

Disclaimer: This document is a working draft and is provided for discussion purposes only. The information contained herein is subject to change and does not commit the Michigan Public Service Commission.

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 in 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.

## DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

### PUBLIC SERVICE COMMISSION

#### PART IV: CREATION OF A LEGALLY ENFORCEABLE OBLIGATION

Applicability: Scope—These rules apply to an electric utility that has an avoided cost basis and associated capacity need established by the Commission, alternative electric supplier and to a proposed facility eligible for standard offer service to connect to the electric utility's distribution system, whose rates are regulated by the Commission. If a project is to be connected at a transmission level these rules do not apply. There shall be no legally enforceable obligation other than a fully executed power purchase agreement for energy only at the appropriate MISO LMP, in the event that an electric utility or alternative electric supplier has no need for generation capacity.

Definitions:

**Commented [A1]:** Definitions should be consistent with the interconnection rules

(1) A legally enforceable obligation on both the qualified facility and the electric utility or alternative electric supplier 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 electric utility or alternative electric supplier with documentation identified by the electric utility or alternative electric supplier in business practices maintained in the ordinary course of business 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.

(b) A qualifying facility shall provide the purchasing utility all of the following:

- (i) A description of the location of the proposed 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;
- (ii) An Internal Revenue Service Form W-9; and
- (iii) 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 proposed project’s proposed power purchase agreement.

(c) A qualifying facility shall provide the purchasing electric utility or alternative electric supplier with:

- (i) Written proof of a legally enforceable 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 electric utility or alternative electric supplier with written, legally enforceable proof of a steam host that ~~has~~ is willing to ~~contracted~~ contract for steam over the full term of the project’s proposed power purchase agreement.

(d) ~~If a project is to be~~ A qualifying facility connected at distribution level, ~~a qualifying facility has~~ must have completed the following steps:

- (i) Completed and remitted full payment for the Interconnection Application
- (ii) Completed and remitted full payment for the Engineering Review which identifies system impacts to be addressed in the Distribution Study
- (iii) Completed and remitted full payment of the cost of Distribution Study which provides a good faith estimated cost of distribution system upgrades required for a viable interconnection.
- (iv) executed a ~~Construction~~ Facilities Agreement provided by the purchasing utility and remitted full payment of the good faith estimated cost of distribution system upgrades. ~~the first Milestone payment.~~ [Must correspond with payment schedule in Facilities Agreement]

~~(e) If a project is to be connected at the distribution level, purchasing utility must adhere to the process and timelines pursuant to Mich Admin Code, R[460.XXX] of the (full title of rules), subject to penalties under MCL 460.10e.~~

~~(e) If a project is determined by an interconnecting electric utility to create an affected system impact, the qualifying facility shall present evidence acceptable to the interconnecting electric utility that the proposed project's impacts will be properly mitigated or are acceptable to the affected system. 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"). [Need Stakeholder input here.]~~

~~(f) If the purchasing utility and the QF are unable to reach agreement on the PPA, either party may file an unexecuted PPA with the Commission pursuant to the complaint process.~~

~~(f) 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.~~

~~(g) The qualifying facility and any and all upstream holding companies shall demonstrate through audited financial statements that each company has the same capital structure in terms of those companies' ratio of debt to equity as the purchasing electric utility or alternative electric supplier.~~

~~(h) The qualifying facility and any and all affiliated companies are in good standing with the interconnecting electric utility and the purchasing electric utility or alternative electric supplier and have timely paid all bills rendered by the interconnecting electric utility and the electric utility or alternative electric supplier.~~

~~(i) A qualifying facility has obtained and provided to the purchasing utility or alternative electric supplier written, legally enforceable 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 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 proposed qualifying facility.~~

~~(2f) If ~~For aa-~~project is to be connected at the distribution level, the Commission has a right to audit and review all interconnection study cost information and timelines.~~

~~(3g) ~~If a~~ For a project is to be connected at the distribution level, a purchasing electric utility or alternative electric supplier will provide a ~~draft proposed~~ ~~executed~~ PPA within ten (10) days of the QF signing the ~~Construction Facilities~~ Agreement and remitting full payment of the good faith estimated cost~~

**Commented [A2]:** No need for a special complaint provision. Complaints are always available.

of distribution system upgrades. If the electric utility or alternative electric supplier and the proposed facility do not fully execute a PPA 6 months from the provision of a draft proposed PPA, the legally enforceable obligation terminates.

(4) Nothing in these rules shall be construed to limit an electric utility's or alternative electric supplier's right to negotiate any term or condition of any contract with a qualifying facility and the electric utility or alternative supplier shall have no obligation to execute any specific contract with any specific qualifying facility. In no event shall an electric utility or alternative electric supplier have an obligation to execute a contract with a qualifying facility that is above its avoided cost or otherwise inconsistent with the Public Utility Regulatory Policies Act of 1978 (PURPA) as amended from time to time.

(5) The interconnecting electric utility's right to study and operate its distribution system shall not be infringed. An interconnecting utility shall every 3 years issue a request for proposals for third party vendor Engineering Reviews and Distribution Studies considering distribution system conditions determined to be necessary and acceptable in the interconnecting electric utility's sole reasonable judgment. If the interconnecting electric utility chooses the lowest cost proposal from a qualified and reasonably staffed vendor that proposal and its costs shall be considered reasonable, prudent and acceptable for all purposes.