



A CMS Energy Company

July 9, 2019

**VIA E-MAIL at [hadalam@michigan.gov](mailto:hadalam@michigan.gov)**

Meredith Hadala  
Michigan Public Service Commission

**RE: Consumers Energy Company Comments on Proposed PURPA LEO Standards**

Dear Ms. Hadala:

Consumers Energy Company (“Consumers Energy” or the “Company”) appreciates the opportunity to provide comments on the draft legally enforceable obligation (“LEO”) standards published by the Michigan Public Service Commission (“MPSC” or “Commission”) Staff (“Staff”) on May 28.

In general, the Company commends Staff for moving toward the inclusion of fair and robust LEO standards in both of its draft LEO proposals. Consumers Energy has consistently taken the position that appropriate LEO standards adopted by the MPSC must ensure that qualifying facilities (“QFs”) demonstrate their viability in order to establish a LEO under PURPA. A sufficient demonstration of project viability is critical to the Company’s ability to adequately plan on QF resources from a technical and financial standpoint – and thereby, among other things, to ensure system safety, reliability, and resource adequacy.

The Commission itself has previously emphasized the importance of viability in the context of LEO requirements, stating in its February 22, 2019 Order in Case No. U-20095 that a LEO arises, at a minimum, “when a QF makes a viable offer to sell its electricity to a specific electric utility.” The Commission’s recognition of the importance of QF viability is in keeping with the approach taken in other states. Notably, for example, the Minnesota Public Utilities Commission (“MPUC”) has stated that a QF must demonstrate that it is “truly viable” by providing evidence of performance guarantees, financing, equipment supply, actual site control (as opposed to mere options), permits, site and design details, and interconnection plans. See *Re Petition by Highwater Wind LLC and Gadwall Wind LLC*, 2013 WL 683041 (MPUC February 25, 2013). A QF in Minnesota must show that it is in fact “ready, willing, and able to meet the obligations of a power purchase agreement” before a LEO is established, in part because uncertainty around a QF’s viability “undermines prudent and effective resource planning, and the reliability this planning is designed to ensure.” *Id.* As the MPUC has explained, “[a] speculative offer of electricity from hypothetical generators will not suffice to establish a binding, legally enforceable obligation.” *Id.* Other states, too, have emphasized the importance of QF viability.

Consumers Energy recognizes Staff’s effort to develop LEO standards that will require a showing of QF viability. Both Staff proposals incorporate certain key LEO criteria proposed by the Company in its prior redline of the Montana rule, which is attached again here for reference. However, it is Consumers Energy’s position that its original redline of the Montana rule best represents a LEO standard that will ensure QF viability. As a result, the Company is not

providing a redline of either LEO standard proposed by Staff, and is instead providing the following general comments in addition to those set forth above:

- Consumers Energy supports the inclusion of a site control requirement in Staff’s Option 1, at subsection (d), consistent with the Montana rules. However, the Company notes that a demonstration of site control should include proof of actual land use and permitting approvals rather than simply proof of having submitted requisite applications. A site control provision consistent with Consumers Energy’s original proposal (and generally consistent with the Montana rule) should be included in any LEO standard adopted by the MPSC.
- Consumers Energy also supports the inclusion of an interconnection payment requirement in Staff’s Option 1, at subsection (h), and notes only that the “agreed upon limit” must be sufficient to ensure that QFs are willing and able to pay the likely actual costs of interconnection for a facility of its type and size. An agreement to pay for likely actual interconnection costs should be a prerequisite to formation of a LEO under any standard.
- Consumers Energy observes that neither Staff proposal includes a requirement that QFs provide proof of project financing or financeability in order to establish a LEO; likewise, neither proposal includes a requirement that QFs provide a monetary deposit as a performance guarantee. Proof of financing and a performance security are both important to a demonstration of overall project viability. The MPSC should adopt a LEO standard that includes both.

In sum, final LEO standards adopted by the MPSC should be sufficiently robust to ensure that QFs are truly viable, consistent with Consumers Energy’s prior comments and as required in Minnesota and other states. Such standards should balance the interests of utilities in preserving adequate system planning and reliability, for the sake of their customers, against the financial interests of QFs in obtaining contracts under PURPA. As a result, the Company encourages the Staff to include additional criteria in any final proposed LEO standard. Such additional criteria should be consistent with the comments provided above and Consumers Energy’s original redline of the Montana rule.

Respectfully,

Consumers Energy Company

**Consumers Energy Company**  
**Case No. U-20344 Stakeholder Process Comments**  
**Proposed Redline of Montana Legally Enforceable Obligation Rule**

~~Mont.Admin.R. 38.5.1909~~

~~ARM 38.5.1909~~

~~38.5.1909. CREATION OF A LEGALLY ENFORCEABLE  
OBLIGATION~~

(1) A “legally enforceable obligation,” as that phrase is used in 18 C.F.R. § 292, is created when a proposed or existing electric generation facility satisfies all of the following conditions:

(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.

~~(a)(b) (a) A~~ qualifying facility ~~has~~ must ~~unilaterally signed and tendered~~ a proposed power purchase agreement (“PPA”) 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.~~

A qualifying facility must provide proof that it is in agreement with contract terms and conditions that are not detrimental to the purchasing utility, its customers, or the public interest. Such terms must include rates that are just and reasonable, and in no event is a legally enforceable obligation created if a qualifying facility fails to offer a price term that accurately reflects a purchasing utility’s avoided costs for energy or capacity at the time all other criteria for a legally enforceable obligation are satisfied.

(c) A qualifying facility must provide the purchasing utility with a description of the location of the project and its proximity to other projects which are owned or controlled by the same developer. A qualifying facility must also provide to the purchasing utility an Internal Revenue Service Form W-9, as well as 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 PPA.

(d) ~~(b)-A~~ a qualifying facility ~~has~~must obtained and provided to the purchasing utility written documents confirming control of the complete project site and access to the site for the length of the asserted legally enforceable obligation, ~~and as well as~~ permission to construct the qualifying facility. These written documents must ~~that~~ establish, at a minimum:

(i) proof of control of the site for the duration of the term of the ~~power purchase agreement~~proposed PPA 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, as designed, for the duration of the proposed PPA; and

(iii) permission to construct and operate the qualifying facility, as designed, for the duration of the proposed PPA, ~~as defined in ARM 38.5.1901(2)(f)~~;

(e) ~~(c)-A~~ a qualifying facility must provide the purchasing utility with sufficient evidence of an engineering, procurement, and construction program that will result in commercial operation of the project (and the project's interconnection) on a defined schedule that is consistent with the capacity needs of the purchasing utility. This must include 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. A qualifying facility must also provide the purchasing utility with proof of fuel security, or, if the project is for wind, solar, or hydroelectric generation, the amount of available fuel at the project's location. If the project is for cogeneration, a qualifying facility must 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 PPA.

(f) A qualifying facility must provide the purchasing utility with documentation of having acquired all necessary financing for the project over the life of its proposed PPA. A qualifying facility must also provide the purchasing utility with a deposit based on the size

of each project, the amount of which shall be established by the purchasing utility with the commission's approval. If the proposed PPA is executed by the purchasing utility, the deposit may not be refunded if the project is not constructed for any reason not within the purchasing utility's control.

~~(g) A~~ qualifying facility has ~~must~~ 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~~under the commission's applicable interconnection standards and the purchasing utility's corresponding interconnection procedures; ~~and~~

~~(d) A~~ qualifying facility has undertaken one ~~must also complete all~~ of the following additional steps towards interconnection:

(i) A qualifying facility must execute an agreement demonstrating its commitment to satisfy and pay for all necessary interconnection requirements. These requirements are established in the results of studies completed by the purchasing utility under the commission's applicable interconnection standards, and they are then set forth in a proposed facilities agreement and/or proposed interconnection agreement.

(ii) 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").

(iii) A qualifying facility must 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) 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.~~

(h) A qualifying facility must demonstrate that its project is within 90 days of its commercial operation date, plus a 240-day grace period if the project is eligible for a standard offer PPA. A qualifying facility must provide the purchasing utility with proof of the project's ability to provide the promised energy and capacity no later than the end of that time period.