Circle Power

Michigan Public Service Commission
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Submitted electronically to hadalam@Michigan.gov

Circle Power LEO Comments

Ms. Hadala:

Please find attached the comments from Circle Power Company (www.circlepowerco.com). Circle Power is a developer of renewable energy projects and is active in Michigan. Thank you for the opportunity to participate in the Legally Enforceable Obligation Stakeholder Process.

If you have any questions regarding our comments or about Circle Power please contact me, Christopher Moore, at 612.749.4236 or chris@circlepowerco.com.

Christopher Moore
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MPSC Legally Enforceable Obligation Stakeholder Process
Circle Power Input for Review
2/15/2019

Topics Covered:

1. Commentary on the Montana LEO rules[1]
2. Commentary on items be included in and excluded from the LEO process
3. A draft of a proposed LEO process
4. Applicability of a LEO for projects interconnecting at MISO versus the LDC[2]

1. Commentary on the Montana LEO rules

Mont.Admin.R. 38.5.1909

ARM 38.5.1909

38.5.1909. CREATION OF A LEGALLY ENFORCEABLE OBLIGATION

Currentness

(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

Commented [CM1]: The Montana regulations list the requirements (The contract shall specify:
(a) the nature of the purchases and sales;
(b) the applicable rate schedule or negotiated rates for the purchases and sales;
(c) the amount and manner of payment of interconnection costs;
(d) the means for measurement of the energy or capacity purchased or sold by the utility;
(e) the method of payment by the utility for purchases, and the method of payment by the facility for utility sales;
(f) any installation and performance incentives to be provided by the utility to the qualifying facility;
(g) the services to be provided or discontinued by either party during system emergencies;
(h) the term of the contract;
(i) applicable operating safety and reliability standards with which the qualifying facility must comply;
(j) appropriate insurance indemnity and liability provisions.)

Rather then tender and review a wide variety of contracts, the MPSC should promulgate a standard QF contract (perhaps differentiated by capacity, technology, and interconnection).

Commented [CM2]: If this is indicating that the avoided cost will be recalculated with every contract, the posted "Avoided Costs" should be calculated in a manner that allows that posted rate (energy, capacity, or both) to be inserted into a power purchase agreement provided by the QF.

Commented [CM3]: The interconnection costs should only be included in the power purchase agreement to the extent the costs are not covered in a separate interconnection agreement.

[1] As requested by MPSC staff

[2] There was a question during the January 11, 2019 hearing regarding the applicability of a LEO if the project was interconnecting at MISO versus the LDC. Circle Power provided an oral response at the hearing and is providing additional information with this submittal

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 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

Commented [CM4]: This may be a reasonable requirement prior to first energy being delivered but not as a criteria for LEO.

Commented [CM5]: This may be a reasonable requirement prior to first energy being delivered but not as a criteria for LEO.

Commented [CM6]: This may be a reasonable requirement prior to first energy being delivered but not as a criteria for LEO.

Commented [CM7]: NRIS contemplates a level of service that a QF may not require or desire to provide.

This may be a reasonable requirement prior to first energy being delivered but not as a criteria for LEO.

Commented [CM8]: There is no reason additional requirements should be listed. This listing adds little additional information but does add considerable expense for the QF and provides delay in a required response from the utility.

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.

2. Commentary on items be included in and excluded from the LEO process

We suggest two elements should be required for the establishment of a LEO: 1) confirmation the project meets the requirements to be a QF as determined by FERC and 2) confirmation the project intends to sell to the Utility. Many of the elements required by the Montana rules to establishing a LEO are related to the physical elements of a project and have little to do with the establishment of the obligation as defined by FERC. The ability to complete a project is being conflated with the establishment of the obligation to purchase. The ability to complete a project does not remove or defer the obligation to purchase the power from the QF. The ability to complete the project is a self-regulating activity, if a project ultimately fails, no purchases will be required.

An argument can be made that establishing hurdles to obtaining a PPA reduces the opportunity for "mischief" in contracting or potential for activities that are not in the rate payer's interest. PPAs are valuable documents and care should be taken in executing agreements with qualified parties. Standardized contracts with established milestones provide protection against bad acts and provide the remedy when a project is not viable. Artificial, spurious, and unneeded rules were part of the impetus for the genesis of PURPA. It would be wrong to make PURPA projects more difficult to produce by implementing another series of artificial, spurious, and unneeded rules.

A reduction in hurdles provides the utility and the MPSC with the best view regarding the nature of projects that can be made available for power generation.

MPSC should disaggregate the LEO from the physical constraints regarding delivery and/or the physical mechanisms of delivery. Other regulatory bodies already oversee the safe and reliable construction and operation of a power generation facility. For example:

- Safe, reliable generation interconnections and power delivery mechanisms are the responsibility of the ISO/LDC.
- Siting concerns, generally for small projects and QFs, are the responsibility of the local townships and county permitting authority.
- Equipment selection, when not prescribed by the regulatory bodies above, is a consideration of the power generator and their financial partners.
- Adequacy of resource, similar to above, is a consideration of the power generator and their financial partners.

The MPSC should focus on creating and enforcing mechanisms that allow QFs to flourish in Michigan in a safe and regulated manner.

Providing schedules is important to keep both parties engaged in completing an agreement or in setting aside an unproductive effort. As an example of meeting the letter of the law without upholding the spirit of the law - Circle Power is involved in a QF project that has been attempting to obtain a contract, deal sheet or even a list of terms & conditions for over a year. Circle Power has provided a draft PPA, a second draft PPA and after little progress, offered to use the Consumer's PPA for QF purchases as a starting point. In each case, the utility has replied along the lines of – "the document is being reviewed", "numerous comments", "might not be the right starting point", "we are very busy", etc. We have an email from the MPSC stating that the utility has been informed that they must take the power and has been informed of that obligation. Regardless, there has been no action by the utility towards a contract. The utility is stalling without an MPSC definitive schedule that requires action.

Utilities have always had concerns regarding PURPA and QF projects such as:

- Multiple contracts in process makes utility planning more difficult. This is true. In a similar manner, multiple interconnection requests make transmission planning more difficult; however, utilities have been able to organize and handle these requests quite effectively. The method proposed to increase the knowledge available to the utility is to use a standardized PPA and include a standardized list of milestones (perhaps dependent on technology) that allow the utility to monitor the progress of a project. Developers have a similar concern regarding projects that are not viable hoarding assets and resources that could be made available to other projects. The elimination of projects that are not viable is a shared concern.
- There is potential for the avoided cost to attract too many projects. The proposed process described below provides for an increased frequency of avoided cost review that will dampen any short-term market influences and allow the MPSC additional oversight should it be required.
- Issuing a PPA during the development process is not necessary and leaves the utility exposed. The FERC requires the utility to take the power at the avoided cost, but the terms and conditions of a PPA can be as important to the viability of a project as the price. Should the project be required to be built before knowing that payment is quarterly, that emergency service requirements will require 24/7 onsite monitoring or any other term or condition that impacts the cost to provide the service? It is reasonable to require the utility to be bound by appropriate terms and conditions for purchase as stated in a PPA - in advance of committing millions of dollars to the development and construction of a project.
- Requiring a demonstration of assets (e.g. land agreements, interconnection, permits) provides a better indication of a viable project. Regardless of the LEO regulation, all projects will be required to meet any number of development milestones as required by other regulatory bodies. While requiring the demonstration of these milestones prior to receiving a PPA does increase the surety of a project coming online, that surety comes at an additional cost. All assets are acquired at some cost and requiring assets at an earlier time increases the holding costs of the asset during a far riskier phase of project development – a period during which the required return on development capital will be significantly higher as compared to a period closer to construction. These types of requirements can lead to several undesirable outcomes including higher overall development costs (i.e. more expensive projects), the elimination of otherwise viable projects that apply for a QF contract and, generally, a discriminatory environment that makes QF projects unfairly difficult – in particular those proposed by less well-capitalized/smaller developers.
- Projects will game the system. There are elements of the proposed process that CP believes hinder the potential for gaming the system. A notice of intent to sell provides the utility with basic information about the project and some estimated timeframes. The notice would be public information which goes against a party trying to develop a competitive edge. The information also allows the utility to include the potential resource in a planning cycle[1]. The request for a PPA will require the project to provide definitive dates to be incorporated into a PPA. A project that is ineffectively researched in an effort to get a PPA early risks being unable to meet the proposed milestones.

[1] The utility can use its own judgment regarding the probability of a particular project actually being built

3. CP's proposed LEO process

Circle Power would suggest the following process:

A. **Avoided Cost Review.** The utility provides a review of the avoided cost on two-year basis. As part of the avoided cost process, there is a threshold established where QF participation is likely to materially impact the avoided cost (e.g. XX% of the utility's load). The number of QF projects (in MW and as a % of utility load) will be tracked in a queue. The utility will have the ability to request an avoided cost review if the threshold described above is reserved/provided by QFs. In an expedited review [90 days], the MPSC will determine if the avoided cost has been impacted and, if it has, determine a new avoided cost. QFs that are in, or enter, the queue after the threshold has been exceed would not have a price set until the completion of the expedited avoided cost hearing.

B. **PPA Issuance.** To obtain a PPA, the QF would go through the following process:

   a. QF provides a notice of intent to sell. The notice of intent to sell locks the price for the QF based on the then current avoided cost and provides notice to the utility for planning purposes that additional power may be available. If the avoided cost is being calculated (see above), the QF is in queue but does not have a price until the new avoided cost rate is approved. After the MPSC has approved a new avoided cost, the new avoided cost would be awarded to QFs in queue until either the queue is satisfied or the requirements to again recalculate the avoided cost has been met. The notice of intent must include a description of the project, the proposed point of interconnect and a draft schedule of milestone events, with estimated dates, to be included in the PPA.

   b. QF requests a PPA or provides draft of agreement provided and approved by MPSC. The PPA request entitles the QF to negotiations regarding any outstanding issues with a defined calendar (45 days) for a completed PPA to be presented to MPSC.

C. **Removal of Inactive Contracts.** The utility must be provided the ability to reduce/remove inactive contracts. The PPA will include a definitive schedule of milestone events that must occur by certain deliverable dates. The PPA schedule is an appropriate place for requiring items such as land contract, interconnection status and permit approval. The QF should be responsible for providing a list of milestones and milestones dates. Standard force majeure considerations should be employed as well as the consideration of the utility's ability to control aspects of the schedule.

If the process above, or similar, is not enacted, the MPSC should clearly state the terms and conditions regarding a power purchase agreement that QFs are eligible to obtain.

4. Applicability of a LEO for projects interconnecting at MISO versus the LDC

Regarding an electric utility obligation to purchase power if the interconnection is at a transmission voltage versus directly to the LDC, see § 292.303 (a)(2) and § 292.303 (d) which clearly state that an indirect sale is allowed. The QF has the option ("*If a qualifying facility agrees…*") and the language is unambiguous ("*…shall purchase such energy or capacity under*

this subpart as if the qualifying facility were supplying energy or capacity directly to such electric utility"). The utility must purchase the power, even with an indirect connection.

Cited section below.

§ 292.303 Electric utility obligations under this subpart.

(a)Obligation to purchase from qualifying facilities. Each electric utility shall purchase, in accordance with § 292.304, unless exempted by § 292.309 and § 292.310, any energy and capacity which is made available from a qualifying facility:

(1) Directly to the electric utility; or

(2) Indirectly to the electric utility in accordance with paragraph (d) of this section.

(b)Obligation to sell to qualifying facilities. Each electric utility shall sell to any qualifying facility, in accordance with § 292.305, unless exempted by § 292.312, energy and capacity requested by the qualifying facility.

(c)Obligation to interconnect.

(1) Subject to paragraph (c)(2) of this section, any electric utility shall make such interconnection with any qualifying facility as may be necessary to accomplish purchases or sales under this subpart. The obligation to pay for any interconnection costs shall be determined in accordance with § 292.306.

(2) No electric utility is required to interconnect with any qualifying facility if, solely by reason of purchases or sales over the interconnection, the electric utility would become subject to regulation as a public utility under part II of the Federal Power Act.

(d)Transmission to other electric utilities. If a qualifying facility agrees, an electric utility which would otherwise be obligated to purchase energy or capacity from such qualifying facility may transmit the energy or capacity to any other electric utility. Any electric utility to which such energy or capacity is transmitted shall purchase such energy or capacity under this subpart as if the qualifying facility were supplying energy or capacity directly to such electric utility. The rate for purchase by the electric utility to which such energy is transmitted shall be adjusted up or down to reflect line losses pursuant to § 292.304(e)(4) and shall not include any charges for transmission.

(e)Parallel operation. Each electric utility shall offer to operate in parallel with a qualifying facility, provided that the qualifying facility complies with any applicable standards established in accordance with § 292.308.

[Order 688, 71 FR 64372, Nov. 1, 2006; 71 FR 75662, Dec. 18, 2006]