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May 28, 2019

VIA ELECTRONIC CASE FILING

Ms. Kavita Kale
Executive Secretary
Michigan Public Service Commission
7109 W. Saginaw Highway
Lansing, Michigan 48917

Re: ***MPSC Case No. U-20344: In the matter, on the Commission's own motion, to promulgate rules governing electric interconnection, distributed generation, and legacy net metering.***

Dear Ms. Kale:

Enclosed for filing please find the ***Association of Businesses Advocating Tariff Equity's Comments*** as it relates to the above case.

Sincerely,

CLARK HILL PLC

Stephen A. Campbell

SAC/lkd
cc w/enc.: Parties of Record

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter, on the Commission's own motion, to promulgate rules governing electric interconnection, a legally enforceable obligation, distributed generation, and legacy net metering.	)))))	Case No. U-20344

COMMENTS OF THE ASSOCIATION OF
BUSINESSES ADVOCATING TARIFF EQUITY

The Association of Businesses Advocating Tariff Equity ("ABATE"), by its attorneys, Clark Hill PLC, hereby provides Comments to the Michigan Public Service Commission ("Commission") Staff ("Staff") with regard to its Options 1 and 2 (the "Options") and the creation of rules defining and establishing a legally enforceable obligation ("LEO") under the Public Utilities Regulatory Policies Act of 1978 ("PURPA").[1]

Consistent with ABATE's previously submitted comments, ABATE generally supports the principle that the requirements to establish a LEO must be based solely on actions taken by the qualifying facility ("QF") which are within that QF's control. This principle is important to consider when analyzing the Options, as numerous provisions suggest ambiguous requirements or condition a LEO on a QF receiving approvals that are beyond the QF's own authority or discretion. Clarity, transparency, and sufficient assurances for all parties, including QFs, are of paramount concern in ensuring PURPA's intention to "encourage cogeneration and small power

[1] While ABATE's comments here do not necessarily address all the issues raised by Staff's Options, ABATE's lack of comment on those issues should not be taken as an approval of the Options' treatment of those issues, and ABATE reserves the right to comment on said issues in the future.

production and to increase use of renewable energy resources."[2] It is therefore important to avoid onerous or unclear regulatory requirements which may dissuade QFs and frustrate PURPA's purposes.[3]

[2] *In re Application of the Association of Businesses Advocating Tariff Equity*, order of the Public Service Commission, entered December 5, 1990 (Case No. U-9798).

[3] See *FLS Energy, Inc*, 157 FERC ¶ 61,211 (2016); *Great Divide Wind Farm 2 LLC*, 166 FERC ¶ 61,090 (2019).

OPTION 1

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

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) 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) 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.

Comment [A1]: Third-party approvals beyond the control of the QF should not be a precondition to forming a legally enforceable obligation.

A QF should only be required to show, at most, that it has requested such approvals or is otherwise in the process of obtaining them.

A QF's failure to maintain these requirements can be addressed in the contract and would presumably prevent the QF from making any energy or capacity available in the first place.

Comment [A2]: See comment above.

Comment [A3]: Which entity determines if the request is "completed"? If this gives discretion to the utility it may be inconsistent with FERC decisions.

Comment [A4]: Again, third-party approvals beyond the control of the QF should not be a precondition to forming a legally enforceable obligation.

Comment [A5]: What is meant by the requirement that meter data and tests must be made available "at no additional cost to the purchasing utility"?

Is a QF potentially agreeing to undertake additional efforts as directed by the utility at the QF's cost?

Comment [A6]: Similar to the comment above, requiring an executed agreement with a utility may run afoul of various FERC interpretations of PURPA.

Is this execution meant to be unilateral, or will the agreement be "mutually agreed upon"?

Comment [A7]: This introduces unnecessary inflexibility, unless the QF is not bound by the 90 day operation date.

OPTION 2

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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 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]

Comment [A8]: Again, third-party approvals beyond the control of the QF should not be a precondition to forming a legally enforceable obligation.

Comment [A9]: Again, requiring an executed agreement with a utility may run afoul of various FERC interpretations of PURPA.

The QF should only need to have requested or solicited any necessary agreements.

(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.

Comment [A10]: Again, third-party approvals outside the control of the QF should not be a precondition to forming a legally enforceable obligation.

Comment [A11]: This introduces unnecessary inflexibility, unless the QF is not bound by the 90 day operation date.