

Mont.Admin.R. 38.5.1909

ARM 38.5.1909

38.5.1909. CREATION OF A LEGALLY ENFORCEABLE
OBLIGATION

Below is DTE Electric's redline of the Montana Regulations concerning the creation of a "legally enforceable obligation." The Company is submitting these in response to MPSC Staff's request in the Legally Enforceable Obligation workgroup. The Commission has successfully evaluated this topic on a case by case basis for decades and the submission of these comments should not be viewed as agreement or acknowledgement that administrative rules are legally required or advisable. In order to encourage all parties to engage in thoughtful and constructive dialogue during the stakeholder process, it should be made clear that a) stakeholder meetings will be treated like settlement conferences under MRE 408 and no statement or writings of a participant may be used as evidence in current or future legal proceedings; b) DTE Electric by its participation does not waive the right to challenge any provisions or take any positions in this proceeding or in future proceedings regarding these rules. DTE Electric notes that the below redline changes and comments represent initial thinking on these matters, are not comprehensive, and the Company's positions may evolve as this process continues. The Company reserves its right to modify or expand its positions on this subject matter in the future and/or in response to positions taken by other stakeholders this process. The Company appreciates the opportunity to take part in this process, and looks forward to working with MPSC Staff and other stakeholders in this process.

- (1) A legally enforceable obligation is created for qualifying facilities committing to sell all electric energy generated by the qualifying facility to a purchasing utility and eligible for standard offer tariff service when:
- (a) a qualifying facility has unilaterally signed and tendered a form power purchase agreement to the purchasing utility acceptable to the purchasing utility and approved by the commission which requires that the qualifying facility be financed based on the same debt to equity capital structure as the purchasing utility and with a price term equal to either:
- (i) the existing standard offer rate in accordance with the applicable standard offer tariff provisions as approved by the commission for qualifying facilities eligible for standard offer rates and provisions committing the qualifying facility to reimburse the purchasing utility for all interconnection process costs, interconnection study costs, and interconnection construction costs referenced in sections c) and d); 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 all interconnection ~~process costs, interconnection study costs, and interconnection construction~~ costs referenced in sections c) and d), pursuant to ARM 38.5.1901(2)(d) and 38.5.1904(2) and (3) for qualifying facilities not eligible for standard offer rates. 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.;

(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)(gf);

(iv) Project schedule, including estimated commercial operation date~~insert list of additional desired site requirements]~~

(v) Forecasted energy production profile for the qualified facility

(vi) 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.

(c) a qualifying facility has submitted a completed generator interconnection application and fee, and requested interconnection on the Distribution System.~~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;~~ and

(d) a qualifying facility has undertaken all~~one~~ of the following additional steps towards interconnection:

Commented [A1]: Need to consider either striking all definitions or making them consistent with Michigan process.

(i) the qualifying facility has executed and returned a signed System Impact Study Engineering Review Agreement for interconnection on the Distribution System, with any required deposit, to the interconnecting utility and all technical data necessary to complete the System Impact Study Engineering Review Agreement;

~~(ii) the for~~ qualifying facility ~~ies has demonstrated adequate commitment to proceed with any network upgrades identified and required as part of an Affected System Study, requesting to interconnect under the Small Generator XXXXXX Interconnection Procedures (XXSGIP), 9053 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 an Engineering Review System Impact Study Agreement within 6038 days of the qualifying facility's interconnection application 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 XX Interconnection Procedures (XXLGIP), 18090 days have elapsed since the qualifying facility submitted a completed interconnection ~~application and fee~~ request with the interconnecting utility, and all of the following conditions exist: the qualifying facility has not been provided an Engineering Review System Impact Study Agreement within 90-60 days of the initial interconnection application request; the qualifying facility has not waived the timeline associated with the work of the interconnecting utility associated with the XXLGIP process; and the qualifying facility has timely met its deadlines established in the XXLGIP; or

~~(iv) for~~ qualifying facilities that have waived the deadlines pertaining to the work of the interconnecting utility associated either with the XXSGIP or XXLGIP process, the mutually agreed upon time period after which the qualifying facility was scheduled to execute and return a signed Engineering Review System Impact Study Agreement, with any required deposit, to the interconnecting utility and all technical data necessary to complete the Engineering Review System Impact Study, has elapsed.

(v) the qualifying facility has paid the full actual cost for the Engineering Review Study.

(vi) the qualifying facility has executed and returned a signed Distribution Study Agreement, with any required deposit, to the interconnecting utility and all technical data necessary to complete the Distribution Study.

(vii) the qualifying facility has paid the full actual cost for the Distribution Study.

(viii) the qualifying facility has executed and returned a signed Distribution Construction Agreement, with any required deposit, to the interconnecting utility.

(e) the qualifying facility meets the purchasing utility's consistently applied creditworthiness standards.

Credits

AUTH: 69-3-103, 69-3-604(5), MCA

IMP: 69-3-102, 69-3-604(5), MCA

NEW, 2018 MAR p. 1298, Eff. 7/7/18.

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