

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Qualifying Facility Rates and Requirements.)	Docket No. RM19-15-000
)	
)	
Implementation Issues Under the Public Utility Regulatory Policies Act of 1978)	Docket No. AD16-16-000
)	
)	

**NOTICE OF INTERVENTION AND COMMENTS OF THE
MICHIGAN PUBLIC SERVICE COMMISSION**

The Michigan Public Service Commission (“MPSC”) respectfully submits the following comments in response to the Federal Energy Regulatory Commission’s (“Commission” or “FERC”) Notice of Proposed Rulemaking (“NOPR”) in the above-referenced proceedings to revise its regulations implementing sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978 (“PURPA”). The MPSC commends the Commission for conducting a comprehensive review of its PURPA regulations intended to recognize the significant changes in the energy industry since PURPA was implemented nearly forty years ago. As a state regulatory authority charged with implementing PURPA, the MPSC provides these comments to inform the Commission of our experience as well as to recommend clarification on how certain provisions in the NOPR would work in practice.

I. Notice of Intervention

The MPSC is a legislatively established agency in the State of Michigan, created by 1939 Public Act 3. MICH. COMP. LAWS § 460.1 et seq. The MPSC is the Michigan regulatory agency having jurisdiction and authority to control and regulate rates, charges, and conditions of service for the retail sale of natural gas and electricity in Michigan. The MPSC is also a “state

commission” as defined in 16 USC § 796(15) and 18 CFR § 1.101(k) and has an interest in this proceeding that cannot be adequately represented by another party.

As a state commission, the MPSC enters this Notice of Intervention. Copies of all pleadings, correspondence, and other communications concerning this proceeding should be directed to:

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II. Background

Citing the significant developments in the energy industry since PURPA and the Commission’s PURPA regulations were implemented in 1980, including the creation of organized wholesale electricity markets, advancements in renewable energy technology and market penetration, and the discovery of abundant natural gas supplies, on September 19, 2019, the Commission proposed to revise its implementing regulations in Docket No RM19-15-000 (NOPR). This follows the Commission’s June 29, 2016, Technical Conference on implementation issues under PURPA in Docket No. AD16-16-000 that examined the mandatory purchase obligation under PURPA and the determination of avoided costs. The Commission asserts its intentions in the NOPR to provide individual states enhanced flexibility to implement PURPA in ways reflective of their unique needs and to encourage continued development of Qualifying Facilities (“QFs”) in the modern and evolving electric generation sector. The Commission is proposing to amend its regulations to: (1) grant states additional flexibilities in

setting rates for QFs; (2) relieve the mandatory purchase obligation to account for retail choice load; (3) modify the “one-mile rule”; (4) reduce the rebuttable presumption that QFs have access to wholesale electricity markets from 20 megawatts (“MW”) to 1 MW; (5) require states to establish legally enforceable obligation (“LEO”) qualification criteria; and (6) allow a party to protest a QF self-certification or self-recertification without being required to file a separate petition for declaratory order.¹

Specifically regarding state rate-setting authority for QFs, the Commission is proposing to grant states the flexibility to: (1) require that energy (but not capacity) rates in QF power sales contracts and other LEOs vary in accordance with changes in the purchasing utility’s as-available avoided costs at the time of delivery; (2) allow QFs to have a fixed energy rate that can be based on projected energy prices during the term of a QF’s contract based on anticipated dates of delivery; and (3) set “as-available” QF energy rates for QFs selling to utilities located in organized electric markets at the locational marginal price (“LMP”), or outside organized electric markets at competitive prices from liquid market hubs or based on natural gas prices. The Commission also proposes that states would have the flexibility to set energy and capacity rates for QFs pursuant to a transparent and non-discriminatory competitive solicitation process. The Commission explains that the states would have the flexibility to choose to adopt one or more of these options or to continue setting QF rates under the existing PURPA regulations.

The Commission opines in the NOPR that it believes that consideration of competitive market prices in setting energy rates for QFs will help states to identify a utility’s avoided costs in a simpler, more transparent and predictable manner; and allowing energy (but not capacity)

¹ NOPR (pp. 5-9).

prices to vary in QF contracts would protect consumers and would likely make it easier for QFs to obtain longer-term contracts.²

III. Comments

The MPSC appreciates the Commission's intentions in the NOPR to provide states added flexibility to implement PURPA and provides the following comments to inform the Commission of our experience with implementation as well as to highlight areas of the proposed rule on which additional clarity would be beneficial.

A. Consideration of Competitive Solicitations to Determine Avoided Costs

The Commission's proposal to ensure states have the flexibility to set energy and capacity rates for QFs pursuant to a transparent and non-discriminatory competitive solicitation process is timely given the MPSC recently approved the use of a Request for Proposal ("RFP") to determine avoided capacity costs for a large electric utility in Michigan. In Case No. U-20165, Consumers Energy Company's ("Consumers") Integrated Resource Planning ("IRP") case, a settlement agreement approved by the MPSC dated June 7, 2019, stipulated that Consumers is permitted to use competitive solicitations for RFPs to set future PURPA avoided cost rates. Consumers was also ordered to contract with QFs for any capacity need not filled by an RFP, for which QFs are entitled to an administratively determined avoided cost for capacity and energy outside the RFP process. If the utility has a capacity need within the planning horizon set by the MPSC (generally, five years into future), the avoided capacity payment is based on the highest cleared bid price resulting from the RFP process. If there is not a capacity need, the avoided capacity payment is based on the Midcontinent Independent System Operator (MISO) Planning

² NOPR (para. 13).

Reserve Auction results for the applicable year. Avoided cost rates for both the RFP process and the administrative determination are based on LMPs in the relevant wholesale electricity market. The MPSC believes this recently approved structure aligns with the Commission's proposal.

In the NOPR, the Commission inquires whether it should provide further guidance on whether, and under what circumstances, an RFP can be used as a utility's exclusive vehicle for acquiring QF capacity. The MPSC would welcome such guidance. The exclusive use of RFPs to procure QF capacity could have implications for QF development in Michigan and the Commission's guidance on the implications of this practice, including with respect to energy-only QF contracts, would be beneficial to the MPSC as it evaluates competitive solicitation processes to procure QF capacity.

B. Relief from Purchase Obligation in Competitive Retail Markets

The MPSC would benefit from additional detail on the Commission's proposal in the NOPR to provide state regulatory authorities flexibility to respond to possible changes in a utility's Provider of Last Resort ("POLR") supply obligations resulting from a state retail choice program. Michigan's retail choice program is unique in that the law caps retail choice at 10% of a utility's retail customer demand.³ The MPSC recommends that the Commission provide guidance on how this provision is intended to function in practice. If a state regulatory authority determines there is a reduction in a utility's supply obligation resulting from the state retail choice program, the MPSC recommends that the Commission clarify (1) whether the reduction in that utility's purchase obligation would necessarily equal the reduction in their supply

³ Public Act 286 of 2008 (MCL 460.10a) provides that no more than 10 percent of an electric utility's average weather-adjusted retail sales for the preceding calendar year may take service from an alternative electric supplier at any time.

obligation, or if it would be based on the percentage of its customer demand that participates in the state's retail choice program, or some other metric; and (2) how fluctuations in participation in the state retail choice program and resulting fluctuations in the purchase obligation should be addressed.

C. PURPA Section 210(m) Rebuttable Presumption of Nondiscriminatory Access to Markets

The MPSC would also benefit from additional clarity on the Commission's proposal to revise its regulations to reduce the presumption of nondiscriminatory access to wholesale electricity markets from 20 MW to 1 MW. Under current regulations, utilities can request mandatory purchase relief from the Commission for QFs larger than 20 MWs based on the presumption that its location within the footprint of a wholesale electricity market provides nondiscriminatory access for the QF. In proposing the change, the Commission explains that today's small power production facilities below 20 MW, specifically those whose capacity exceeds 1 MW, now have greater access to wholesale electricity markets than they did when the Commission first established the presumptions of market access. The MPSC would benefit from additional clarity on the mechanics of implementing this provision, specifically regarding: (1) how existing contracts with QFs greater than 1 MW but below 20 MWs are to be treated under the NOPR, and if they would be subject to early termination or would be grandfathered indefinitely⁴ or until the end of the existing contract term; (2) whether utilities that have already received relief from the

⁴ By way of example, the MPSC has ruled that existing QFs with an expiring PURPA contract are permitted to the full avoided cost capacity payment (vs. the annual MISO planning reserve auction price) even if the utility does not have a capacity need at the time of contract renewal. This is because these resources are already part of the portfolio to meet the utility's capacity needs. See, e.g., MPSC Order in Case No. U-18090. (May 31, 2017).

mandatory purchase obligation from the Commission for operating within the footprint of an organized wholesale electricity market automatically qualify for relief under the 1 MW threshold; and (3) how interconnection requirements would be considered for QFs between 1 MW and 20 MWs – specifically whether these projects would need to interconnect at transmission level voltages to be considered having access to the wholesale electricity market.

In addition, the MPSC notes there is some tension between the 1 MW threshold proposed in the NOPR, and some of the market structures used in the two RTOs that cover Michigan. The MISO, for example, utilizes a 5 MW threshold as the cut off point for Network Modeling purposes, and resources less than 5 MW are modeled on a case-by-case basis only.⁵ MISO also allows distributed generation systems equal or greater than 100 kW, whether located on the utility's distribution system or behind a customer's meter, to qualify as load modifying resources within MISO.⁶ PJM does not have minimum system requirements, though it does categorize generation and storage resources of 20MW or less as "Small Generation Resources."⁷ In revising the threshold by which a QF has a presumption of nondiscriminatory access to wholesale electricity markets, the MPSC encourages the Commission to be cognizant of the market rules currently in place in these wholesale electricity markets in order to avoid confusion and a presumption of market access that does not match actual market mechanics.

D. Legally Enforceable Obligation

⁵ See MISO Energy and Operating Reserve Markets Business Practices Manual (BPM-002-r19), (Effective Date: Oct. 15, 2018).

⁶ See MISO Resource Adequacy Business Practice Manual (BPM-0111-r21, 4.2.8 BTMG Qualification Requirements), (Effective Date: Feb. 20, 2019).

⁷ PJM Open Access Transmission Tariff, Docket No. ER19-263-000 (Effective Date: Feb. 1, 2019).

The MPSC appreciates the Commission's efforts to clarify when and how a LEO is established and triggers a purchase obligation. The Commission's stated objective in the NOPR is to ensure that utilities' purchase obligations are only triggered when a QF has demonstrated a certain level of objective and reasonable financial commitment and commercial viability, as well as ensuring that a purchasing utility does not unilaterally and unreasonably decide when its obligation arises. The Commission's proposal to require states to establish LEO qualification criteria is opportune as a rulemaking to do that is currently underway in MPSC Case No. U-20344, and the question of when a LEO arises is also a central element in a growing number of complaint cases brought by QFs against utilities in Michigan.⁸ The issues involved in both the rulemaking process and the complaint cases closely mirror many of the issues discussed in the NOPR, and the MPSC appreciates any additional clarity the Commission can provide in this area.

E. Conclusion

The MPSC appreciates the Commission's effort throughout the NOPR to provide states greater flexibility to implement PURPA. The MPSC thanks the Commission for consideration of these comments and looks forward to further collaboration with the Commission and stakeholders to ensure PURPA regulations will continue to encourage the development of QFs and appropriately consider the rapid pace of evolution in the electric power supply industry.

⁸ See, e.g., *In re Greenwood Solar LLC v DTE Electric Company*, MPSC Order in Case No. 20156. (September 26, 2019). (<https://mi-psc.force.com/s/filing/a00t000000DWpi5AAD/u201560081>).