

**ELPC's Proposed Legally Enforceable Regulations**  
MPSC LEO Stakeholder Process  
February 15, 2019

Unambiguous legally enforceable obligation (“LEO”) regulations are necessary for Michigan to smoothly implement Section 210 of the Public Utility Regulatory Policies Act (“PURPA”). The LEO is an integral part of PURPA’s framework for five key reasons.

First, obtaining a power purchase agreement is an essential condition precedent before a qualifying facility (“QF”) can obtain financing for its project. The purpose of the LEO under PURPA is to allow the QF to establish the electric utility’s obligation to purchase the QF’s output without having to wait for utility execution of a PPA. Second, the LEO provides both the QF and electric utility certainty about their long-term relationship. Third, the LEO provides an electric utility the ability to adequately consider prospective QF development in its resource planning decisions and Integrated Resource Plans (“IRP”). Fourth, a LEO sets the date from which to base avoided costs, which is important as avoided costs can change over time. Fifth, a LEO establishes first-in-time priority when a dispute occurs concerning priority of avoided cost rates among multiple QFs.

LEO standards should strike a balance between a QF’s need for flexibility and an electric utility’s need for reasonable assurances necessary to conduct planning exercises. For LEO standards with site control requirements, it is imperative that those requirements should not be structured in a manner that is unduly burdensome on QFs or an attempt to evade the must purchase obligation. The seemingly “simple” issue of site control, when improperly implemented, can effectively end any and all future QF development, which contradicts Congress’ primary intent of PURPA.

With this background in mind, ELPC proposes the following LEO regulations.

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A legally enforceable obligation is created when:

(1) a qualifying facility has unilaterally signed and tendered a power purchase agreement to the purchasing utility with a price term equal to either:

(a) the existing standard offer rate in accordance with the applicable standard tariff provisions as approved by the commission for qualifying facilities eligible for standard offer rates; or

(b) a price term consistent with the purchasing utility's avoided costs, calculated within 30 days of the date the power purchase agreement is tendered, with specified beginning and ending dates for delivery of energy, capacity, or both to be purchased by the utility with provisions committing the qualifying facility to reimburse the purchasing utility for only those interconnection costs necessary to implement the delivery of energy and/or capacity to the purchasing utility

(2) a qualifying facility has obtained and provided to the purchasing utility written documents confirming site control. Site control can be demonstrated by proof of control of the planned facility site for at least 75% of the project's total proposed size and for the term of the proposed power purchase agreement. Proof can include ownership, leasehold interest, and/or an option to purchase or lease site that allows construction and operation of the proposed facility.

(3) a qualifying facility has submitted a completed generator interconnection application to the purchasing utility or to the wheeling utility;<sup>1</sup>

(4) if larger than one megawatt (1 MW) in nameplate capacity, the qualifying facility has certified itself to the Federal Energy Regulatory Commission by filing Form 556.

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<sup>1</sup> **NOTE:** It is important that any update to Michigan's interconnection standards and application that concern site control conform to the site control requirements of the LEO. If not, there could be dueling standards as to what constitutes site control, and the interconnection standards could effectively render the LEO's site control requirement meaningless.

An alternative option to ensure clarity would be, for LEO purposes, to specify that the only site control requirement that controls is the LEO site control requirement.

These draft proposed LEO regulations assume that Michigan's future-updated interconnection standards and application either have no site control requirement or the site control requirements are exactly the same as proposed in these LEO regulations.