

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of Renew Missouri Advocates d/b/a)	
Renew Missouri's Petition for Amendment of)	File No. EX-2019-0378
Commission Rule 4 CSR 240-20.060)	

**SUN2O PARTNERS' RESPONSE TO RENEW MISSOURI'S RULEMAKING PETITION
AND STAFF RECCOMENDATION**

COMES NOW Sun2o Partners, LLC ("Sun2o"), hereby submits these Comments responding to Renew Missouri's Rulemaking Petition and the Staff Recommendation submitted in this case on June 3, 2019 and June 14, 2019 respectively.

Sun2o is a developer of utility scale solar energy and energy storage projects across the U.S. and is currently developing over 1,000MW of projects in Michigan, South Carolina, Washington, Idaho, and New Mexico. Should the Missouri Public Service Commission ("Commission") decide to revise and amend its cogeneration rules at 4 CSR 240-20.060 ("Rules") to include the recommendations submitted by Renew Missouri, Sun2o looks forward to investing in and developing solar projects throughout the State. Sun2o's comments are limited to specific areas of Renew Missouri's Petition and Staff's Recommendation that are vital to opening market access to independently developed qualifying facilities ("QF") in Missouri. Sun2o appreciates the opportunity to engage with the Commission in this proceeding as it reviews amending its Rules to better reflect a changing energy environment.

To date, the Commission's Rules have prohibited the development of solar QFs in Missouri, something an amendment of the Rules can rectify. Sun2o believes successful implementation of Renew Missouri's Petition will bring cost-competitive clean energy, economic development, and environmental benefits to ratepayers and stakeholders throughout the State of Missouri. Sun2o appreciates Staff's thoughtful Recommendation in this Rulemaking as well as the work in File No. EW-2017-0245 and File No. EW-2018-0078. While Staff's Recommendation moves the Rules in the right direction, Sun2o believes there are key deficiencies that would continue to bar any independent QF solar development in Missouri, as discussed in detail below.

Thank you for the consideration of our comments.

I. Contract Length

As stated in Renew Missouri's Petition, QFs should have the option to select up to a fifteen-year power purchase agreement ("PPA"). Staff's Recommendation unfortunately does not specify that QFs can access a long-term fixed price PPA and instead suggests that contract lengths be considered outside the requirements of the Rules through the approval of standard contract templates. Sun2o urges the Commission to address contract length in the requirements of the Rules. Without a long-term fixed price contract, all other amendments of the Rules will be for naught and no independently developed, low-cost solar QFs will be built in Missouri. Additionally, the Rules will continue to be out of line with FERC

precedent. Long-term contracts are essential to a QFs ability to secure project financing and necessary to comply with PURPA's intent to encourage the development of QFs. FERC has stated that QF contracts must be "long enough to allow QFs reasonable opportunities to attract capital from potential investors."¹ In Sun2o's experience, fifteen years is the minimum time period historically needed to allow most projects to obtain project financing. For QFs to receive project financing, it is important that the Commission amend the Rules to include a fifteen-year fixed price contract term.

Long-term contracts provide certainty in uncertain times. Missouri IOU owned generation typically lasts for over 30 years and is paid back by ratepayers regardless of future market pricing. Additionally, under a PPA the independent developer is responsible for any cost overruns, as well as construction and operational risk. Fifteen-year fixed pricing is necessary for QFs and Sun2o urges the Commission to revise the Rules accordingly.

II. Legally Enforceable Obligations

Another key deficiency in Staff's Recommendation is the omission of language related to a Legally Enforceable Obligation ("LEO"). Sun2o agrees with Renew Missouri that it is imperative that the Rules provide clear guidance on when and how a LEO is established. If this is not sufficiently completed upfront, the Commission risks having to open new dockets, initiate new stakeholder processes, and handle developer complaints and requests for relief following the implementation of the Rules, as is occurring in Michigan today.² Additionally, there is ample FERC case history pertaining to LEOs that the Commission can use to sufficiently amend the Rules. The LEO guidelines should establish a quantifiable test that relies fundamentally on a QF committing to sell its output to a Missouri IOU. The determination of a LEO is central to PURPA implementation. While states are granted authority under PURPA to determine the criteria for LEO formation,³ any state requirement that is inconsistent with FERC regulation is invalid.⁴ Sun2o urges the Commission to provide LEO guidance to QFs that is consistent with precedent FERC rulings.

FERC has provided strong guidance that a LEO is formed when a QF has unequivocally committed itself to sell its output to a utility.⁵ It is important that LEO criteria cannot depend solely on factors in the control of a Missouri IOU, such as a fully executed PPA or fully executed interconnection agreement. For example, FERC found that the Idaho PUC's requirement that a PPA be executed by one or both parties in order to form a LEO was inconsistent with PURPA.⁶ Additionally, FERC determined in a Montana rulemaking that, because "the establishment of a [LEO] turns on the QF's commitment, and not the utility's actions,"⁷ the Montana commission's requirement that an interconnection agreement be released to a QF was inconsistent with FERC regulation.⁸ In a recent Oregon PURPA proceeding, Portland General Electric confirmed this statute by stating, "FERC's orders hold that a state commission violates PURPA if it conditions the existence of a LEO on: (a) a fully executed PPA, (b) a fully executed

¹ Windham Solar LLC & Allco Fin. Ltd., 157 FERC ¶ 61,134 (2016).

² MPSC Dockets U-20095, U-20500, U-20516, U-20588 & MPSC PURPA-Legally Enforceable Obligation Stakeholder Process

³ West Penn Power Co., 71 FERC ¶ 61,153 at 61,495 (1995).

⁴ Cedar Creek Wind, LLC, 137 FERC ¶ 61,006 (2011).

⁵ JD Wind 1, LLC, 130 FERC ¶ 61,127 (2010).

⁶ Cedar Creek Wind, LLC, 137 FERC ¶ 61,006 (2011); Grouse Creek, LLC, 142 FERC ¶ 61,187 (2013); Rainbow Ranch Wind, LLC, 139 FERC ¶ 61,077 (2012); Murphy Flat Power, LLC, 141 FERC ¶ 61,145 (2012).

⁷ FLS Energy, Inc., 157 FERC ¶ 61,211 at pg. 24 (2016).

⁸ Ibid, at pg. 23-26.

interconnection agreement...”⁹ Thus, any Commission defined LEO requirement that hinges on procedural steps that are within a Missouri IOU’s control, is not valid.

Staff’s Recommendation to not propose a Legally Enforceable Obligation conflicts with this FERC precedent and is likely to cause problems down the road. Additionally, FERC has established that a state commission cannot require a QF to prevail on a complaint proceeding in order to establish a LEO.¹⁰ Thus, in line with Renew Missouri’s Petition, Sun2o recommends that the Commission find a QF to have established a LEO when the following milestones, which demonstrate a QF’s commitment to sell its output to a Missouri IOU, are completed:

- 1) QF tenders an executed PPA in the form established by this, or a following, Rulemaking to the applicable Missouri IOU
- 2) QF obtains and provides written documentation confirming site control to the applicable Missouri IOU
- 3) QF submits a complete generator interconnection application to the applicable Missouri IOU
- 4) QF provides system details to applicable Missouri IOU including scheduled commercial on-line date and information regarding the QF’s expected minimum and maximum annual deliveries

Importantly, the QF should still be able to establish a LEO on a case by case basis if it can show a Missouri IOU delays or obstructs the establishment of an executable PPA or completed generator interconnection application.

It is important that when a QF is committed to selling its output, a utility does not have the ability to unilaterally avoid the creation of a LEO. A LEO is the primary mechanism for protecting QFs against a Missouri IOU’s refusal to comply with the PURPA obligations established in the Rules by delaying negotiations indefinitely or refusing to execute contracts. Thus, Sun2o urges the Commission to establish a clear LEO framework that is specifically designed to preempt Missouri IOUs from avoiding their obligations under PURPA.

III. System Size Limits

Lastly, Sun2o wishes to comment on the maximum system size proposed by Staff and Renew Missouri. For Missouri to benefit from the development of independent, low-cost, renewable power, modest project sizes are needed to spur development and achieve economies of scale. The current rules allow for standard rates for projects up to 100kW in size, which is wholly insufficient to attract capital and initiate new development.

Staff’s Recommendation for an eligible project cap of 1MW moves the Rules in the right direction but would not lead to any meaningful independent development in Missouri. All states that have successfully implemented PURPA, and received the large accompanying benefits, have established eligibility of standard offer contracts for projects significantly above 100kW in size. Additionally, as stated by Renew Missouri, PURPA requires that utilities also purchase the output of QFs above the standard offer cap pursuant to long-term, fixed price contracts, unless the QF has nondiscriminatory access to wholesale markets. Sun2o firmly supports Renew Missouri’s proposed amendment that the Commission set the cap for standard offer contract projects at 5MW, while still providing that Missouri

⁹ UM 1878, PGE Comments, 04/06/2018, at pg. 2.

¹⁰ Grouse Creek, LLC, 142 FERC ¶ 61,187 (2013).

IOUs must purchase power from projects up to 20MW through long-term fixed price contracts. The purchase power price for projects between 5MW and 20MW can use the standard offer contract terms and adjust accordingly for QF specific factors during negotiation. The establishment of adequate standard offer and negotiated rate system size caps will help Missouri catch other states in developing renewable energy and realizing the abundant economic and ratepayer benefits.

WHEREFORE, Sun2o thanks the Commission for the opportunity to submit these Comments and respectfully requests that the Commission undertake the formal rulemaking process required to amend the Rules.

Respectfully,

/s/ Corey Kupersmith

Corey Kupersmith

Managing Partner

Sun2o Partners, LLC

15 E Putnam Ave., Suite 221

Greenwich, CT 06830

203-292-1883 x 102

Corey@sun2o.com