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February 19, 2019

Comment from Michigan Biomass on Montana template for determining a Legally Enforceable Obligation (LEO) on a regulate utility Case No. U-20344

Michigan Biomass is a coalition of the state's waste-wood-fired power plants supplying Consumers Energy Co. with energy and capacity under existing PURPA power purchase agreements. Following are our comments on proposed rulemaking to determine a legally enforcement obligation (LEO) on a regulated utility in Michigan, under case number U-20344.

We understand that much of the LEO and similar rulemaking efforts underway at the Michigan Public Service Commission[1] are focused on new generation systems expected to connect to the grid as a result of energy policy that went into effect in April 2017. The Commission opened many dockets as a result; specific to the LEO were PURPA-related case numbers U-18090 and U-20095. Our comments, then, will center on considerations for determining a LEO for a qualified facility with an existing PURPA power purchase agreement.

There are six biomass plants[2] between 18 MW and 38 MW in capacity that have been selling energy and capacity to Consumers Energy under PURPA contracts entered between 1985 and 1994. The power purchase agreements of three of these facilities[3] have expired, but they continue to fulfill their contractual obligations through extensions ordered by the Commission in PURPA complaint case number U-17981.

The Commission in U-18090 clearly segregates existing PURPA contract holders from the many qualified facilities, principally wind and solar, that are looking to obligate PURPA contracts on Michigan's regulated utilities, which again, are the focus of these proceedings under U-20344:

> "The Commission also agrees with the parties and the ALJ that a 10-year planning horizon is most appropriate for determining capacity requirements, that avoided costs established in this proceeding should only apply to new and renewed contracts, and that existing contracts should not be altered."[4]

Staff and the administrative law judge in the case also recommend different treatment for existing QFs:

> "Nevertheless, for existing QFs with contracts that expire, the Staff recommended that these facilities have their contracts renewed at the full standard rate, whether or not the

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[1] U-20034: Interconnection, Distributed Generation and Legacy Net Metering, and Legally Enforceable Obligation

[2] Cadillac Renewable Energy, Grayling Generating Station, Genesee Power Station, Hillman Power Co., Viking Energy/McBain and Viking Energy/Lincoln

[3] Hillman, Lincoln and McBain

[4] U-18090 orders page 18

> company forecasts a need for capacity. 2 Tr 157. The Staff posited that because the capacity supplied by existing QFs is already considered in the company's planning, it was appropriate to continue the contracts at the full avoided cost rate. The Staff recommended that if any capacity shortfall is projected over the 10-year planning horizon, QFs should be compensated for both capacity and energy.[5]
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> "And, the ALJ agreed with the Staff's recommendations that: (1) any electric capacity Consumers may need over its current 10-year planning horizon should come from either existing or new/willing QF suppliers, if possible, (2) all of the QFs currently supplying capacity to the utility should have their expiring contracts renewed at the full standard offer rate -- as opposed to the PRA--regardless of whether the company expresses that it has additional capacity needs based on its then-current 10-year planning horizon,[6] …

Being distinctly different from new facilities regarding U-18090 orders, QFs with existing PURPA contracts should likewise be treated differently from other QFs in determining a LEO, in a manner consistent to these Commission conclusions in U-18090. In effect, as these QFs are already in the utility's capacity portfolio within the planning horizon, under a LEO, that obligation should remain in effect at the end of the existing power purchase agreement.

LEO for existing facilities

Lacking in the Montana model are considerations and methodologies for determining a utility's LEO with QFs providing energy and capacity to that utility under an existing agreement. See new sections (2) and (3) in the attached redline of the Montana model.

The Commission, through its orders in U-18090, sets existing QFs apart from other QFs, which calls for LEO criteria that best accommodates the LEO relationship between the existing QF and the purchasing utility. Therefore, we propose that the LEO under existing contracts should continue when the QF offers or requests an extended, amended or new PPA under, as long as that QF capacity is treated as utility capacity within the planning horizon as it pertains to PURPA regulation.

[5] U-18090 orders page 5
[6] U-18090 orders page 11

Mont.Admin.R. 38.5.1909

ARM 38.5.1909

38.5.1909. CREATION OF A LEGALLY ENFORCEABLE OBLIGATION

Currentness

(1) A legally enforceable obligation is created when:

(a) a qualifying facility has unilaterally signed and tendered a 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, 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;

(b) 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 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; and

(iii) permission to construct the qualifying facility as defined in ARM 38.5.1901(2)(f);

(c) a qualifying facility has 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; and

(d) a qualifying facility has undertaken one of the following additional steps towards interconnection:

(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.

(2) A legally enforceable obligation is determined to exist if the qualifying facility is providing energy and capacity to the purchasing utility under a power purchase agreement, in which case that existing capacity is treated, within regulatory frameworks such as an Integrated Resource Plan, as the purchasing utility's own capacity.

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(3) A QF seeking an extended, amended or new PPA under an existing LEO as defined in section (2) are exempt from sections (1)(a)(i), (a)(ii), and sections (1)(b), (c) and (d).

Credits

AUTH: 69-3-103, 69-3-604(5), MCA
IMP: 69-3-102, 69-3-604(5), MCA
NEW, 2018 MAR p. 1298, Eff. 7/7/18.
Current through Issue 18 of the 2018 Montana Administrative Register dated September 21, 2018.
Mont.Admin.R. 38.5.1909, MT ADC 38.5.1909