STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion, to initiate an inquiry into the methods and approaches for determining utility capacity needs over a 10-year planning horizon to establish or update avoided capacity costs.	))))))	Case No. U-20095

At the October 5, 2018 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman
Hon. Norman J. Saari, Commissioner
Hon. Rachael A. Eubanks, Commissioner

ORDER

On May 3, 2016, the Commission commenced several contested cases in which it directed rate-regulated utilities to file proposed avoided cost calculation methods and costs in accordance with the requirements of the Public Utility Regulatory Policies Act of 1978, 16 USC 2601 *et seq.*, 16 USC 824a-3 (PURPA). Under PURPA, "the states play the primary role in calculating avoided costs and in overseeing the contractual relationship between QFs [qualifying facilities] and utilities operating under the regulations promulgated by the FERC [Federal Energy Regulatory Commission]." *Indep Energy Producers Ass'n Inc v Cal Pub Utils Comm'n*, 36 F3d 848, 856 (CA 9, 1994). States have discretion "in determining the manner in which the regulations are to be implemented. Thus, a state commission may comply with the statutory requirements [regarding contractual relationships and avoided costs] by issuing regulations, by

resolving disputes on a case-by-case basis, or by taking any other action reasonably designed to give effect to FERC's rules." *FERC v Mississippi*, 456 US 742, 751; 102 S Ct 2126; 72 L Ed 2d 532 (1982).

In an order issued in this docket on February 22, 2018 (February 22 order), the Commission sought comment from interested persons on seven clusters of issues, and 14 comments were timely received. The Commission also received one late comment filed by TurningPoint Energy (TPE) on July 20, 2018. The Commission also noted in its order that it has historically addressed the issue of the creation of a legally enforceable obligation (LEO) under PURPA on a case-by-case basis, that it envisions a future rulemaking addressing this issue, and that it would provide guidance in the meantime. February 22 order, p. 4. Addressing each issue in the order in which it appeared in the February 22 order, this order reviews the comments and provides Commission feedback.

1) Should the need for capacity over a 10-year period be determined in an integrated resource plan? If so, how should the capacity requirement be established? Should capacity need be evaluated each year or incrementally (i.e., 2019-2021, 2022-2024)?

The majority of commenters agreed that the integrated resource plan (IRP) proceeding is the most appropriate forum in which to determine a utility's capacity need, and that claimed changes to capacity need that occur between IRP proceedings must undergo Commission review and approval in a contested case. The Environmental Law and Policy Center (ELPC) averred that because of the infrequency IRP proceedings, a utility's capacity need should be reviewed in the biennial PURPA review as the Commission ordered in Case No. U-18090. ELPC's comments, pp. 1-2.

2) In the event that a utility claims a change in its 10-year capacity forecast, such that avoided capacity costs would change, at what point should the Commission reset the capacity price? Are there interim measures that the Commission should undertake until a full assessment of the revised forecast can be concluded?

Again, most commenters agreed that the avoided capacity costs approved by the Commission should remain in effect until the regulated utility has filed for Commission review of its proposed capacity change, a full contested proceeding has taken place, and the Commission has made a final determination. The commenters also generally agreed that no interim measures should be taken without full Commission review. Consumers Energy Company (Consumers) deviated from the consensus and suggested that when an electric provider makes a filing demonstrating that its capacity need has been met, the avoided capacity rate should either immediately switch to the Midcontinent Independent System Operator Planning Resource Auction rate, or the Commission should stay the avoided cost rate currently in effect pending the outcome of an expedited, contested proceeding. Consumers' comments, p. 6. DTE Electric Company (DTE Electric) commented that, "[c]apacity need should be established over a forward looking period, but with distinctions made for the starting point and duration of the need. The determining factor in making such distinctions should be whether or not the need is persistent." DTE Electric's comments, p. 4. DTE further commented that if a utility demonstrates a persistent need for capacity over a period of time, such as 10 years, then the avoided cost methodology should be based on the expected next generation investment, but if there is no capacity need, then the avoided cost methodology should be based on short-term market options. *Id*., pp. 5-6.

3) How should qualifying facility projects that are in the queue be treated at the point where a utility claims that its need for capacity in the 10-year planning period has been reduced or eliminated?

DTE Electric and Consumers responded that QFs should be permitted to stay in the interconnection queue at their own risk, but emphasized that being in the queue, on its own, does not create an LEO or requirement for the utility to purchase capacity from the QFs. DTE

Electric's comments, p. 7; Consumers' comments, p. 7. Cypress Creek Renewables, LLC (Cypress Creek) agreed with DTE Electric and Consumers that an LEO, and not the position in the queue, determines a QF's rights to sell capacity. Cypress Creek's comments, p. 8. The Commission Staff's (Staff) position was that QFs with complete applications shall be permitted to remain in the queue, and incomplete applications shall be given the opportunity to cure any defect before removal from the queue. ELPC, the Michigan Energy Innovation Business Council (MEIBC), and Energy Michigan commented that there should be no change to or removal from the interconnection queue until the Commission issues a final determination as to a utility's capacity need. ELPC's comments, p.4; MEIBC's comments, pp. 5-6; Energy Michigan's comments, p. 5. TPE explained that it would be reasonable to allow any project that conforms to the intended standard offer of two megawatts (MWs) or less to move forward in the interconnection queue. TPE's comment, p. 1.

4) What criteria should the Commission use in determining whether a legally enforceable obligation has been created?

The Commission received extensive comments on this issue. Generally, there was agreement among the commenters that an unequivocal commitment from the QF is a prerequisite to an LEO, that an executed power purchase agreement (PPA) is not a prerequisite, and that the utility cannot have unilateral control over the creation of an LEO. DTE Electric was the only commenter to suggest that an executed PPA was necessary to establish an LEO. DTE Electric's comments, pp. 8-9.

The Staff provided a list of prerequisites to the establishment of an LEO, including: (1) site control, (2) initial proof that the project has a high likelihood of being financed if awarded a PPA, (3) proof that the QF performed an electrical engineering assessment demonstrating

technical feasibility for interconnection, and (4) proof of preliminary steps to secure permitting and zoning. Staff's comments, pp. 3-4.

DTE Electric and Consumers also listed several criteria they believed necessary to establish an LEO, including: (1) descriptions of the QF project; (2) proof of FERC certification as a QF; (3) site control and acquisition of necessary permitting; (4) demonstrated fuel security; (5) proof of secured commitment from major equipment manufacturers; (6) an agreement to satisfy all interconnection requirements; (7) a project schedule; and (8) demonstrated financial security. DTE Electric's comments, pp. 8-9; Consumers' comments, pp. 8-14. The Michigan Energy and Gas Association (MEGA) suggested that the Commission adopt the Texas model, which establishes an LEO 90 days from the date of commercial operation of a QF. MEGA's comments, pp. 3-5. MEIBC requested that the Commission promulgate rules codifying the criteria for establishing an LEO. MEIBC's comments, pp. 6-7.

5) Going forward, should the Commission consider a competitive process for the procurement of qualifying facility capacity, based on the utility's capacity need, as determined by the integrated resource plan? Should the competitive process be used solely to allocate available capacity, or should it also be used to determine avoided cost payments to qualifying facilities?

Competitive bidding proved to be a divisive issue among commenters with some suggesting that competitive bidding would be feasible within certain defined parameters, while others contended that it is not a workable option under Michigan's current laws and regulations or that it would violate PURPA.

The Staff commented that utilizing a competitive bidding process would be reasonable for capacity beyond the standard offer capacity size and that a blind auction for capacity could be administered by a third party. As to determining avoided costs, the Staff proffered that a competitive process could be used for a utility that is not expected to build its own generation.

Consumers opined that a competitive process could be used for purchasing capacity for any need that occurs within the first five years of an IRP, and that both the utility's avoided cost and the cost of alternative resources (i.e., QF resources) could be determined in the IRP. The company suggested that after an IRP, including an action plan for capacity procurement, is approved, the utility would solicit bids and "[a]ll QF resources that came in under the costs identified in [the] IRP would be awarded contracts, at the rates bid in the competitive process, up to the amount of capacity" approved in the IRP. Consumers' comments, pp. 7-8. DTE Electric offered few specifics but agreed with Consumers that a competitive capacity procurement could be feasible and should be limited to the amount determined in the IRP. DTE Electric also emphasized that competitively established rates could fall below the utility's avoided costs but could not exceed them. DTE Electric's comments, p. 9. Cypress Creek and MEGA also took the stance that competitive bidding was feasible but cautioned that competitive bidding could not impair the rights of QFs established in LEOs and that it must conform with PURPA and FERC regulations.

ELPC, the Sustainable Power Group, LLC (Sustainable Power), MEIBC, Energy Michigan, Geronimo Energy, LLC (Geronimo Energy), and Ranger Power, LLC (Ranger Power) all voiced opposition to the use of competitive bidding to procure capacity. While conceding that there is nothing wrong with competitive bidding *per se*, ELPC explained that because Michigan is vertically-integrated and utilities are not required to procure all capacity competitively, implementing a competitive PURPA process would be discriminatory, would not reflect the incremental cost to the utility, and would not capture all the benefits provided by QFs. ELPC's comments, pp. 6-7. Sustainable Power, MEIBC, Energy Michigan, Geronimo Energy, and Ranger Power argued that competitive bidding is incompatible with the requirements and intent

of PURPA. Geronimo Energy elaborated, stating that competitive bidding cannot be the only pathway to a PURPA contract for a QF and that such methodology is not appropriate for allocating capacity. As to using competitive bidding to establish avoided costs, Geronimo Energy conveyed that avoided costs are determined using several factors and that a competitive process would not capture the total picture of actual avoided costs. Geronimo Energy advocated for a first-come, first-serve methodology for awarding capacity contracts based on establishment of an LEO. Geronimo Energy's comments, p. 5.

6) Should the integrated resource plan process be used to update avoided energy and capacity payments based on the blended cost of the plan (e.g., energy efficiency, demand response, fossil generation, renewables, market purchases), or some other method that ensures an accurate representation of a utility's actual avoided costs and non-discriminatory treatment of qualifying facilities?

DTE Electric and Consumers expressed support for using the IRP process to update avoided costs. Consumers advocated for the use of a blended rate of avoided costs that reflect the mix of resources needed to meet capacity needs in the IRP. Alternatively, Consumers suggested a method of setting avoided costs to match energy and capacity market rates, which reflects the avoided cost a "utility would incur when an immediate or short-term need is identified." Consumers' comments, p. 15. Consumers' third suggestion was to utilize a tiered avoided cost rate based on resources selected in the IRP to meet a capacity need at a specified rate. Ranger Power and Energy Michigan agreed that the IRP could be used to update avoided energy and capacity costs, but only to the extent that it is used to restrain utility costs. Ranger Power and Energy Michigan did not agree, however, on the use of a blended rate, reasoning that it is not among the consideration factors the FERC sets out in 18 CFR 292.304(e) and that it is improper to base QF pricing on programs in which QFs are barred from participating. Ranger Power's comments, pp. 5-6; Energy Michigan's comments, pp. 8-9. MEIBC, Independent Power

Producers Coalition of Michigan (IPPC), and Geronimo Energy joined Ranger Power and Energy Michigan's opposition to the use of blended costs.

The Staff, ELPC, Cypress Creek, MEIBC, and IPPC oppose using the IRP for avoided cost determinations and maintain that the proceeding provided by MCL 460.6v is the proper avenue. Cypress Creek and ELPC also objected to the IRP as a procedural avenue arguing that the IRP cases are too infrequent to address potentially changing avoided costs, and that the Commission should use the avoided costs it just developed in the Consumers avoided costs case, Case No. U-18090, and the biennial review of avoided costs to begin in 2019. Cypress Creek's comments, pp. 17-18; ELPC's comments, p. 8.

7) Putting aside the overall capacity forecast, how should qualifying facility energy and capacity be treated with respect to the utility's renewable portfolio or customer-requested renewable energy under 2008 PA 295?

There was a consensus among the commenters that the FERC has determined that renewable energy credits (RECs) associated with the renewable energy generated by a QF are not included in a PURPA contract. However, the commenters agreed that electric providers and QFs could separately contract for RECs, if desired, as means to achieve RPS compliance. Cypress Creek, ELPC, Ranger Power, MEIBC, Energy Michigan, IPPC, and Geronimo Energy all expressed that QFs are an economical source of RECs for RPS compliance and that a utility should not be able to subvert its PURPA obligations by claiming that it must build its own renewable generation to comply with RPS mandates.

Discussion

The Commission would first like to acknowledge the difficulty and complexity surrounding PURPA and its associated issues; and secondly, would like to express gratitude to the

commenters in this docket for providing their instructive and informative feedback in response to the Commission's questions. As the Commission moves forward in the PURPA foray, it is necessary to emphasize that cooperation and collaboration from all stakeholders are imperative to ensuring a fair process, just and reasonable rates for Michigan ratepayers, and PURPA implementation that is viable into the foreseeable future. The Commission now addresses each issue raised in this comment docket in turn.

1) Should the need for capacity over a 10-year period be determined in an integrated resource plan? If so, how should the capacity requirement be established? Should capacity need be evaluated each year or incrementally (i.e., 2019-2021, 2022-2024)?

The Commission is not revisiting in this docket the Commission's overall decision to determine a utility's need for capacity under PURPA over a 10-year period. As to whether an IRP is an appropriate proceeding in which to determine a utility's need for capacity, the IRP process, as set out in MCL 460.6t, is explicitly designed and is indeed the most suitable proceeding for determining capacity needs. Recognizing that the capacity need may change quickly between IRP cases and the need to provide certainty on the applicable capacity rates under PURPA, the Commission expects information addressing capacity needs in an IRP proceeding be provided in a yearly format. In other words, the capacity need must be addressed for each individual year within the period forecast. The Commission believes this will allow for more thorough and specific evaluation of a utility's capacity need. The Commission also agrees that interim filings to update a utility's capacity need are appropriate and will be permitted.

2) In the event that a utility claims a change in its 10-year capacity forecast, such that avoided capacity costs would change, at what point should the Commission reset the capacity price? Are there interim measures that the Commission should undertake until a full assessment of the revised forecast can be conducted?

In reviewing the comments, the Commission agrees with the majority of commenters that a filing by a utility claiming a change in its 10-year capacity forecast should not on its own reset

the capacity price previously set by the Commission. The Commission would not go through the rigors of a contested proceeding to set avoided capacity costs only to turn around and reset them upon a utility's claim of changed capacity need that has not been vetted by a similarly rigorous process. While the Commission generally agrees that no interim measures are necessary until the claim of changed capacity is fully assessed by the Commission in a contested proceeding, the Commission finds that some flexibility should be provided to reset the capacity price without a full contested case if there is good cause demonstrated by the utility. The Commission would still evaluate the good cause request to make such a determination. As mentioned in the response to Question 1, the Commission will consider the issue of capacity need in IRP cases or stand-alone cases.

3) How should qualifying facility projects that are in the queue be treated at the point where a utility claims that its need for capacity in the 10-year planning period has been reduced or eliminated?

Similar to its determination that avoided capacity costs should not be reset upon a claimed change in capacity need by a utility without good cause as determined by the Commission, the Commission also finds a QF's position or treatment in the utility's interconnection queue should not be impacted by a claimed change in capacity need alone. The rights and obligations of a QF in the interconnection queue shall remain subject to first-come, first-serve prioritization. The Commission notes that a position in the interconnection queue alone does not determine a QF's right to sell capacity because a QF's rights and obligations are determined by a number of factors, including the Commission's final determination of a utility's capacity need.

The Commission is aware of the uncertainty and confusion surrounding interconnection queues, especially for the queues of DTE Electric and Consumers. Some of these issues were alluded to in Case No. U-18491, addressing Consumers' recent filing alleging it no longer has a

capacity need[1] and in the PURPA-related complaints filed by QFs against DTE Electric.[2] The Commission is currently considering ways in which it can work with the utilities and stakeholders to improve clarity, fairness, and efficiency in the interconnection queue process; one of those ways being a rulemaking process in connection with the revision of the Electric Interconnection Standards, 1999 AC, R 460.601 *et seq*. Given the complexity of the issue, prior to initiating the formal rulemaking process, the Staff will lead stakeholder discussions on potential rule changes. The Commission will continue to review options to address the interconnection queue issues and will provide further guidance on this issue at a later date.

4) What criteria should the Commission use in determining whether a legally enforceable obligation has been created?

In reviewing the comments, it is clear to the Commission that the establishment of an LEO is a critical step in the determination of rights and obligations of both a utility and a QF in a PURPA contract. Considering the important role of an LEO and relying on the comments provided in this docket, the Commission finds that the appropriate pathway forward to establishing criteria to determine whether an LEO has been established is through a rulemaking procedure. A rulemaking, pursuant to the Administrative Procedures Act of 1969, MCL 24.201 *et seq*. will allow full participation by all interested parties, thorough vetting of pertinent information and criteria, and careful consideration by the Commission. Therefore, the Commission will include in the revision of the Electric Interconnection Standards, Mich Admin Code R 460.601 *et seq.*, rules pertaining to the definition and establishment of an LEO.

[1] *See*, Consumers' application, Case No. U-18491 (Dec. 20, 2017) (requesting Commission approval of Consumers' position that over a ten-year generation period, it has no capacity need).

[2] *See*, Cypress Creek Renewables, LLC's complaint, Case No. U-20151 (April 6, 2018); Greenwood Solar, LLC's complaint, Case No. U-20156 (April 17, 2018).

5) Going forward, should the Commission consider a competitive process for the procurement of qualifying facility capacity, based on the utility's capacity need, as determined by the integrated resource plan? Should the competitive process be used solely to allocate available capacity, or should it also be used to determine avoided cost payments to qualifying facilities?

Competitive bidding is a means of PURPA implementation in which a state commission authorizes or utilizes an open bidding process for independent power producers (IPPs), including QFs, to bid to supply a utility's unmet capacity needs. The winning bids are generally regarded as equivalent to the utility's avoided costs. Several states including Washington, North Carolina, Connecticut, Pennsylvania, California, and Maine utilize some form of competitive bidding for PURPA purposes.

In the past, the Commission has contemplated the use of competitive bidding. The Commission issued its first order implementing PURPA on August 27, 1982, in Case No. U-6798, in which the Commission established a procedure for the administrative determination of avoided energy and capacity costs for Michigan electric providers. On January 31, 1989, in Case No. U-8871, the Commission attempted to utilize competitive bidding in its PURPA implementation by directing Consumers to propose methods for obtaining capacity from QFs by means of a competitive bidding system, among other things. Consumers failed to do so. The Commission made a second attempt on March 29, 1990, in Case No. U-9586, in which it requested that the Staff and Consumers file proposals for a competitive bidding framework. In that docket, the Staff filed a proposal suggesting that any competitive bidding for a utility's available capacity include the following elements:

- Any capacity solicitation should be consistent with the utility's IRP, however, because the utility should use the most current information available, the utility may deviate from the IRP with justification.

- The utility shall file a request for proposals (RFP) containing a schedule for the submission of bids, as well as the review and selection process.

- The RFP shall contain sufficient information regarding the amount and characteristics of its needed capacity, minimum qualifications of projects and developers to be eligible to participate in a bid, requirements for bid proposals, and the method of bid ranking so that potential developers can make informed decision to participate or not.

- The RFP must contain all avoided cost information.

- A contested case shall be conducted to determine avoided cost and any disputes regarding the RFP.

- Bids will be evaluated on a price-only basis.

- The process will be monitored by a third party, the Commission Staff.

- The first RFP will be limited to supply-side bids, but future RFPs may be expanded to other options.

- The Commission will resolve disputes between the utility and a successful bidder.

- If two bids are in all aspects equal, a QF will receive preference over a non-QF.

- Bids will not be self-scoring. The utility will evaluate bids and select winning bids in accordance with the methodology proposed by Staff.

- Ties between bids will be resolved by a second round of bidding.

- The RFP should contain a proposal to address situations where the final winning bid is not sufficient to meet the remaining capacity need of the utility.

- The Staff also proposed to give the utility an incentive of 50% savings between the bid amount and the avoided cost, however, this was rejected by the Commission.

The Commission adopted the framework listed above, with the exception of the incentive mechanism, as well as some other adjustments discussed in further detail in the June 12, 1992 order in Case No. U-9586. Thus, the Commission established this framework for future capacity solicitations and directed Consumers to conform its RFP filing with that framework. However, it

appears that a competitive solicitation process never materialized, and the Commission has not since revived its attempts.

Since 1992, there have been significant changes to the energy landscape in Michigan, PURPA,[3] wholesale energy markets, and Michigan's energy laws with the passage of Public Act 141 of 2000 and Public Act 341 of 2016, MCL 460.1 *et seq.* (Act 341), and Public Act 342 of 2016 (Act 342), MCL 460.1001 *et seq.*, and therefore, the Commission is aware that a framework established in 1992 may well not be viable contemporaneously. However, as mentioned previously, there are multiple states utilizing a competitive bidding process that can serve as examples of "dos and don'ts" for the Commission to consider in determining whether this is a viable avenue for Michigan utilities, QFs, and ratepayers.

The example states listed above have set out the framework for competitive bidding through rulemaking processes that clearly define the parameters of competitive bidding. While the details vary between states, there are some components set out in those states' regulations worth noting. Those components include, but are not limited to: (1) defining the scope of application for competitive solicitations; (2) regulating the timing and/or frequency of competitive solicitations (i.e., linking the bid solicitation to the utility's IRP); (3) including a waiver from a requirement to issue solicitation if the utility demonstrates it does not have a capacity need; (4) setting out the requirements for an RFP (i.e., state the capacity needed and duly supported avoided cost, show the capacity need is consistent with the IRP's stated capacity, list eligibility and evaluation criteria, specify timing of the bidding process, and identify security

[3] The Energy Policy Act of 2005 amended sections of PURPA removing the mandatory purchase requirement for QFs with a capacity over 20 MW that have non-discriminatory access to a competitive market. *See*, Energy Policy Act of 2005, 16 U.S.C. 824a-3(m)(1) (2005).

requirements); (5) allowing a utility discretion to enter into or not enter into a contract with an IPP that meets all specified requirements; and (6) setting out the rights and obligations of an IPP.

Recent declaratory orders issued by the FERC provide further guidance to the Commission on other pitfalls associated with competitive bidding. For instance, in *Hydrodynamics, Inc.*, 146 FERC ¶ 61,193 (2014), the FERC found that where the Montana state commission required any QF over 10 MW to participate in competitive bidding to obtain a long-term avoided cost contract and where only one solicitation had occurred in approximately ten years due to the lack of state commission rules requiring solicitation, the state's competitive bidding process violated the PURPA-granted, unconditional right of a QF to choose whether to sell its power as available or at a forecasted avoided rate pursuant to an LEO. Generally, the FERC explained, a state cannot impose limitations on the QF's ability to sell energy or capacity that are not in the FERC's PURPA regulations. In another recent case, *Windham Solar, LLC*, 157 FERC ¶ 61, 134 (2016), the FERC declared that a Connecticut utility could not opt to purchase capacity from the independent system operator market if QF capacity was available, and that the utility could not refuse a QF a forecasted avoided cost rate, even if the utility was also offering an "as available" or at time of delivery rate. According to the FERC, a utility cannot refuse a QF the opportunity for a contract long enough to allow the QF a reasonable opportunity to attract capital from potential investors.

The Michigan Court of Appeals has also addressed an early attempt by the Commission to implement PURPA through a competitive bidding process in *Consumers Power Co v Public Serv Commission*, 189 Mich App 151, 472 NW 2d 77 (1991). In that case, the Commission entered an interim order in its implementation of PURPA in a case with Consumers that approved a capacity need of 1,160 MW; set a capacity cost of 3.77 cents per kilowatt hour; allowed capacity

rates to be backloaded[4] by 10% for projects fueled by coal or peat, and 25% for oil or natural gas; prohibited any one project from supplying more than 55% of the capacity need; and prohibited any more than 75% of the capacity need from being served by a single type of fuel. When the decision reached the Michigan Court of Appeals, the Court found that the Commission had exceeded its authority under PURPA by limiting the size of the chosen QFs and limiting the capacity to be supplied by a single type of fuel. The Court also held that the Commission could not force a utility into a contract, but can, within its authority, set limitations on a PURPA contract. The Court also noted that utilities and QFs are free to negotiate contracts, but that if negotiations fail, the QF can insist that the utility purchase needed energy and capacity at full avoided cost.

In reviewing the comments, the Commission is cognizant of the division between commenters regarding the use of competitive bidding. DTE Electric, Consumers, and the Staff voiced that competitive bidding could be possible for PURPA implementation, while other commenters, made up mostly of ratepayer representative associations, environmental groups, and IPPs, cautioned that competitive bidding would be discriminatory or would not fairly compensate QFs. Reviewing the comments has also raised additional questions for the Commission. Specifically, how current Michigan law, the state's diversity in electric generation, and energy markets would shape competitive bidding; how competitive bidding would be structured to comply with PURPA and FERC regulations; how a competitive solicitation would or would not be linked to an IRP proceeding in terms of capacity determinations and solicitation

[4] Backloading "means that, while the average price paid over the length of the contract is 3.77 cents, payments made to the QF are reduced by the backloading amount at the beginning of the project and increased by that amount at the end of the contract." 189 Mich App 151, footnote 2.

frequency; eligibility and ranking criteria for projects and bids; how a competitive bidding process would accurately capture a utility's avoided cost; the contents of a potential RFP; whether an RFP should include a standard offer and the associated criteria of a standard offer; and, what a potential rule set establishing competitive bidding would include, among others.

The Commission is interested in gathering information and exploring all potential pathways that will improve upon and refine PURPA implementation. Competitive bidding is one such possible pathway, provided competitive bidding is compatible with applicable law. The Commission also notes that many of the issues raised in this comment docket, including competitive bidding, have also been raised in Consumers' IRP docket, Case No. U-20165, which is being conducted as a contested case. As such, the Commission suggests reservation of further comment on competitive bidding for the proceeding in Case No. U-20165.

6) Should the integrated resource plan process be used to update avoided energy and capacity payments based on the blended cost of the plan (e.g., energy efficiency, demand response, fossil generation, renewables, market purchases), or some other method that ensures an accurate representation of a utility's actual avoided costs and non-discriminatory treatment of qualifying facilities?

The use of blended costs in determining avoided energy and capacity payments also proved to be a divisive issue, with DTE Electric and Consumers being receptive to the use of blended costs to determine avoided costs in the IRP, and the Staff, ELPC, Cypress Creek, MEIBC, IPPC and Geronimo Energy voicing opposition to using the IRP to determine avoided costs or the use of blended costs. The Commission finds that, given the close relationship between a utility's capacity need and avoided costs, it is appropriate to address both capacity need and avoided costs in an IRP proceeding. The Commission notes, however, that if avoided costs are considered in an IRP proceeding, avoided costs will continue to be addressed as required under and pursuant to MCL 460.6v. As to the use of blended costs in calculating avoided costs, the Commission will

consider this issue in an avoided cost proceeding (either a stand-alone proceeding for that purpose or an IRP proceeding) where avoided costs will be addressed in their entirety.

7) Putting aside the overall capacity forecast, how should qualifying facility energy and capacity be treated with respect to the utility's renewable portfolio or customer-requested renewable energy under 2008 PA 295?

The Commission agrees with previous FERC decisions and the consensus by the commenters that the RECs associated with a QF's renewable generation are not automatically included in a PURPA contract, however, they can be separately contracted for as a means to achieve RPS compliance under Public Act 295 of 2008 (Act 295), as amended by Act 342. The Commission notes that the removal of the 50/50 provision in Act 295[5] should not be interpreted as a requirement for utilities to own all renewable generation used to comply with RPS. The Commission agrees that QFs should be considered as a source of RECs and that a utility cannot use its RPS obligations to improperly avoid any PURPA obligation; however, the Commission declines to make any specific directives to any rate-regulated utility regarding separate purchases of RECs in PURPA contracts in this docket. The Commission will continue to evaluate the reasonableness and prudence of a utility's renewable energy portfolio in renewable energy plan and reconciliation proceedings, whether it is based on utility-owned generation, REC purchases, traditional power purchase agreements, and/or contracts with QFs.

THEREFORE, IT IS ORDERED that this docket shall be closed.

[5] Prior to its amendment by Public Act 342 in 2016, Act 295 mandated that no more than 50% of the RECs used to meet the renewable energy standards for 2015 could be sourced from renewable generation owned or developed by the utility. Clean, Renewable, Efficient Energy Act, 2008 PA 295, MCL 460.1033(1)(a) (2008) (amended 2016).

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so by the filing of a claim of appeal in the appropriate court within 30 days of the issuance of this order, under MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel. Electronic notifications should be sent to the Executive Secretary at mpscedockets@michigan.gov and to the Michigan Department of the Attorney General - Public Service Division at pungp1@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

Sally A. Talberg, Chairman

Norman J. Saari, Commissioner

Rachael A. Eubanks, Commissioner

By its action of October 5, 2018.

Kavita Kale, Executive Secretary

P R O O F O F S E R V I C E

STATE OF MICHIGAN)

Case No. U-20095

County of Ingham)

Lisa Felice being duly sworn, deposes and says that on October 5, 2018 A.D. she electronically notified the attached list of this **Commission Order via e-mail transmission**, to the persons as shown on the attached service list (Listserv Distribution List).

Lisa Felice

_____

Lisa Felice

Subscribed and sworn to before me
this 5th day of October 2018

Angela P. Sanderson

_____

Angela P. Sanderson
Notary Public, Shiawassee County, Michigan
As acting in Eaton County
My Commission Expires: May 21, 2024

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