

ARTICLE 20:10

**PUBLIC UTILITIES COMMISSION**

Chapter

- 20:10:01 General rules of practice.
- 20:10:02 General motor carrier rules, Repealed.
- 20:10:03 Regulated motor carriers, Repealed.
- 20:10:04 Exempt motor carriers, Repealed.
- 20:10:05 General telecommunications company rules.
- 20:10:06 Telecommunications records.
- 20:10:07 Telecommunications subscriber billing rules.
- 20:10:08 Telecommunications credit.
- 20:10:09 Refusal of telecommunications service.
- 20:10:10 Disconnection of telecommunications service.
- 20:10:11 Public grain warehouses.
- 20:10:12 Grain buyers.
- 20:10:13 Public utilities rate filing rules.
- 20:10:14 Procedure rules for public utilities, Repealed or transferred.
- 20:10:15 General gas and electric rules.
- 20:10:16 Gas and electric utility records and public information rules.
- 20:10:17 Gas and electric customer billing rules.
- 20:10:18 Gas and electric service rules.
- 20:10:19 Establishment of gas and electric credit.
- 20:10:20 Refusal and disconnection of gas and electric service.
- 20:10:21 Energy facility plans.

- 20:10:22 Energy facility siting rules.
- 20:10:23 Gas and electric advertising rules.
- 20:10:24 Interexchange carrier and classification rules.
- 20:10:25 Telecommunications facility construction notice rules, Repealed.
- 20:10:26 Master metering variance rules.
- 20:10:27 Telecommunications switched access filing rules.
- 20:10:28 Telecommunications separations procedures.
- 20:10:29 Telecommunications switched access charges.
- 20:10:30 Assignment of N11 dialing codes.
- 20:10:31 Assessment of fees for intrastate gas pipeline operators.
- 20:10:32 Local exchange service competition.
- 20:10:33 Service standards for telecommunications companies.
- 20:10:34 Prohibition against unauthorized changing of telecommunications company and charging for unauthorized services.
- 20:10:35 Telecommunications services.
- 20:10:36 Small generator facility interconnection.
- 20:10:37 Pipeline safety rules.
- 20:10:38 Renewable, recycled, and conserved energy rules.
- 20:10:39 Stray electrical current and voltage remediation.
- 20:10:40 Requirements for establishing a legally enforceable obligation.

**20:10:40**

**REQUIREMENTS FOR ESTABLISHING A LEGALLY ENFORCEABLE OBLIGATION**

**Section**

**20:10:40:01. Definitions.**

**20:10:40:02. Applicability of rules.**

**20:10:40:03. Establishment of a legally enforceable obligation.**

**20:10:40:01. Definitions.** Terms defined in SDCL 49-34A-1 have the same meaning when used in this chapter. In addition, terms used in this chapter mean:

(1) “Avoided cost,” the incremental costs to a public utility of electric energy or capacity or both which, but for the purchase from the qualifying facility, the public utility would generate itself or purchase from another source;

(2) “Legally enforceable obligation,” an obligation that the qualifying facility will sell and the affected public utility will purchase energy or capacity or both for a specified term in which the rates for purchase shall, at the option of the qualifying facility, be based on either the avoided costs calculated at the time of delivery or the avoided costs calculated at the time the obligation is incurred;

(3) “Qualifying facility,” a facility that meets the definition of a qualifying facility under 18 C.F.R. § 292.101(b)(1) (July 1, 2014).

**Source:**

**General Authority:** SDCL 49-34A-93.

**Law Implemented:** SDCL 49-34A-93.

**20:10:40:02. Applicability of rules.** The provisions of § 20:10:40:03 apply only to the establishment of a legally enforceable obligation between a qualifying facility with a design capacity of more than 100 kilowatts and a public utility.

**Source:**

**General Authority:** SDCL 49-34A-93.

**Law Implemented:** SDCL 49-34A-93.

**20:10:40:03. Establishment of a legally enforceable obligation.** A legally enforceable obligation is established when a qualifying facility notifies the public utility of the qualifying facility’s intent to establish a legally enforceable obligation and the following requirements have been met:

- (1) The qualifying facility, if it has a net power production capacity of 500 kW or more, has notified the public utility of its status as a qualifying facility at least 90 days prior, pursuant to 18 C.F.R. § 292.207(c)(2);
- (2) The qualifying facility has entered into an interconnection agreement or the interconnection process is delayed as a result of a dispute that has been filed with the proper jurisdiction;

- (3) The public utility has failed to provide the avoided cost information required by 18 C.F.R. § 292.302 (July 1, 2014) or the qualifying facility has filed a dispute of the public utility's avoided cost information with the Commission;
- (4) The qualifying facility has offered a signed power purchase agreement to the public utility that includes the following:
  - (a) A purchase price based on the qualifying facility's estimate of the public utility's avoided cost;
  - (b) A reasonable date or range of dates for commencement of delivery of the energy or capacity, or both;
  - (c) The length of the contract; and
  - (d) Other terms and conditions that would be reasonable in the industry; and
- (5) The qualifying facility has shown that it has made significant progress toward bringing the qualifying facility into existence by providing:
  - (a) A list of any permits that are needed for the facility to be operational and documentation that it has completed or started the process to obtain the permits;
  - (b) A description of the site of the project and documentation that it has acquired or is in the process of acquiring the land or any necessary easements or options;
  - (c) The amount of financing that is needed and documentation that it has acquired financing or its plan for acquiring financing; and
  - (d) A description of any owners, employees, or consultants' qualifications to construct and operate the qualifying facility.

The notification of the qualifying facility's intent to establish a legally enforceable obligation shall be sent via certified mail to the public utility and shall include any necessary documentation demonstrating that the above requirements have been met. A copy of the notification and the attached documentation shall be sent to the commission.

**Source:**

**General Authority:** SDCL 49-34A-93.

**Law Implemented:** SDCL 49-34A-93.