

**ELPC and Vote Solar's Redline of MPSC Staff Option #1: Legally Enforceable Regulations**  
MPSC LEO Stakeholder Process  
June 21, 2019

ELPC and Vote Solar submit this redline version, along with a copy of a clean version for easy viewing, of MPSC Staff's Option #1 in an effort to illustrate how we believe Michigan can provide clarity and guidance on when a legally enforceable obligation ("LEO") occurs. We did not redline Option #2 because we thought it was too burdensome on qualifying facilities ("QFs") and lacked the clarity we hope Michigan will pursue. Unambiguous LEO regulations are necessary for Michigan to implement Section 210 of the Public Utility Regulatory Policies Act ("PURPA"), and we thought Option #1 was less ambiguous and less burdensome.

There are three important effects of a LEO and these three effects guided our proposed redlines. First, obtaining a LEO is a vital condition precedent before a QF can obtain financing for its project. Michigan will see no future PURPA development if its LEO requirements do not facilitate project financing. Clear LEO requirements allow the QF to demonstrate its commitment to deliver power to the electric utility and prevent an electric utility from avoiding its obligations under PURPA by not agreeing to a power purchase agreement ("PPA") or some other agreement, like an interconnection agreement. The Federal Energy Regulatory Commission has found that states cannot set LEO requirements that allow an electric utility the ability to frustrate or avoid its obligations under PURPA.

Second, the LEO provides both the QF and electric utility certainty regarding their long-term relationship. To foster this certainty, Michigan should promulgate simple and clear guidelines on when a LEO occurs. When clear, the LEO guidelines and the LEO itself provide an electric utility the ability to adequately consider prospective QF development in its resource planning decisions and Integrated Resource Plans ("IRP").

Third, a LEO sets the date from which to base avoided costs, which is important because avoided costs can change over time. For this reason, a LEO establishes first-in-time priority when a dispute occurs concerning priority of avoided cost rates among multiple QFs. There are currently some disputes for which LEO dates may resolve those disputes, but it is important that Michigan consider the prospective effect of its LEO regulations and not just whether they can resolve disputes rooted in the past. The worst outcome would be Michigan to have burdensome guidelines that resolve past disputes but prospectively result in an unworkable framework that leads to little or no QF development in Michigan.

In the end, LEO standards should strike a balance between a QF's need for flexibility and an electric utility's need for the assurances necessary to safely and reliably operate its system and to conduct resource planning. For LEO standards with site control requirements, it is imperative that those requirements not be structured in a manner that are unduly burdensome on QFs or an attempt to evade an electric utility's obligations. The seemingly "simple" issue of site control, when improperly implemented, can effectively end any and all future QF development, which contradicts Congress' primary intent of PURPA.

With this background in mind, ELPC and Vote Solar's redline of Option #1 follow.

# ELPC and Vote Solar redline version of MPSC Staff's LEO Option #1

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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 of certification under 18 C.F.R. Section 292.207 with the~~ Federal Energy Regulatory Commission.

(b) A qualifying facility has unilaterally signed and tendered a proposed ~~contract power purchase agreement to begin negotiations or standard offer power purchase agreement to~~ the purchasing utility with the following information:

~~(i) a~~ price term equal to either:

~~(1)~~ 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

~~(2)~~ A price term consistent with the purchasing utility's avoided costs, calculated within 30 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 with provisions committing the qualifying facility to reimburse the purchasing utility for only those interconnection costs necessary to implement the delivery of energy and/or capacity to the purchasing utility 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;~~

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~~(ii) An Internal Revenue Service Form W-9; and~~

~~(ii)(i) 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.~~

~~(ce) A qualifying facility has obtained and provided to the purchasing utility written documents confirming control of the site control for the length of the asserted legally enforceable obligation and permission to construct the qualifying facility. Site control can be demonstrated by proof of control of the planned facility site for the term of the proposed power purchase agreement. Proof can include ownership, leasehold interest, and/or an option to purchase or lease site that allows construction and operation of the proposed 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.~~

~~(fd) If a project is to be connected at distribution level, a qualifying facility has submitted a completed generator interconnection request application pursuant to Mich. Admin. Code, R[460.XXX] of the (full title of rules). for the study for facilities with a net capacity at or below 20 megawatts.~~

~~(eg) If a project is to be connected at a transmission level, the qualifying facility must has submitted a generator interconnection application to the requisite agency 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~~

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~~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.~~

# **ELPC and Vote Solar proposed changes MPSC Staff's LEO Option #1 (no redline)**

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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 of certification under 18 C.F.R. Section 292.207 with the Federal Energy Regulatory Commission.

(b) A qualifying facility has unilaterally signed and tendered a proposed power purchase agreement to the purchasing utility with the following information:

(i) a price term equal to either:

(1) 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

(2) A price term consistent with the purchasing utility's avoided costs, calculated within 30 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 with provisions committing the qualifying facility to reimburse the purchasing utility for only those interconnection costs necessary to implement the delivery of energy and/or capacity to the purchasing utility.

(ii) A 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 has obtained and provided to the purchasing utility written documents confirming site control for the length of the asserted legally enforceable obligation and permission to construct the qualifying facility. Site control can be demonstrated by proof of control of the planned facility site for the term of the proposed power purchase agreement. Proof can include ownership, leasehold interest, and/or an option to purchase or lease site that allows construction and operation of the proposed facility.

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(d) If a project is to be connected at distribution level, a qualifying facility has submitted a generator interconnection application pursuant to Mich. Admin. Code, R[460.XXX] of the (full title of rules).

(e) If a project is to be connected at a transmission level, the qualifying facility has submitted a generator interconnection application to the requisite agency with the availability of Network Resource Integrated Service ("NRIS").