

Markup from NextEra Energy Resources

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

PUBLIC SERVICE COMMISSION

PART IV: CREATION OF A LEGALLY ENFORCEABLE OBLIGATION

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 that includes performance guarantees, including a scheduled commercial on-line date and adequate security for non-performance, 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) A qualifying facility 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 to construct the qualifying facility 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 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) A qualifying facility shall demonstrate that to the utility's satisfaction that it has access to adequate financing.

(g) 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.

(gh) 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").

(hi) 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.

(ij) 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.