STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter on the Commission's own motion to Examine the changes to the regulations Implementing the Public Utility Regulatory Policies Act of 1978, 16 USE 2601 *et seq.*, pursuant to the Federal Energy Regulatory Commission Final Order No. 872.	)))))))	Case No. U-20905

Introduction

The Michigan Energy Innovation Business Council ("Michigan EIBC") and Advanced Energy Economy ("AEE") (collectively "Michigan EIBC/AEE") are pleased to submit comments to inform the Michigan Public Service Commission's ("MPSC" or "Commission") examination of changes in the regulations implementing the Public Utilities Regulatory Policies Act of 1978 ("PURPA") pursuant to the Federal Energy Regulatory Commission ("FERC") Final Order No. 872. Comprised of a membership of approximately 120 companies doing business in Michigan, Michigan EIBC's mission is to grow Michigan's advanced energy economy by fostering opportunities for innovation and business growth and offering a unified voice in creating a business-friendly environment for the advanced energy industry in Michigan.

Michigan EIBC/AEE appreciates the Commission's attention to addressing PURPA implementation issues, especially as they relate to FERC Order 872. We urge the Commission to refrain from making any changes toward implementing FERC Order 872

until all of the appeals related to the Order are completed. After that time, if the Order remains intact, in general, as described in our comments below, Michigan EIBC/AEE believe that any changes should be entirely prospective in nature and cannot be implemented in such a manner to modify or override the execution or spirit of existing contracts or settlement agreements. Of specific interest to Michigan EIBC and AEE members, as noted by the Commission, on June 7, 2019, the Commission approved a contested settlement agreement in Case No. U-20165, which included approval of an avoided cost methodology and LEO requirements as well as eligibility requirements. The Commission subsequently approved a settlement agreement on September 11, 2019 in Case No. U-20615 between Consumers and QF signatories pursuant to PURPA. Among the provisions in this settlement agreement were the following:

- "170 MW will be awarded to QFs 20 MW or lower in size that are in the interconnection queue as of the cutoff date, and those QFs would be eligible to enter into power purchase agreements (PPAs) at the full avoided cost (FAC) rate set forth in Case No. U-18090. …"
- "414 MW will be awarded (after the 170 MW of FAC PPAs) to QFs 20 MW or lower in size that are in the interconnection queue as of the cutoff date, and those QFs would be eligible to enter into PPAs at the energy plus Midcontinent Independent System Operator, Inc. (MISO) planning reserve auction (PRA) rate set forth in Case No. U-18090. To be eligible to receive an award from the 414 MW, the QF must have a status that is current in the interconnection queue; QF certification from the Federal Energy Regulatory Commission (FERC); site control through ownership, lease, or option to purchase or lease for a 20-year PPA term; and execution by the QF's parent company of a binding commitment to abide by the settlement agreement. …"
- "A QF that terminates after executing a PPA but prior to the project start date may, after notification to Consumers and within two years from the notification date, transfer its allocation in the award queue to another eligible QF. …" Commission Order in Case No. U-20615, September 11, 2019.

Michigan EIBC and AEE members have made significant existing investments that rely on the assumption that contracts resulting from these settlement agreements and requirements set forth in the settlement agreements will not be modified. As a general principle, Michigan EIBC/AEE believe that contracts and settlement agreements, once entered into, are binding and should not be modified except under specific extenuating circumstances at the agreement of both parties.

As the Commission considers how to implement FERC Order 872, it is important to also ensure compliance with PURPA for small generators. In addition to requiring standard rates for generators smaller than 100kW, PURPA requires that a QF must be able to sell energy “as available” to a utility. This must be an available option without requiring the QF to enter into a written contract with the utility. In addition, as FERC indicated in Order 2222 and reiterated in Order 872, multiple small generators can be aggregated to provide both energy and capacity to a utility. To avoid double compensation for the same benefit in different markets, utility tariffs should explicitly outline the services for which a QF is compensated. This would enable a small generator which is not being compensated for capacity to be compensated in another market for aggregated capacity. It is important that the Commission contemplate these issues as they are fundamental to implementation of both FERC Orders 872 and 2222.

Responses to Questions

In our responses below we describe specific examples related to the Consumers PURPA settlement in Case No. U-20615. However, the principles and concerns exemplified by these examples are not unique to that one settlement agreement. Instead, these concerns are broadly applicable, and these examples should be treated as illustrious and not exhaustive in nature.

1. To what extent does FERC Order 872 require modification of the Commission's prior orders in the above-captioned cases as well as Commission-approved contracts, tariffs, and agreements to implement PURPA in Michigan? What aspects of those prior orders may need to be modified and how?

a. Addressing the revisions to allow states flexibility to set energy rates, FERC Order 872 states that: "State regulators may not change rates in existing QF contracts or other existing LEOs. By its terms, the variable energy avoided cost provision adopted in this final rule applies only prospectively to new contracts and new LEOs entered into after the effective date of this final rule. Nothing in the final rule, including in this preamble, should be read as sanctioning the modification of existing fixed-rate QF contracts and LEOs." FERC Order 872, p. 157. When addressing Question 1, please be specific on the applicability of the new rules to existing QFs and associated contract terms (including new provisions that may alter expiration of existing contracts) and expiring contracts versus new QF facilities or contracts.

As described above, it is fundamentally important that Commission-approved contracts and agreements are not modified. As indicated clearly by FERC, the rates, terms, and LEO requirements may not be changed in existing QF contracts or other existing LEOs.

Specifically, in the Consumers PURPA settlement in Case No. U-20615, projects totaling 170 MW were awarded full avoided cost capacity payments based on the rate set forth in Case No. U-18090, whereas another set of projects totaling 414 MW were awarded

"PPAs at the energy plus Midcontinent Independent System Operator, Inc. (MISO) planning reserve auction (PRA) rate set forth in Case No. U-18090." Commission Order in Case No. U-20615, September 11, 2019. As a result of this settlement, many QFs in Michigan are moving forward with projects with Consumers Energy at these agreed upon rates and under the agreed upon conditions of the settlement. All QFs deemed eligible under this settlement, or under similar Commission Orders, should be grandfathered and not subject to any of the changes to PURPA included in FERC Order 872 including, but not limited to, changes in rates, changes in LEO requirements, and changes to the one-mile rule. Changing any of these items could curtail significant investments as well as undermine the sanctity of the Commission ordered settlement agreement that was approved and signed onto by numerous parties.

In addition, the settlement agreement in Case No. U-20615 states that "A QF that terminates after executing a PPA but prior to the project start date may, after notification to Consumers and within two years from the notification date, transfer its allocation in the award queue to another eligible QF. …" Commission Order in Case No. U-20615, September 11, 2019. This provision means that a QF project that does not ultimately become viable can transfer its allocated MW to another eligible QF (according to the eligibility requirements set forth in the settlement agreement). Per the settlement agreement, the new QF taking the allocation is entitled to the same PPA terms as the original QF. We highlight this example because the new QF would be signing a "new" PPA but that PPA would use same price terms and requirements as the

original PPA. If the Commission established new PURPA rates moving forward, but only for new PPAs, it is imperative that those not apply to PPAs which appear to be "new," but really were previously established as a result of already existing settlement agreements.

Finally, due to Covid-19, a number of QFs have requested contract date extensions for existing PPAs (e.g., due to supply chain interruptions or delays). These issues are entirely outside of the QF's control and any such approved contract extensions or date changes should not be constitution for a PPA to be considered "new" and subject to any rate or requirement changes developed by the Commission to implement FERC Order 872.

2. *If revisions are required to the Commission's prior PURPA decisions, what process should the Commission utilize to update Commission-approved tariffs and other Commission-approved documents such as the standard offer contract?*

It is important that stakeholders including third-party developers with existing QF projects and those with projects in the interconnection queues be involved in any process to update Commission-approved tariffs and documents to be utilized on a strictly prospective basis, as described above. To enable complete review of the tariffs and documents, it may be best to consider these issues for each utility in a PURPA contested case proceeding.

3. *FERC Order 872 determines that avoided capacity costs may be priced at zero under certain circumstances, namely when: (1) an electric utility procures all of its supply-side resources through a competitive solicitation that meets the guidelines as set forth in Order 872; (2) the state regulatory authority and independent administrator both certify that competitive bidding meets the guidelines; and (3) the state requires the electric utility's total planned self-build and power purchase options to compete in the competitive solicitations (i.e., no supply arrangements outside of the conforming competitive bidding process).*

    a. *What are the implications of these provisions given the current status quo in Michigan with respect to procurement and determining capacity needs and associated avoided cost rates?*
    b. *Is there interest in moving to this model for competitive procurement and associated avoided cost pricing? If so, what actions would be required by the Commission and electric utilities to establish appropriate protocols that align with the guidance issued in FERC Order 872 for conducting fair and non- discriminatory competitive procurements?*

        i. *What approaches and timing considerations should the Commission take into account to set up a competitive procurement model?*
        ii. *Should details be addressed through the MI Power Grid competitive procurement workgroup initiated in Case No. U-20852?*

Michigan EIBC, AEE, and our members are currently participating in the MI Power Grid competitive procurement workgroup initiated in Case No. U-20852. Given the level of stakeholder engagement and interest in that workgroup, we believe that it is an appropriate venue to determine the appropriate guidelines for competitive bidding to meet the requirements set forth in FERC Order 872.

4. Is further guidance from the Commission necessary to define an LEO consistent with FERC Order 872? If so, should such guidance be issued through a rulemaking or a Commission order or orders?

It would be valuable for the Commission to define what constitutes an LEO to allow for consistency and certainty across utility territories. This process was underway in the Interconnection Rules workgroup and the proposed LEO requirements in the latest staff

draft would require limited changes to achieve compliance with FERC Order 872. Fundamentally, FERC Order 872 is clear that any factors a state requires to establish an LEO must be in the QF's control.

As described above, it is important that in establishing a prospective definition for an LEO, that the Commission clarify that such actions will not change existing LEOs for current QFs or LEO processes established by previous agreements. QFs with existing LEOs should similarly not be subject to any of the additional new provisions in FERC Order 872 including, but not limited to, changes to the one-mile rule.

For example, the Consumers PURPA settlement in Case No. U-20615 set forth requirements for QFs to establish a LEO, namely that QF's in the queue by the cut-off date "must have a status that is current in the interconnection queue; QF certification from the Federal Energy Regulatory Commission (FERC); site control through ownership, lease, or option to purchase or lease for a 20-year PPA term; and execution by the QF's parent company of a binding commitment to abide by the settlement agreement." Although these requirements appear largely aligned with those set forth by FERC in Order 872, we again caution the Commission against the establishment of LEO requirements that require a retroactive consideration of existing contracts or settlement agreements.