

§3308. Energy and capacity purchases from small power producers and cogenerators by transmission and distribution utilities affected by the filing of a petition in bankruptcy or for reorganization

1. Establishment of a purchase price for energy or energy and capacity delivered to a trustee or reorganized utility. If a transmission and distribution utility that has entered into a power purchase contract with a small power producer or cogenerator for the purchase of energy or energy and capacity pursuant to former section 3305, subsection 1 or section 3306, files for bankruptcy or for reorganization under the bankruptcy laws of the United States and, if the trustee in bankruptcy or debtor, receiver, examiner or any other party in possession and control of the assets of the transmission and distribution utility rejects that power purchase contract pursuant to the United States Bankruptcy Code or any similar power or law, the trustee, debtor, receiver, examiner or other party in possession and control of the assets of the transmission and distribution utility is obligated to continue to purchase without interruption from the small power producer or cogenerator whose contract was rejected any energy or energy and capacity that the small power producer or cogenerator makes available to it. If the power purchase contract is rejected, the avoided cost for the energy or energy and capacity for the time period commencing on the date of the rejection and ending on the original expiration date of the rejected contract must be the avoided cost determined for the period as if the determination were being made on the date on which the transmission and distribution utility and small power producer or cogenerator entered into the rejected contract.

[PL 1999, c. 398, Pt. A, §82 (AMD); PL 1999, c. 398, Pt. A, §§104, 105 (AFF).]

2. Nature of capacity contract. If a small power producer or cogenerator contracts to provide a transmission and distribution utility with electric generating capacity, that portion of the power purchase contract that requires the delivery of the capacity may not be executory in nature under the laws of the State once the small power producer or cogenerator has first made available to the transmission and distribution utility the electric generating capacity. This section may not be interpreted to mean that any other sections of such a contract are executory in nature.

[PL 1999, c. 398, Pt. A, §82 (AMD); PL 1999, c. 398, Pt. A, §§104, 105 (AFF).]

3. Commission approval of rates of reorganized utility. At any time that the commission is requested or required to approve rates for a transmission and distribution utility that has rejected a power purchase contract with a small power producer or cogenerator as a result of a bankruptcy or reorganization proceeding, or to approve rates of a person controlling and in possession of the assets of a transmission and distribution utility that was a party to such a rejected contract, it may not grant any rate approval unless the transmission and distribution utility or person seeking the rates includes within the rates provision for payment for all energy and capacity made available by a small power producer or cogenerator, either at the original contract rate or at the rate specified in subsection 1.

[PL 1999, c. 398, Pt. A, §82 (AMD); PL 1999, c. 398, Pt. A, §§104, 105 (AFF).]

Any person who is obligated to comply with this section may not be permitted to operate as a transmission and distribution utility in the State, unless it is in full compliance with this section. [PL 1999, c. 398, Pt. A, §82 (AMD); PL 1999, c. 398, Pt. A, §§104, 105 (AFF).]

SECTION HISTORY

PL 1987, c. 141, §A6 (NEW). PL 1999, c. 398, §A82 (AMD). PL 1999, c. 398, §§A104,105 (AFF).

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