

Circle Power LEO Comments July 1, 2019

The state (MPSC), working with the utility and other stakeholders, has approved and advertised an avoided cost in a fair and transparent proceeding. A QF commits to provide a project to the rate payers based on that avoided cost. QF projects are reasonably requesting that; 1) a utility acknowledge that QF commitment, 2) agree to purchase that energy if the QF is able to complete the remaining regulatory hurdles, and 3) that energy is valued at a specific price (determined by the MPSC approved tariff when the QF made the commitment).

The LEO regulations proposed by Staff would be among the most restrictive in the country with the potential to eliminate QF development in the state. The Staff should be aware that even without the LEO regulation, development of a QF project can necessitate several years of effort and millions of dollars of at-risk capital for land contracts, resource measurement, interconnection studies, environmental studies, local permitting, engineering, equipment contracts and other requirements of development. What rate payer interest is served by placing additional hurdles (in the form of burdensome LEO requirements) to a project which, as any developer will likely attest, already has significant hurdles to meet?

Additional regulations would reduce the supply of potential projects, and by reducing supply, miss an opportunity to provide lower long-term pricing for rate payers. The risk is not borne by the rate payer as a utility does not have to purchase any power from a project that does not get built, the MPSC approved PPA could have performance milestones to protect rate payers and any power that is purchased from a QF is at the MPSC approved utility avoided cost. Finally, as a matter of maintaining a level playing field, it bears asking if the financial risk borne by QFs is equivalent to the amount risk capital the utilities are investing in advance of securing approvals for utility-owned projects.

The comments below reflect Circle Power's opinion that minimal requirements for establishing a LEO should be the standard. Development milestones (to avoid "zombie" contracts) should be addressed as part of the PPA itself as is typical in the industry.

Circle Power appreciates the opportunity to comment and participate in this process.

Disclaimer: This document is a working draft and is provided for discussion purposes only. The information contained herein is subject to change and does not commit the Michigan Public Service Commission.

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
PUBLIC SERVICE COMMISSION

PART IV: CREATION OF A LEGALLY ENFORCEABLE OBLIGATION (Option 1)

Scope – The rules in this subsection apply to an electric utility whose rates are regulated by the Commission.

Definitions:

(1) A legally enforceable obligation is created when a qualifying facility has completed all of the following:

(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.

(b) A qualifying facility has unilaterally signed and tendered a proposed contract ~~to begin negotiations or standard offer power purchase agreement~~ 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, with specified beginning and ending dates for delivery of energy, capacity, or both to be purchased by the utility.

(c) A qualifying facility shall provide the purchasing utility all of the following:

(i) A description of the location of the project ~~and its proximity to other projects, also located in the purchasing utility's service territory, which are owned or controlled by the same developer;~~

~~(ii) An Internal Revenue Service Form W-9; and~~

~~(iii) 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 power purchase agreement.~~

~~(d) If requested by MPSC or purchasing utility, Aa qualifying facility must be able to demonstrate has obtained and provided to the purchasing utility written documents confirming control of the site for the length of the asserted legally enforceable obligation and permission from the landowner to construct the qualifying facility which may consist of that establish, at a minimum:~~

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

~~(ii) Proof of application to obtain the required control of the site for the duration of the term of the proposed power purchase agreement in the case of Government owned land.~~

~~(ii) Proof of all required land use approvals and environmental permits necessary to construct and operate the facility; or proof of application for all required land use approval and environmental permits necessary to construct and operate the facility.~~

~~(e) A qualifying facility shall provide the purchasing utility with:~~

~~(i) 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;~~

~~(ii) If the project is for cogeneration, a qualifying facility shall 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 power purchase agreement.~~

~~(f) If a project is to be connected at distribution level, a qualifying facility has submitted a completed generator interconnection request for the study for facilities with a net capacity at or below 20 megawatts.~~

~~(g) 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").~~

~~(h) A qualifying facility shall execute an agreement demonstrating its commitment to satisfy and pay for all necessary interconnection requirements subject to a mutually agreed upon limit based on a \$/kW interconnection cost. These requirements are established in the results of studies completed by the purchasing utility pursuant to Mich Admin Code, R[460.XXX] of the (full title of rules);~~

~~(i) A qualifying facility shall 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) A qualifying facility shall demonstrate that its project is within 90 days of its commercial operation date or the date the purchasing utility completes construction of the interconnection facilities;~~

whichever is later, plus a 240-day grace period if the project is eligible for a standard offer power purchase agreement.

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DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
PUBLIC SERVICE COMMISSION

PART IV: CREATION OF A LEGALLY ENFORCEABLE OBLIGATION (Option 2)

Scope – The rules in this subsection apply to an electric utility whose rates are regulated by the Commission.

Definitions:

(1) A legally enforceable obligation is created when a qualifying facility has completed all of the following:

(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.

(b) A qualifying facility shall provide the purchasing utility all of the following:

(i) A description of the location of the project, ~~and its proximity to other projects, also located in the purchasing utility’s service territory, which are owned or controlled by the same developer;~~

~~(ii) An Internal Revenue Service Form W-9; and~~

~~(iii) 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 power purchase agreement.~~

~~(c) A qualifying facility shall provide the purchasing utility with:~~

~~(i) 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;~~

~~(ii) If the project is for cogeneration, a qualifying facility shall 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 power purchase agreement.~~

~~(d) If a project is to be connected at distribution level, a qualifying facility has executed a Facilities Agreement provided by the purchasing utility and remitted the first Milestone payment. [Must correspond with payment schedule in Facilities Agreement]~~

~~(e) If a project is to be connected at the distribution level, purchasing utility must adhere to the process and timelines pursuant to Mich Admin Code, R[460.XXX] of the (full title of rules), subject to penalties under MCL 460.10e.~~

~~(f) If a project is to be connected at the distribution level, the Commission has a right to audit and review all interconnection study cost information and timelines.~~

~~(g) If a project is to be connected at the distribution level, purchasing utility will provide an executed PPA within ten (10) days of the QF signing the Facilities Agreement.~~

~~(i) If the purchasing utility and the QF are unable to reach agreement on the PPA, either party may file an unexecuted PPA with the Commission pursuant to the complaint process.~~

~~(h) 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"). [Need Stakeholder input here.]~~

~~(i) A qualifying facility shall demonstrate that its project is within 90 days of its commercial operation date or the date the purchasing utility completes construction of the interconnection facilities, whichever is later, plus a 240-day grace period if the project is eligible for a standard offer power purchase agreement.~~