

**Consumers Energy Company**  
**Case No. U-20344 Stakeholder Process Comments**  
**Proposed Redline of Montana Legally Enforceable Obligation Rule**

~~Mont.Admin.R. 38.5.1909~~

~~ARM 38.5.1909~~

~~**38.5.1909. CREATION OF A LEGALLY ENFORCEABLE  
OBLIGATION**~~

(1) A “legally enforceable obligation,” as that phrase is used in 18 C.F.R. § 292, is created when a proposed or existing electric generation facility satisfies all of the following conditions:

(a) A proposed or existing electric generation facility must provide a prospective purchasing utility with documentation demonstrating that, under 18 C.F.R. § 292, (i) the facility is a “qualifying facility”, and (ii) the facility has been certified as a qualifying facility with or by the Federal Energy Regulatory Commission.

~~(a)(b) (a) A~~ qualifying facility ~~has~~ must ~~unilaterally signed and tendered~~ a proposed power purchase agreement (“PPA”) to the purchasing utility with a price term equal to either:

(i) 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

(ii) a price term consistent with the purchasing utility's avoided costs, ~~calculated within 14 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 ~~and provisions committing the qualifying facility to reimburse the purchasing utility for interconnection costs, pursuant to ARM 38.5.1901(2)(d) and 38.5.1904(2) and (3) for qualifying facilities not eligible for standard offer rates.~~

A qualifying facility must provide proof that it is in agreement with contract terms and conditions that are not detrimental to the purchasing utility, its customers, or the public interest. Such terms must include rates that are just and reasonable, and in no event is a legally enforceable obligation created if a qualifying facility fails to offer a price term that accurately reflects a purchasing utility’s avoided costs for energy or capacity at the time all other criteria for a legally enforceable obligation are satisfied.

(c) A qualifying facility must provide the purchasing utility with a description of the location of the project and its proximity to other projects which are owned or controlled by the same developer. A qualifying facility must also provide to the purchasing utility an Internal Revenue Service Form W-9, as well as a detailed, forecasted energy production profile for the project that includes, at a minimum, kilowatt-hours to be produced by the qualifying facility for each month and year of the entire term of the project's proposed PPA.

(d) ~~(b)-A~~ a qualifying facility ~~has~~must obtained and provided to the purchasing utility written documents confirming control of the complete project site and access to the site for the length of the asserted legally enforceable obligation, ~~and as well as~~ permission to construct the qualifying facility. These written documents must ~~that~~ establish, at a minimum:

(i) proof of control of the site for the duration of the term of the ~~power purchase agreement~~proposed PPA such as a lease or ownership interest in the real property;

(ii) proof of all required land use approvals and environmental permits necessary to construct and operate the facility, as designed, for the duration of the proposed PPA; and

(iii) permission to construct and operate the qualifying facility, as designed, for the duration of the proposed PPA, ~~as defined in ARM 38.5.1901(2)(f)~~;

(e) ~~(c)-A~~ a qualifying facility must provide the purchasing utility with sufficient evidence of an engineering, procurement, and construction program that will result in commercial operation of the project (and the project's interconnection) on a defined schedule that is consistent with the capacity needs of the purchasing utility. This must include written proof of a secured commitment from major equipment manufacturers for the delivery and/or installation of all major equipment to be utilized by the project. A qualifying facility must also provide the purchasing utility with proof of fuel security, or, if the project is for wind, solar, or hydroelectric generation, the amount of available fuel at the project's location. If the project is for cogeneration, a qualifying facility must provide the purchasing utility with written proof of a steam host that is willing to contract for steam over the full term of the project's proposed PPA.

(f) A qualifying facility must provide the purchasing utility with documentation of having acquired all necessary financing for the project over the life of its proposed PPA. A qualifying facility must also provide the purchasing utility with a deposit based on the size

of each project, the amount of which shall be established by the purchasing utility with the commission's approval. If the proposed PPA is executed by the purchasing utility, the deposit may not be refunded if the project is not constructed for any reason not within the purchasing utility's control.

~~(g) A~~ qualifying facility has ~~must~~ submitted a completed generator interconnection request ~~that either requested study for network resource interconnection service (NRIS) for facilities larger than 20 megawatts or requested an optional study equivalent to NRIS for facilities 20 megawatts and smaller~~under the commission's applicable interconnection standards and the purchasing utility's corresponding interconnection procedures; ~~and~~

~~(d) A~~ qualifying facility has undertaken one ~~must~~ also complete all of the following additional steps towards interconnection:

(i) A qualifying facility must execute an agreement demonstrating its commitment to satisfy and pay for all necessary interconnection requirements. These requirements are established in the results of studies completed by the purchasing utility under the commission's applicable interconnection standards, and they are then set forth in a proposed facilities agreement and/or proposed interconnection agreement.

(ii) If a project is to be connected at a transmission level, the qualifying facility must provide documentation which demonstrates secured interconnection for the project, with the availability of Network Resource Integrated Service ("NRIS").

(iii) A qualifying facility must also execute an agreement demonstrating its commitment to provide full access to meter data and meter tests at no additional cost to the purchasing utility, so as to allow the purchasing utility to monitor the output of each project utilizing its existing systems.

~~(i) the qualifying facility has executed and returned a signed System Impact Study Agreement, with any required deposit, to the interconnecting utility and all technical data necessary to complete the System Impact Study Agreement;~~

~~(ii) for qualifying facilities requesting to interconnect under the Small Generator Interconnection Procedures (SGIP), 53 days have elapsed since the qualifying facility submitted the interconnection request and all of the following conditions exist: the interconnecting utility did not provide the qualifying facility a System Impact Study Agreement within 38 days of the qualifying facility's interconnection request; the~~

~~qualifying facility has not waived the tariffed SGIP timeline; and the qualifying facility has satisfied applicable interconnection customer deadlines in the tariffed SGIP;~~

~~(iii) for qualifying facilities requesting to interconnect under the Large Generator Interconnection Procedures (LGIP), 90 days have elapsed since the qualifying facility submitted a completed interconnection request with the interconnecting utility, and all of the following conditions exist: the qualifying facility has not been provided a System Impact Study Agreement within 60 days of the initial interconnection request; the qualifying facility has not waived the timeline associated with the work of the interconnecting utility associated with the LGIP process; and the qualifying facility has timely met its deadlines established in the LGIP; or~~

~~(iv) for qualifying facilities that have waived the deadlines pertaining to the work of the interconnecting utility associated either with the SGIP or LGIP process, the mutually agreed upon time period after which the qualifying facility was scheduled to execute and return a signed System Impact Study Agreement, with any required deposit, to the interconnecting utility and all technical data necessary to complete the System Impact Study, has elapsed.~~

(h) A qualifying facility must demonstrate that its project is within 90 days of its commercial operation date, plus a 240-day grace period if the project is eligible for a standard offer PPA. A qualifying facility must provide the purchasing utility with proof of the project's ability to provide the promised energy and capacity no later than the end of that time period.