

Commissioner Bernard L. McNamee
September 19, 2019
Docket Nos. RM19-15-000 and AD16-16-000
Decision E-1 [PDF]

Statement Regarding FERC’s Notice of Proposed Rulemaking to Update PURPA Regulations

Today the Commission has taken an important step towards updating its PURPA regulations for the benefit of the American consumer. Congress enacted PURPA in 1978 to promote electric competition, conserve natural gas, encourage the use of renewable resources, and provide opportunities for cogeneration facilities.

It is worth recalling that PURPA was enacted—over 40 years ago—to help address the severe energy crisis America was facing, particularly the concern that America was running out of oil and natural gas.

How times have changed.

American ingenuity by people like Texan George Mitchell—who combined hydraulic fracturing with directional drilling—with some help from U.S. Department of Energy sponsored research—helped usher in an American Energy Renaissance. As a result, according to the U.S. Energy Information Administration’s 2019 annual energy outlook, in 2020—for the first time in almost 70 years—the United States will become a net energy exporter.

I think it’s appropriate to reflect in our regulations the great transformation we have witnessed in our energy sector. Not only is natural gas production—and natural gas-fired electricity generation—at an all-time high, but so is electricity generation from renewables, now representing nearly 20 percent of total U.S. generation. Furthermore, PURPA helped open the door for competition in electric generation by requiring utilities to purchase energy from independent renewable energy resources and co-generation facilities. And with the enactment of the Energy Policy Act of 1992, establishing an open access policy for electricity transmission, which led to FERC Order 888, we have seen the development of wholesale electric competition, with two-thirds of Americans being served by a Regional Transmission Organization (RTO) or Independent System Operator (ISO).

As part of the Energy Policy Act of 2005, Congress amended PURPA section 210(m) to recognize that PURPA’s requirements should take into account the success of competition in wholesale electric markets. And in the original statute, Congress recognized that circumstances could change over time and directed the Commission to revise its PURPA implementing regulations “from time to time.”

Recognizing these changing circumstances and the Commission’s statutory obligations, it is appropriate that the Commission is proposing to update its PURPA regulations.

The changes the Commission is proposing through this notice of proposed rulemaking are designed to protect consumers while also encouraging the development of alternative generation and cogeneration facilities. To achieve these ends, the proposed rules will provide state utility regulators more flexibility to rely on market pricing when determining the rates utilities pay to qualifying facilities under PURPA, provide more transparency to interested stakeholders, and extend the benefits of competition to a greater number of consumers.

I look forward to seeing comments from interested parties to inform us about their views concerning this proposal.

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Summary of NOPR to revise PURPA (Prepared by Commission Staff)

First, the draft NOPR proposes to grant state regulatory authorities the flexibility to require that energy rates (but not capacity rates) in QF power sales contracts and other legally enforceable obligations vary in accordance with changes in the purchasing utility's avoided costs at the time the energy is delivered.

Second, the draft NOPR proposes to grant states the flexibility to set "as-available" QF energy rates based on market factors or, at the state's discretion, to continue setting QF rates under the existing PURPA Regulations.

Third, the draft NOPR proposes to replace the "one-mile rule" for determining whether generation facilities should be considered to be part of a single facility. The draft NOPR proposes a tiered approach under which facilities one mile or less apart would be treated as the same facility, facilities more than one mile but less than 10 miles apart would be presumed to be different facilities, which could be rebutted, and facilities 10 or more miles apart would be treated as separate facilities.

Fourth, the draft NOPR proposes to revise the Commission's regulations implementing PURPA section 210(m) to reduce the rebuttable presumption threshold for small power production facilities (but not cogeneration facilities) from 20 MW to 1 MW. This proposed change recognizes that competitive markets have matured since the Commission first implemented section 210(m) of PURPA and the mechanics of participation in such markets are improved and better understood. For cogeneration facilities, the 20 MW presumption would remain.

Fifth, the draft NOPR proposes to clarify that a QF is entitled to a contract or legally enforceable obligation when it is able to demonstrate commercial viability and financial commitment to construct its facility pursuant to objective and reasonable criteria determined by the state.

Finally, the draft NOPR proposes to allow a party to protest a self-certification or self-recertification of a QF without being required to file a separate petition for declaratory order and to pay the associated filing fee.

The draft NOPR seeks comment on these proposed reforms 60 days from the date of its publication in the Federal Register.