

Legally Enforceable Obligations (LEOs)

Commercial Viability




Missouri Public Service Commission | Jefferson City, MO

Disclaimer

- ▶ The views presented here are my own, and not necessarily those of the Commission Staff, Staff Counsel, or the Missouri Public Service Commission

Review

- ▶ Legally Enforceable Obligations (LEOs)
 - ▶ 18 CFR § 292.304(d)(3)
 - ▶ Order 872
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18 CFR § 292.304(d)(3)

- ▶ (3) *Obtaining a legally enforceable obligation.* A qualifying facility must demonstrate **commercial viability** and financial commitment to construct its facility pursuant to criteria determined by the state regulatory authority or nonregulated electric utility as a prerequisite to a qualifying facility obtaining a legally enforceable obligation. Such criteria must be **objective** and **reasonable**

Purpose of PURPA

- ▶ Rules promulgated under PURPA “shall insure that, in requiring any electric utility to offer to purchase electric energy from any qualifying cogeneration facility or qualifying small power production facility, the rates for such purchase”:
 - (1) shall be **just and reasonable to the electric consumers of the electric utility and in the public interest**, and
 - (2) shall **not discriminate** against qualifying cogenerators or qualifying small power producers.



16 U.S.C.A. § 824a-3 (West)

Factors must be within the control of the QF

Comments submitted in Notice of Proposed Rulemaking at FERC

- ▶ Solar Energy Industry Association (SEIA) proposed LEO formation either with:
 - Completion of System Impact Study; or
 - One year after tendering interconnection request if System Impact Study is not completed in a reasonable time
- ▶ SEIA proposal “may be reasonable,” but FERC declined to mandate them
 - Ensure more than just a speculative paper project
 - But account for potential delays in process

Greenwood Solar, LLC v. DTE Electric Company

- ▶ Michigan could not require distribution study as part of interconnection process as a condition for establishing an LEO
- ▶ But, in the course of its case-by-case decision making, the Michigan PSC could require such studies if the information is needed for an accurate determination
- ▶ The PSC could compel utility cooperation “without prematurely declaring the existence of an LEO.”

Whipple Hydropower I, Inc. v. Conn. Dep't of Pub. Util. Control, 1990 WL 271044 (Conn. Super. Ct., May 25, 1990)

- ▶ Court deferred to DPUC's finding that project was in "fragile financial condition" and utility's ratepayers would be put at grave risk by extending a front-end loaded contract to the project:
 - Indicated ROE was "quite low relative to traditional standards for projects of this type."
 - Relatively low debt service coverage ratios "may not be sufficient to a lender"

Similarity to Tartan Criteria?

- ▶ Tartan criteria:
 - Need for Service
 - **Applicant Qualifications**
 - Applicant Financial Ability
 - **Economic Feasibility of Proposal**
 - Promotion of the Public Interest

Commercial Viability and Qualifications

- ▶ Officer and employee experience
- ▶ Cash on hand
- ▶ Experience developing other projects

Commercial Viability and Economic Feasibility

- ▶ Cost of project and network upgrades
- ▶ Proposed capacity factors
- ▶ Comparison of cost to other forms of generation
- ▶ Financial risk analysis
- ▶ Market price forecasts

Questions or Comments

