison to rates for sales to other customers served by the electric utility.
- (b) Rates for sales which are based on accurate data and consistent systemwide 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.
- (c) Rates for sales shall be in accordance with the terms and conditions of an applicable rate schedule filed with the commission.
- (d) Upon request of a qualifying facility, each electric utility shall provide:
- (1) Supplementary power;
 - (2) Back-up power;
 - (3) Maintenance power; and
 - (4) Interruptible power.

(e) The commission, upon its own motion or upon an application by an electric utility, may waive any requirement of subsection (d) if, after notice in the area served by the electric utility and after opportunity for public comment, the electric utility demonstrates and the commission finds that compliance with the requirement will:

- (1) Impair the electric utility's ability to render adequate service to its customers; or
- (2) Place an undue burden on the electric utility.

(f) Rates for additional services shall be in accordance with a regularly filed schedule or as

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agreed upon by the qualifying facility and the electric utility, subject to approval by the commission before those rates take effect.

(g) Rates for sale of back-up power or maintenance power:

(1) 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 of an electric utility's system will occur simultaneously, or during the system peak, or both; and

(2) 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. [Eff 2/18/82; am and comp 5/2/85; am and comp] (Auth: HRS '269-6) (Imp: HRS '269-27.2)

'6-74-26 Interconnection costs. (a) Each qualifying facility shall be obligated to pay any interconnection costs which the commission may order paid by the qualifying facility on a non discriminatory basis with respect to other customers with similar load characteristics.

(b) The commission shall determine the manner for payments of interconnection costs, which may include reimbursement over a reasonable period of time, provided that:

(1) The reimbursement of interconnection costs for other than legally enforceable obligations for purchase shall be by a lump sum non-refundable contribution for the electric utility's investment in the interconnection facilities and a monthly charge for all other interconnection costs; and

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(2) The reimbursement of interconnection costs under legally enforceable obligations for purchase of firm capacity or energy or both, of more than one hundred kw may be as in paragraph (1), or in monthly payments, fixed at a percentage of the utility's recorded investment for the interconnection facilities, to cover all interconnection costs as defined in '6-74-1. The percentage shall be approved by the commission.

[Eff 2/18/82; am and comp 5/2/85; am and comp] (Auth: HRS '269-6) (Imp: HRS '269-27.2)

'6-74-27 System emergencies. (a) A qualifying facility shall be required to provide energy or capacity to an electric utility during a system emergency only to the extent provided by agreement between the qualifying facility and electric utility.

(b) During any system emergency, an electric utility may discontinue:

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

(2) Sales to a qualifying facility, provided that the discontinuance is on a non discriminatory basis. [Eff 2/18/82; am and comp 5/2/85; comp] (Auth: HRS '269-6) (Imp: HRS '269-27.2)

'6-74-28 Standards for operating reliability. (a) Qualifying facilities shall not be prohibited from providing automatic equipment which will isolate their generation from the system during large system disturbances.

(b) This will allow the qualifying facilities to remain on line and to assist in system restart rather

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than be dependent on the system for restart.

[Eff 2/18/82; am and comp 5/2/85; comp 27.2)

] (Auth: HRS '269-6) (Imp: HRS '269-

"6-74-29 to 31 (Reserved)

DEPARTMENT OF BUDGET AND FINANCE

The amendments to and compilation of chapter 74, title 6, Hawaii Administrative Rules,

on the Summary Page dated _____, were adopted on _____ following public hearing held on December 15, 16, 17, and 18, 1997, after public notice was given in the Honolulu Star-Bulletin on November 12, 1997, The Garden Island on November 14, 1997, the Maui News on November 14, 1997, the Hawaii Tribune Herald on November 14, 1997, and West Hawaii Today on November 14, 1997.

They shall take effect ten days after filing with the Office of the Lieutenant Governor.

Earl I. Anzai

Director of Finance

Department of Budget and

Finance

Yukio Naito

Chairman

Public Utilities Commission

APPROVED:

Benjamin J. Cayetano

Governor

State of Hawaii

Dated: _____

APPROVED AS TO FORM:

Deputy Attorney General

Filed

