

ORDINANCE NO. 891-24

AN ORDINANCE OF THE BOROUGH OF ZELIENOPE, BUTLER COUNTY, PENNSYLVANIA, ADOPTING RULES GOVERNING COGENERATION AND SMALL POWER PRODUCTION FACILITIES OPERATING IN THE BOROUGH, ESTABLISHING AVOIDED COST RATES, AND ADDRESSING RELATED MATTERS

WHEREAS, the Borough of Zelienople (the “Borough”) is charged with establishing rates for retail electric service in the Borough; and

WHEREAS, Section 210 of the Public Utility Regulatory Policies Act of 1978 (“PURPA”) requires electric utilities to purchase power at wholesale from Qualifying Facilities (“QFs”) which include some cogenerators and small power producers using renewable technologies; and

WHEREAS, a goal of PURPA is to encourage the use of renewable energy resources and cogeneration for wholesale power supply; and

WHEREAS, PURPA requires power from QFs to be sold to utilities at “avoided cost rates” that are just and reasonable to the Borough’s electric ratepayers and in the public interest; and

WHEREAS, Section 210 of PURPA authorizes the Federal Energy Regulatory Commission (“FERC”) to promulgate rules to implement this QF purchase requirement, but grants nonregulated utilities, like the Borough, flexibility in determining the details of such purchases; and

WHEREAS, Borough Council has determined that it is necessary and appropriate to establish the rules governing sales of capacity and energy to the Borough by QFs; and

WHEREAS, Borough Council has also determined that it is appropriate to set the current estimated avoided cost rate of the Borough for purchases of capacity and energy from QFs, as well as the formula used to calculate such a rate.

NOW THEREFORE, BE IT ORDAINED AND ENACTED, and it is hereby ordained and enacted by the Council of the Borough of Zelienople, Butler County, Pennsylvania, as follows:

SECTION 1: RECITALS

The above recitals are incorporated herein.

SECTION 2

The Code of the Borough of Zelienople is hereby amended by adding a new Article IV entitled “Cogeneration and Small Power Production,” to Chapter 130 Electric.

1: Definitions

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For the purposes of this Article, the terms below shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural.

“Avoided Costs” means incremental costs to the Borough of electric energy, capacity, or both which, if not for the purchase from the Qualifying Facility, the Borough would generate itself or purchase from another source.

“Back-up Power” means electric energy or capacity supplied by the Borough to replace energy ordinarily generated by a facility’s own generation equipment during an unscheduled outage of the facility.

“Cogeneration Facility” shall have the meaning specified at 18 C.F.R. Parts 292.202 and 292.205, as amended.

“Decommissioning Costs” shall be those costs associated with the removal of a Qualifying Facility from the Borough’s electric grid.

“Interconnection Costs” means the reasonable costs of connection, switching, metering, transmission, distribution, safety provisions, and administration incurred by the Borough directly related to the installation and maintenance of physical facilities necessary to permit interconnected operations with a Qualifying Facility. Interconnection Costs do not include any costs included in calculation of Avoided Costs. Interconnection Costs shall include, but not be limited to, the costs associated with municipal administration, municipal audit, load management and monitoring, load dispatch or curtailment services, ongoing inspection and monitoring of interconnection, physical and digital maintenance of both the Borough’s and the Qualifying Facility’s side of the interconnection, interference with market pricing associated with congestion, delivery, or any other PJM fee or charge now in effect or imposed in the future, capital costs associated with the interconnection, costs assessed by the larger regional grid which may be necessitated by the load associated with the installation, consulting engineering costs, legal costs, and regulatory filing costs.

“Interruptible Power” means electric energy or capacity supplied by the Borough subject to interruption by the Borough under specified conditions.

“Maintenance Power” means electric energy or capacity supplied by the Borough during scheduled outages of the Qualifying Facility.

“Planning Year” means the following year’s guaranteed energy output from a Qualifying Facility, that shall be agreed upon by the parties, and held as a required output for planning purposes.

“Purchase” means the purchase of electric energy, capacity, or both from a Qualifying Facility by the Borough.

“Qualifying Facility” or “QF” means a Cogeneration Facility or a Small Power Production Facility.

“Sale” means the sale of electric energy, capacity, or both by the Borough to a Qualifying Facility.

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“**Small Power Production Facility**” shall have the meaning specified at 18 C.F.R. Parts 292.202 and 292.204, as amended.

“**Supplementary Power**” means electric energy or capacity supplied by the Borough and regularly used by a Qualifying Facility in addition to that electric energy or capacity which the Qualifying Facility generates/provides itself.

“**System**” means the facilities, lines, and equipment used to supply electric energy and/or capacity from suppliers to customers.

“**System Emergency**” means a condition on the Borough’s System or any interconnected System that may result in an imminent significant disruption of service to customers or may imminently endanger life or property.

2: General.

This Section sets forth the manner in which the Borough will discharge duties imposed upon it by Title II of the Public Utility Regulatory Policies Act of 1978 and FERC’s implementing orders including, without limitation, *Qualifying Facility Rates and Requirements Implementation Issues Under the Public Utility Regulatory Policies Act of 1978*, Order No. 872, 85 FR 54638 (Sept. 2, 2020), 172 FERC ¶ 61,041 (2020).

3: Applicability.

This Section shall apply to any Purchases from or Sales to any Qualifying Facility made by the Borough.

4: Criteria for Qualifying Facility Status.

The criteria for qualification of Small Power Production Facilities and Cogeneration Facilities as Qualifying Facilities under this Section are the same as those adopted by FERC, including, but not limited to, 18 C.F.R. Parts 292.203, 292.204, 292.205, and 292.206, as amended.

5: Availability of Data.

To the extent required by law, the Borough shall, upon request, make available the data necessary to enable Qualifying Facilities to estimate the Borough’s then-current estimated Avoided Cost with respect to both energy and capacity, using the procedures and requirements set forth in this Article. Likewise, on an annual basis, or as-needed, the operator of the Qualifying Facility shall make data and estimates available to the Borough for the proper integration of the facility into the Borough’s load pattern in advance of each Planning Year.

6: Borough Obligations.

- A. The Borough shall purchase any energy and capacity which is made available to it from a Qualifying Facility, except as provided in Sections 6(B) and (C) of this Section or other applicable law, in accordance with the then-current requirements of PURPA and any implementing orders from FERC.

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- B. The Qualifying Facility's right to sell power to the Borough and the Borough's obligations under Section 6(A) shall be curtailed in periods when, due to operational circumstances, Purchases from Qualifying Facilities will result in costs greater than those which the Borough would incur if it generated an equivalent amount of energy instead of purchasing that energy.
- C. During any System Emergency, the Borough may discontinue:
- (1) Purchases from a Qualifying Facility if such Purchases would, in the Borough's sole reasonable discretion, contribute to such emergency; or
 - (2) Sales to a Qualifying Facility on a nondiscriminatory basis.
- D. Rates for Sales to Qualifying Facilities. The Borough shall sell power to a Qualifying Facility except as provided in Section 6(C)(2). The Borough shall sell power to a Qualifying Facility at rates for Sale that are just and reasonable in the public interest, and nondiscriminatory. Rates shall be charged in accordance with the Borough's duly adopted rate schedule. If the Borough provides Back-Up Power or Supplementary Power to the Qualifying Facility, then costs associated with that capacity reservation shall be paid by the Qualifying Facility.
- E. Interconnection.
- (1) The Borough shall make any interconnection with a Qualifying Facility that is necessary for the Purchase and Sale of electric energy and/or capacity to or from that Qualifying Facility. Interconnection shall be performed pursuant to the Borough's specifications and safety standards. All plans, equipment, and facilities shall be submitted for approval by the Borough. Prior to installation, the Borough shall either approve or reject the plans within 60 days of receipt of all required documents.
 - (2) Owners of Qualifying Facilities shall be required to pay for all Interconnection Costs. Payment shall be made as determined exclusively by the Borough.
 - (3) The Borough shall operate in parallel with a Qualifying Facility, provided that the Qualifying Facility complies with applicable standards established in accordance with Section 8 and all applicable Borough ordinances, rules, regulations, and published tariffs and fees.
 - (4) A Qualifying Facility seeking to interconnect with the Borough shall submit an application containing all information required by the Borough and reasonably necessary to study the impacts of the proposed Facility on the Borough's System.
 - (5) Following the submission of an application to interconnect pursuant to Section 6(E)(4), the Qualifying Facility shall enter an interactive development period, during which time the Borough will evaluate the

Qualifying Facility's feasibility and all of its potential impacts on the Borough's system based on the information provided in said application or reasonably requested by the Borough. The purpose of this evaluation is to ensure that the integrity of the Borough's system will be preserved if interconnection proceeds, and to address any safety, reliability, practicality, cost, and stability concerns related to the proposed interconnection. The Qualifying Facility shall pay all costs incurred by the Borough for the research necessary to establish and permit the Qualifying Facility. The Borough will endeavor to complete this review process within 120 days.

- (6) Prior to and as a condition precedent to the Borough's review and approval of the Qualifying Facility's application to interconnect pursuant to the procedure set forth, the Borough and the Qualifying Facility shall negotiate and execute a written agreement memorializing the obligations and responsibilities of each party relating to interconnection and the Purchase and Sale of electric energy and/or capacity, which agreement may include, but shall not be limited to, the terms of payment of the costs of evaluation under Section 6(E)(5) and any expected interconnection costs. Upon execution of this agreement, the Borough may require that the Qualifying Facility deposit a sum of money with the Borough to be held in escrow to be used by the Borough as the Borough incurs fees for its costs related to the Qualifying Facility's interconnection to the Borough's system.

7: Purchase of Output from Qualifying Facilities.

- A. The Borough, in its discretion, may establish rates for Purchases of energy from a Qualifying Facility based on the locational marginal price (LMP) calculated by PJM Interconnection, LLC (PJM) at the applicable pricing node for the Borough.
- B. To the extent that rates for the Purchase of capacity or energy are not established pursuant to Section 7(A), the following factors shall be taken into account when determining the final Purchase price:
 - (1) The availability of capacity or energy from a Qualifying Facility during the Borough's System daily and seasonal peak, including: the ability to dispatch the Qualifying Facility, reliability, terms of contract, duration of obligation, termination requirements, ability to coordinate scheduled outages, usefulness of energy and capacity during System Emergencies, compliance with the requirements of PJM or any successor thereto, and the individual and aggregate value of energy and capacity from Qualifying Facilities on the Borough's System.
 - (2) The ability of the Borough to avoid costs, if any, due to deferral, cancellation, or downsizing of capacity additions from the Qualifying Facility.

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- C. All rates for Purchases of energy and/or capacity from a Qualifying Facility pursuant to either a legally enforceable obligation or on an as-available basis shall vary through the life of the obligation, and shall be set at the Borough's Avoided Cost for energy calculated at the time of delivery.
- D. Nothing in this Section shall prevent the Borough from making financial decisions which are in the best interest of the pool of customers served by the Borough's electric system, up to and including requiring reimbursement for any deleterious impact created by the Qualifying Facility.

8: Utility Safety and System Protection Requirements.

Any Qualifying Facility operating in the Borough shall provide adequate staff and equipment to ensure the safety and reliability of interconnected operations and comply with all Borough requirements and specifications. This equipment shall be specifically designed, installed, and operated to protect interconnected operations between the Qualifying Facility and the Borough's System. The Qualifying Facility shall be solely responsible for the cost of obtaining, installing, maintaining, repairing, renovating, replacing, removing, and operating this equipment. Access to the facility and inspection of all equipment is required right of interconnection.

9: Additional Services to be Provided to Qualifying Facilities.

Upon request by a Qualifying Facility, the Borough shall provide, at rates reasonably determined by the Borough, Supplementary Power, Back-Up Power, Maintenance Power, and Interruptible Power; provided, however, that the Borough shall not be obligated to provide such services if the Borough determines in its sole discretion that such service would impair its ability to render adequate service to its other customers or would be unduly burdensome on the Borough's System. Nothing herein shall require the Borough to offer power to the Qualifying Facility or its property owner at the same rate or same regularity as other commercial or residential customers of the Borough system. The Borough can curtail supply or adopt a supplementary power rate as reasonable for these services.

10: Wheeling.

The Borough may wheel power to another utility if the Qualifying Facility approves. This provision shall not eliminate the responsibility of the Borough to Purchase power from the Qualifying Facility if the Qualifying Facility does not approve the wheeling transaction. Resale of power supplied by the Qualifying Facility is unrestricted.

11: Legally Enforceable Obligations.

No legally enforceable obligation will be created until the Qualifying Facility has demonstrated, to the Borough's reasonable satisfaction:

- A. The commercial viability of the Qualifying Facility's project ("Project");
- B. A financial commitment from the Qualifying Facility to construct the Project;

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- C. The Project's compliance with all applicable Borough laws, rules, and regulations, including, but not limited to, this Section of the Borough Code; and
- D. The Project's compliance with the then-current requirements of PURPA and any implementing orders from FERC.

12: Negotiated Rates.

This Section shall not restrict the creation and execution of voluntary, written agreements between a Qualifying Facility and the Borough consistent with the provisions of this Section concerning the Purchase of electric power and/or capacity from the Facility.

13: Adopted Rates.

- A. The Borough hereby will calculate Avoided Cost rates for capacity and energy by a method set forth by resolution adopted and amended by the Borough from time to time. This calculation of Avoided Cost will be in compliance with the then-current requirements of PURPA and any implementing orders from FERC. From time to time, Borough Council may, by resolution, revise this calculation method to ensure its continuing compliance with PURPA and any implementing orders from FERC and to account for the specific circumstances unique to the Borough's System.
- B. The Avoided Cost estimates to be set forth the Borough's resolutions will be based on the Borough's current contractual arrangements and supply portfolio and are subject to change. From time to time, the Borough Manager, in consultation with the Borough Electrical Engineer, may, as necessary, update the Borough's Avoided Cost rates using the calculation method to be set forth by resolution adopted by Borough Council, as may be revised in accordance with Section 13(A) above, to reflect the Borough's then-current Avoided Cost estimates.
- C. Any Avoided Cost rate adopted pursuant to this Section shall ensure that the Borough's other electric customers and other electric suppliers do not subsidize the operations of any Qualifying Facility selling capacity, energy, or both to the Borough.

14: Removal, Indemnification, and Experts.

- A. In the event that use of a Qualifying Facility is discontinued, the owner shall provide written notice to the Borough of its intent to discontinue use and the date when the use shall be discontinued. Unused or abandoned Qualifying Facilities or portions thereof shall be removed as follows:
 - 1. All unused or abandoned Qualifying Facilities and accessory facilities shall be removed within two months of the cessation of operations at the site unless a time extension is approved by the Borough.
 - 2. If the Qualifying Facility and/or accessory facility is not removed within two months of the cessation of operations at a site, or within any longer period

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approved by the Borough, the Qualifying Facility and accessory facilities and equipment may be removed by the Borough and the cost of removal assessed against the owner of the Qualifying Facility.

- B. Indemnification. Each person that owns or operates a Qualifying Facility shall, at its sole cost and expense, indemnify, defend and hold harmless the Borough, its elected and appointed officials, employees and agents, at all times against any and all claims for personal injury, including death, and property damage arising in whole or in part from, caused by or connected with any act or omission of the person, its officers, agents, employees or contractors arising out of, but not limited to, the construction, installation, operation, maintenance or removal of the Qualifying Facility. Each person that owns or operates a Qualifying Facility shall defend any actions or proceedings against the Borough in which it is claimed that personal injury, including death, or property damage was caused by the construction, installation, operation, maintenance or removal of a Qualifying Facility. The obligation to indemnify, hold harmless and defend shall include but not be limited to the obligation to pay judgments, injuries, liabilities, damages, reasonable attorneys' fees, reasonable expert fees, court costs and all other costs of indemnification. No person shall be issued a permit to own or operate a Qualifying Facility unless and until the owner or operator executes a Qualifying Facility indemnification agreement in a form as adopted by the Borough from time to time.
- C. Retention of experts. The Borough may hire any consultant(s) and/or expert(s) necessary to assist the Borough in reviewing and evaluating the application for approval of the Qualifying Facility and, once approved, in reviewing and evaluating any potential violations of the terms and conditions of this Chapter. The applicant and/or owner of the Qualifying Facility shall establish an escrow deposit to cover the costs of any consultant(s) and/or expert(s) hired to assist the Borough in reviewing and evaluating the application for approval of the Qualifying Facility. The amount of the escrow deposit is directed to be established from time to time by resolution of the Mayor and Borough Council.
- D. Owners of Qualifying Facilities shall be required to pay all costs associated with their decommissioning. Such costs include, but shall not be limited to, the costs of decommissioning and liquidating or redistributing each individual component and any decommissioning studies to determine the effect on the Borough's system of such decommissioning. The Borough may require the owner of the Qualifying Facility to post financial security at the time the application to interconnect is submitted in an amount necessary to guarantee payment of the costs described in this Section as estimated by the Borough in its sole discretion.

SECTION 3: SEVERABILITY

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If any Section, subsection, sentence, clause, phrase, or word of this Ordinance is for any reason held to be illegal or invalid by any court or administrative agency of competent jurisdiction, such illegal or invalid portion or provision shall be severable and shall not affect or impair any remaining portion of this Ordinance and Chapter, which shall remain in full force and effect.

SECTION 4: REPEALER

All provisions of previous Ordinances of the Borough which are contrary to this Ordinance are expressly repealed only to the extent to which they are inconsistent with this Ordinance.

SECTION 5: SAVINGS CLAUSE

In all other respects, all ordinances, codes, resolutions, rules, and regulations of the Borough shall remain as previously adopted, approved, enacted, and ordained.

SECTION 6. EFFECTIVE DATE

This Ordinance shall take effect immediately.

ENACTED, ORDAINED, AND APPROVED this _____ day of _____, 2024.

ATTEST:

**BOROUGH COUNCIL OF THE
BOROUGH OF ZELIENOPE:**

Secretary

President

Mayor