QUAKERTOWN BOROUGH
Bucks County, Pennsylvania

ORDINANCE #1237
(Duly Adopted September 7, 2022)

AN ORDINANCE OF THE BOROUGH OF QUAKERTOWN, BUCKS COUNTY PENNSYLVANIA, REVISING THE RULES GOVERNING COGENERATION AND SMALL POWER PRODUCTION FACILITIES OPERATING IN THE BOROUGH, ESTABLISHING UPDATED AVOIDED COST RATES, AND ADDRESSING RELATED MATTERS

WHEREAS, the Borough of Quakertown, Pennsylvania ("Quakertown" or the "Borough") is the retail regulator 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 co-generators 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 utility ratepayers and in the public interest; and

WHEREAS, Section 210 of PURPA authorizes the Federal Energy Regulatory Commission to promulgate rules to implement this QF purchase requirement and also directs state regulatory bodies to implement such rules; and

WHEREAS, PURPA created a broad and flexible framework for the sale of QF power to utilities by leaving the details to be worked out by various state entities, including, but not limited to, non-regulated retail regulators such as the Borough; and

WHEREAS, Borough Council has determined that it is necessary and appropriate to update the Borough Code to more thoroughly detail 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 update 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 HEREBY RESOLVED by the Borough Council of the Borough of Quakertown, Pennsylvania as follows:

ARTICLE I - Cogeneration and Small Power Production

Chapter 7, Part 5, Section 503 (Cogeneration and Small Power Production) of the Quakertown Borough Code is hereby repealed and replaced in its entirety with the following provisions:

§503 Cogeneration and Small Power Production

1. Definitions. For the purposes of this Section, the following definitions shall apply unless the context clearly indicates a different meaning:

   A. "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.

   B. "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.

   C. "Cogeneration Facility" shall have the meaning specified at 18 C.F.R. Part 292.204, as amended.

   D. "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.

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

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

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

   H. "Qualifying Facility" means a cogeneration facility or a small power production facility.

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

   J. "Small Power Production Facility" shall have the meaning specified at 18 C.F.R. Part 292.204, as amended.

   K. "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 Facility generates/provides itself.

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

M. “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 conferred upon it by Title II of the Public Utility Regulatory Policies Act of 1978 and the Federal Energy Regulatory Commission’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 the Federal Energy Regulatory Commission, 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. 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 Section.

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 Subsections 6.B and 6.C of this Section, in accordance with the then-current requirements of PURPA and any implementing orders from the Federal Energy Regulatory Commission.

B. The Qualifying Facility's right to sell power to the Borough 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 sale. The Borough shall sell power to a Qualifying Facility except as provided in Subsection 6.C.(2) of this Section. Rates for sale shall be just and reasonable in the public interest, and nondiscriminatory. Rates for sale which are based on accurate data and consistent system costing principles shall not be considered to discriminate against any Qualifying Facility to the extent that such

rates apply to the Borough's other customers with similar load or cost-related characteristics. If the Borough provides back-up power or supplementary power to a Qualifying Facility, then costs associated with that capacity reservation are properly recoverable from 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. Owners of Qualifying Facilities shall be required to pay for all interconnection costs. Payment shall be made over a reasonable period of time, and terms of payment shall be a part of the contract between the Borough and the Qualifying Facility.

(2) The Borough shall operate in parallel with a Qualifying Facility, provided that the Qualifying Facility complies with applicable standards established in accordance with Subsection 7-503.8 of this Section and all applicable Borough ordinances, rules, regulations, and published tariffs and fees.

(3) 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 distribution System.

7. Purchase of Output from Qualifying Facilities.

A. Rates for purchase of output of a Qualifying Facility shall be just and reasonable to the retail electric customers of the Borough, in the public interest, and nondiscriminatory. Any rate for the purchase of the output of a Qualifying Facility shall ensure that the Borough's retail customers do not subsidize the development, construction, or operations of any Qualifying Facility selling capacity and/or energy to the Borough.

B. 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.

C. To the extent that rates for the purchase of capacity or energy are not established pursuant to Subsection 7-503.7.B of this chapter, 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 System's 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.

D. 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.

8. Utility Safety and System Protection Requirements. Any Qualifying Facility operating in the Borough shall provide adequate equipment to insure 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.

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 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.

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.

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;

C. The Project's compliance with all applicable Borough's 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 the Federal Energy Regulatory Commission.

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 adopts the method of calculating avoided cost rates for capacity and energy identified in Appendix "A" to this Chapter, as well as, the Borough's current estimated avoided costs. This calculation method was created

in compliance with the current requirements of PURPA and any implementing orders from the Federal Energy Regulatory Commission. 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 the Federal Energy Regulatory Commission.

B. The avoided cost estimates set forth in Appendix "A" are 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 Superintendent of the Electric Department, may, as necessary, update the Borough's avoided cost rates using the calculation method in Appendix "A", as may be revised in accordance with Subsection 13.A above, to reflect the Borough's then-current avoided cost estimates. The Borough shall publish its estimated avoided cost rates as part of the Borough's annual Fee Schedule.

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.

ARTICLE II Repealer

All Borough ordinances or parts of ordinances which are inconsistent herewith are hereby repealed but only to the extent of such conflict.

ARTICLE III Severability

If any sentence, clause, section, or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid by any court of competent jurisdiction, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Ordinance. It is hereby declared as the intent of Borough Council that this Ordinance would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, section, or part thereof not been included herein.

ARTICLE IV Effective Date

This Ordinance shall become effective five (5) days after enactment.

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QUAKERTOWN BOROUGH
Bucks County, Pennsylvania
ORDINANCE #1237

ENACTED AND ORDAINED this 7th day of September, A.D., 2022, by Quakertown Borough Council in lawful session, duly assembled.

QUAKERTOWN BOROUGH COUNCIL

_____
Donald E. Rosenberger, President

ATTEST:

_____
Scott C. McElree
Borough Manager/Secretary

APPENDIX "A" TO ORDINANCE #1237

I. Borough of Quakertown method of calculating Avoided Costs as of June 2022:

$$\textbf{Avoided Cost } (\$/\text{MWh}) = \frac{(X \times \$48.90) - ((X - Y) \times Z)}{Y}$$

WHERE

X = Estimated annual Quakertown energy purchases (in MWH)

Y = Estimated annual Qualified Facility (QF) energy production from proposed Qualified Facility ("Project") (in MWH)

Z = Projected NextEra energy cost rate to Quakertown after the re-opening of the NextEra Contract due to the Project reducing energy purchases under this Contract (in $/MWH)

II. Borough of Quakertown estimated Avoided Cost as of June 2022:

Estimated Avoided Capacity Cost: $5.037 per kw-month

Estimated Avoided Energy Cost either:

1. The applicable PJM Interconnection, LLC locational marginal price ("LMP") for deliveries to the Borough; or

2. A fixed price of approximately $33.71 per MWh subject to the execution of a firm power purchase agreement that includes standard industry provisions for such arrangements including make-whole provisions in the event the QF fails to deliver the quantities specified in such agreement.

Any as-available energy provided by a Qualifying Facility will be priced with reference to PJM LMP prices.

These avoided cost rates are for illustrative purposes only and are subject to the negotiation of a definitive agreement for the purchase of capacity and/or energy from a Qualifying Facility. These rates are subject to change as necessary to reflect the Borough's then-current avoided costs.