Comments and Proposal to Define a Legally Enforceable Obligation
Michigan EIBC
February 15, 2019

The Michigan Energy Innovation Business Council (Michigan EIBC) appreciates the opportunity to submit comments and a proposal to define a legally enforceable obligation (LEO). As part of this process, we encourage the Commission, Staff, and stakeholders to ensure that existing providers with current PURPA contracts are considered. We also note that this process should contemplate a methodology to address any QFs that remain in the utility queues at the time of adoption of these new rules, given that those projects were offered in good faith by developers under the assumption that they had met the requirements to obtain a LEO.

With respect to the new definition of a LEO, Michigan EIBC offers the following guiding principles:

- The rules defining when a LEO has been created should be clear and transparent, providing certainty and clarity to the advanced energy industry and utilities.
- The requirements to establish a LEO cannot be based on action by a utility. Instead, a LEO must be based solely on actions taken by the qualifying facility (QF) that are under the control of that QF.
- It is important that companies be given sufficient assurances, as required under PURPA, that utilities will purchase electricity from a QF that commits itself to sell electricity to the utility.

There are several general requirements that should be included in the definition of a LEO: file the project in the utility's interconnection queue, register with FERC as a QF, obtain site control, and submit formal notice to the utility offering a proposed project and the intention to negotiate a contract with the utility under PURPA. Below is a proposal that includes these requirements set forth as a redline of Montana's LEO rules with comments describing the rationale for each redline.

CREATION OF A LEGALLY ENFORCEABLE OBLIGATION

(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~~

Commented [LS1]: It is important that a signed contract is in place and that it contains terms that both parties can abide by. However, especially given that standard offer rates and avoided costs are still subject to contested cases in Michigan, it would not be reasonable to require those as the price terms to establish a LEO. Instead, the price terms should be mutually agreeable to the QF and the utility.

Commented [LS2]: As noted above, it is important that the QF has established site control. However, given Michigan's local control rules, it is not reasonable to require that all local land use approvals are in place prior to a LEO being established. Those land use approvals require a construction-ready project, which would require set pricing terms and a contract with the utility. This sets up the potential for a circular argument and the involvement of local units of government in the establishment of a LEO between a QF and the utility (which would not be appropriate and could essentially stymie many projects).

Commented [LS3]: It is important that the QF has filed an interconnection request, but it is not reasonable for a LEO to be based on action by the utility, which would be required in order for that interconnection request to be deemed "completed." In addition, it is possible that the reference to NRIS will be outdated in the future and, for a project which is not selling capacity, ERIS would be sufficient. For that reason, we submit that those details are unnecessary and may become outdated.

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.

Commented [LS4]: As described above, it is not reasonable for there to be additional requirements related to interconnection that rely on the utility taking action in a timely manner. Inclusion of (d) would effectively allow the utility to control when a LEO is created, whereas it is critical that a LEO be created based solely on actions taken by the QF.