STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion, to initiate an inquiry into the methods and approaches for determining utility capacity needs over a 10-year planning horizon to establish or update avoided capacity costs.	))))))	Case No. U-20095

At the February 22, 2018 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman
Hon. Norman J. Saari, Commissioner
Hon. Rachael A. Eubanks, Commissioner

ORDER AND NOTICE OF OPPORTUNITY TO COMMENT

The Commission opened a series of contested case proceedings in an order issued on May 3, 2016 in Case No. U-18089 *et al*, in which it directed each rate-regulated utility to file proposed avoided cost calculation methods and costs in accordance with the requirements of the Public Utility Regulatory Policies Act of 1978, PL 95–617; 92 Stat 3117 (PURPA). This was the Commission's first foray into PURPA avoided costs, and associated issues, in over 25 years.

In determining avoided cost, the Commission is required to consider, among other criteria, data regarding "the electric utility's plan for the addition of capacity by amount and type, for purchases of firm energy and capacity, and for capacity retirements for each year during the succeeding 10 years[.]" 18 CFR 292.302(b)(2). In addition, the Commission must take into account, "[t]he relationship of the availability of energy or capacity from the qualifying facility . . .

to the ability of the electric utility to avoid costs, including the deferral of capacity additions and the reduction of fossil fuel use." 18 CFR 292.304(e)(3). Consistent with these mandates, in the May 31, 2017 order in Case No. U-18090, the Commission found that capacity requirements for Consumers Energy Company (Consumers) should be considered over a 10-year planning horizon. If no capacity need is forecasted over the 10-year period, then the Standard Offer capacity rate for new qualifying facilities (QFs) should be adjusted to the Midcontinent Independent System Operator, Inc. (MISO) planning reserve auction (PRA) price. In addressing the same issue, in the July 31, 2017 order in Case No. U-18091, p. 15, the Commission explained that:

> The Commission rejects DTE Electric's contention that only if capacity is required in the next five years should the company pay full avoided cost because, as the Staff, GLREA, and ELPC point out, DTE Electric uses a far longer planning horizon in making decisions about whether to purchase or build new conventional generation. In addition, as ELPC argued, there is significant ratepayer value in deferring large, capacity additions through contracting with QFs for incremental capacity. This is a particularly acute concern in the case of DTE Electric, which is in fact planning a significant increase to its capacity portfolio, at a substantial cost to ratepayers, beginning in the next few years. As ELPC stated, "DTE's proposed methodology . . . 'gives no value to capacity until DTE approaches a near-term shortfall, and then returns to giving virtually no value to capacity when DTE addresses that shortfall by acquiring a large resource.' The Commission must not permit discrimination against QFs by basing avoided capacity costs on an artificially short planning period."

Not long after the Commission approved final avoided capacity and energy costs for Consumers in Case No. U-18090, the company filed a request to reduce the capacity avoided cost rate to the MISO PRA rate based on a purportedly changed capacity forecast.[1] Thus, Consumers requested that the Commission stay the implementation of new avoided costs until the company completes a 10-year capacity demonstration in Case No. U-18491, or until the company has an

[1] The record in Case No. U-18090 demonstrated a need for capacity beginning in 2022 and increasing until the end of the planning horizon.

approved integrated resource plan (IRP) sometime in 2019. Similarly, it has been reported that DTE Electric Company (DTE Electric) has informed potential QFs that it has no capacity need for the next decade, despite the company's request for approval of new generation.

This raises concerns for the Commission regarding how to address potential changes in capacity requirements whether through an IRP or in a standalone proceeding.[2] Although Consumers' situation arose at a time when the company does not yet have an approved IRP, the Commission can envision a circumstance where a company has an approved IRP and subsequently has an unforeseen increase or decrease in its capacity requirements. While there are clear implications for the company's capacity planning and customer rates, there are also consequences for potential QFs under PURPA. Consumers contends that capacity rates must be reduced immediately in the event that the company determines that a forecasted capacity shortfall has disappeared. Conversely, potential QFs would be right, especially in the face of asymmetric information, to have concerns about whether the alleged change in the company's capacity position is actually supported. For the Commission, this raises an issue as to whether considering a 10-year planning horizon as a whole, and requiring the provider to pay full capacity avoided cost if there are any years within that time period where capacity is needed, is a sufficiently refined approach to ensure that QFs are treated fairly and in a non-discriminatory manner while at the same time protecting ratepayers from paying for excess, unneeded capacity.

In a related issue, under PURPA regulations, a QF has the option:

> (1) To provide energy as the qualifying facility determines such energy to be available for such purchases, in which case the rates for such purchases shall be based on the purchasing utility's avoided costs calculated at the time of delivery; or
> (2) To provide energy or capacity pursuant to a legally enforceable obligation for the delivery of energy or capacity over a specified term, in which case the rates for

[2] In the case of a significant change in the capacity forecast, an electric utility may file an amended IRP.

> such purchases shall, at the option of the qualifying facility exercised prior to the beginning of the specified term, be based on either:
> (i) The avoided costs calculated at the time of delivery; or
> (ii) The avoided costs calculated at the time the obligation is incurred.

18 CFR 292.304(d). Thus, when a QF makes a viable offer to sell its electricity to a specific electric utility, this may establish a legally enforceable obligation (LEO) on the part of the utility to purchase the electricity at either the utility's avoided cost or at a negotiated rate.

Under PURPA, "the states play the primary role in calculating avoided costs and in overseeing the contractual relationship between QFs and utilities operating under the regulations promulgated by [the Federal Energy Regulatory Commission]." *Indep. Energy Producers Ass'n Inc v Cal Pub Utils Comm'n*, 36 F3d 848, 856 (CA 9, 1994). States have discretion "in determining the manner in which the regulations are to be implemented. Thus, a state commission may comply with the statutory requirements by issuing regulations, by resolving disputes on a case-by-case basis, or by taking any other action reasonably designed to give effect to FERC's rules." *FERC v Mississippi*, 456 US 742, 751, 102 S Ct 2126; 72 L Ed 2d 532 (1982). Accordingly, in determining what constitutes an LEO, states have generally either undertaken rulemaking (e.g., New Mexico, Texas) or have addressed this matter on a case-by-case basis (e.g., Minnesota, Pennsylvania).

The Commission currently has no rules addressing the creation of an LEO, and in the past has addressed LEOs on a case-by-case basis. In the future, the Commission envisions incorporating a rule defining when an LEO is established when the Electric Interconnection Standards, 1999 AC, R 460.601a *et seq*., are revised. In the meantime, the Commission intends to provide some guidance on the creation of an LEO.

Finally, the Commission has discussed the challenges associated with use of a single fuel type for determining avoided costs. As the Commission discussed in the November 21, 2017 order in Case No. U-18090, p. 30:

> [E]xcept for situations where a utility is replacing large amounts of retiring generating capacity, the actual approaches to securing energy and capacity in the short to medium term do not necessarily entail building new, large-scale generation. Rather, energy resource additions tend to fall into three categories: (1) purchases of surplus energy and capacity from other energy and capacity suppliers through the MISO energy market, MISO PRA or through bilateral contracts; (2) the use of energy efficiency and demand response programs that help customers use less electricity overall and shift when they consume it; or (3) the use of renewables to provide low-cost energy, as a hedge against high fuel prices, and to comply with renewable portfolio standard requirements.

Given that costs that are avoided consist of both supply and demand side options, an IRP may be the proper proceeding to evaluate avoided costs based on an actual plan.

In order to address these issues in advance of upcoming IRP proceedings, the Commission requests comments from interested parties on the following:

- Should the need for capacity over a 10-year period be determined in an IRP? If so, how should the capacity requirement be established? Should capacity need be evaluated for each year or incrementally (i.e., 2019-2021; 2022-2024)?

- In the event that a utility claims a change in its 10-year capacity forecast, such that avoided capacity costs would change, at what point should the Commission reset the capacity price? Are there interim measures that the Commission should undertake until a full assessment of the revised forecast can be concluded?

- How should QF projects that are in the queue be treated at the point where a utility claims that its need for capacity in the 10-year planning period has been reduced or eliminated?

- What criteria should the Commission use in determining whether an LEO has been created?

- Going forward, should the Commission consider a competitive process for the procurement of QF capacity, based on the utility's capacity need, as determined by the IRP? Should the competitive process be used solely to allocate available capacity, or should it also be used to determine avoided cost payments to QFs?

- Should the IRP process be used to update avoided energy and capacity payments based on the blended cost of the plan (e.g., energy efficiency, demand response, fossil generation, renewables, market purchases), or some other method that ensures an accurate representation of a utility's actual avoided costs and non-discriminatory treatment of QFs?

- Putting aside the overall capacity forecast, how should QF energy and capacity be treated with respect to the utility's renewable portfolio or customer-requested renewable energy under 2008 PA 295?

Any person may submit written or electronic comments regarding the determination of capacity need, the process for resetting avoided capacity cost, and the criteria for determining whether an LEO has been created. Comments must be filed with the Commission and must be received no later than 5:00 p.m. on March 19, 2018. Written comments should be sent to: Executive Secretary, Michigan Public Service Commission, P.O. Box 30221, Lansing, MI 48909. Electronic comments may be e-mailed to mpscedockets@michigan.gov. All comments should reference Case No. U-20095. All information submitted to the Commission in this matter will become public information available on the Commission's website and subject to disclosure.

THEREFORE, IT IS ORDERED that interested parties may file written or electronic comments on the determination of utility capacity requirements over a 10-year planning horizon and the criteria for evaluating a legally enforceable obligation. Comments must be received no later than 5:00 p.m. on March 19, 2018.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so by the filing of a claim of appeal in the appropriate court within 30 days of the issuance of this order, under MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel. Electronic notifications should be sent to the Executive Secretary at mpscedockets@michigan.gov and to the Michigan Department of the Attorney General - Public Service Division at pungp1@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

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Sally A. Talberg, Chairman

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Norman J. Saari, Commissioner

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Rachael A. Eubanks, Commissioner

By its action of February 22, 2018.

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Kavita Kale, Executive Secretary