



## ADMINISTRATIVE RULES OF MONTANA



### 38.5.1909 CREATION OF A LEGALLY ENFORCEABLE OBLIGATION

- (1) For a proposed, qualifying facility that has not achieved commercial operation, a legally enforceable obligation is created when a qualifying facility has demonstrated, based on objective and reasonable criteria, commercial viability and a financial commitment to construct its facility. A qualifying facility has demonstrated commercial viability and a financial commitment when:
  - (a) It has obtained qualifying facility status from FERC pursuant to the certification procedures in 18 CFR part 292;
  - (b) It has provided to the utility the following:
    - (i) a description of the location of the project;
    - (ii) an estimate of the energy production for the project, produced through industry-accepted engineering methods, that includes the kilowatt-hours or megawatt-hours to be produced by the qualifying facility for each month and year of the entire term of the qualifying facility's anticipated power purchase agreement;
    - (iii) an interconnection application, including any application fees;
    - (iv) a signed, written statement committing to sell output from the qualifying facility to the utility over a proposed term of a power purchase agreement and stating the proposed term for the proposed power purchase agreement and the proposed avoided cost rate; and
    - (v) a deposit, paid in full, to cover the estimated costs for a system impact or facilities study;
  - (c) It has taken meaningful steps to obtain site control adequate to commence construction of the project at the proposed location and operate the facility, throughout the term of the contract;
  - (d) It has submitted applications, including filing fees, to obtain all necessary permits, licenses, and approvals necessary to construct and operate the facility, and has provided copies of the same to the utility; and
  - (e) If the qualifying facility seeks payment for an avoided cost of capacity, it has requested to be studied for interconnection as a network resource.
- (2) For an existing qualifying facility that has achieved commercial operation, a legally enforceable obligation is created when the qualifying facility has, no more than three years prior to the start of a new power purchase agreement, provided to the utility documentation that includes the following:

- (a) documents indicating qualifying facility status obtained pursuant to the certification procedures in 18 CFR part 292;
- (b) an updated estimate of the energy production for the project, produced through industry-accepted engineering methods, that includes the kilowatt-hours or megawatt-hours to be produced by the qualifying facility for each month and year of the entire term of the qualifying facility's new power purchase agreement;
- (c) a signed, written statement committing to sell output from the qualifying facility to the utility through a new power purchase agreement and stating the term for the proposed power purchase agreement and the proposed avoided cost rate;
- (d) a signed, written statement attesting that the qualifying facility will continue to exercise site control adequate to operate the facility throughout the proposed term of the new power purchase agreement, or describing the actions the qualifying facility has taken for continued site control for the term of the new power purchase agreement; and
- (e) a signed, written statement attesting that the qualifying facility will maintain all necessary permitting and zoning approvals for the term of the new power purchase agreement, or a description of any actions the qualifying facility has taken to obtain all necessary permitting and zoning approvals applicable for the term of the new power purchase agreement.

**Authorizing statute(s):** 69-3-103, 69-3-604, MCA

**Implementing statute(s):** 69-3-102, 69-3-604, MCA

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**History:** NEW, 2018 MAR p. 1298, Eff. 7/7/18; AMD, 2022 MAR p. 1919, Eff. 9/24/22; AMD, 2025 MAR, 38-5-263, Eff. 1/25/25.