FERC Open Commission Meeting July 16, 2020

Staff Presentation Item E-1

Good morning Mr. Chairman and Commissioners.

Item E-1 is a draft final rule that revises the Commission's regulations implementing sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA). With some modifications, which I will describe later, this draft final rule largely adopts the proposals in the September 2019 Notice of Proposed Rulemaking (NOPR) issued in Docket Nos. RM19-15-000 and the AD16-16-000.

PURPA was enacted as part of a legislative package intended to reduce the country's dependence on conventional fossil fuels to generate electricity by encouraging the development of alternative generation, that is, qualifying facilities or "QFs." While PURPA provided encouragement to QFs, PURPA also imposed limits. For example, the mandatory purchase rates for QF output cannot exceed the purchasing utility's avoided cost, even if the QF's costs of producing electricity might be higher. Another example is that small power production QFs cannot exceed 80 MWs power production capacity.

This draft final rule implements changes that continue to encourage the development of QFs but also ensure that the Commission's PURPA regulations are consistent with PURPA.

This draft final rule's changes to the Commission's regulations implementing PURPA include:

First, this draft final rule grants state regulatory authorities and nonregulated electric utilities (together, states) 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 electric utility's as-available avoided costs at the time the energy is delivered.

Second, this draft final rule grants states flexibility to allow QFs to have a fixed energy rate, and to provide that such state-authorized fixed energy rate can be based on projected energy prices during the term of a QF's contract based on the anticipated dates of delivery.

Third, this draft final rule grants states flexibility to set "as-available" QF energy rates based on the locational marginal price (LMP) established in organized electric markets. However, the NOPR proposed that LMP per se represents the as-available avoided costs of the electric utilities located in these markets, but the draft final rule changes that to establish a rebuttable presumption that LMP represents the purchasing utility's avoided costs.

With respect to QFs selling to electric utilities located outside of the organized electric markets, this draft final rule provides states the option to set as-available energy avoided cost rates either at competitive prices from liquid market hubs or calculated from a formula based on natural gas price indices and specified heat rates, provided that the states first determine that such prices represent the purchasing electric utilities' avoided costs.

The draft final rule makes clear that the states have the flexibility to choose to adopt one or more of these options – LMP, liquid market hubs, or formula rates based on natural gas price indices and specified heat rates -- or to continue setting QF rates under the standards long established in the Commission's regulations implementing PURPA.

Fourth, this draft final rule provides states the flexibility to set energy and capacity rates pursuant to a competitive solicitation process conducted pursuant to transparent and non-discriminatory procedures.

Fifth, this draft final rule modifies the Commission's "one-mile rule" for determining whether affiliated small power production facilities are considered to be at the same site for purposes of determining whether a small power production facility meets the statutory 80 MW limit. Under the draft final rule, a facility one mile or less from an affiliated small power production QF would be deemed to be at the same site as its affiliate. A facility located more than one mile but less than ten miles from an affiliated small power production QF would be rebuttably presumed to be at a different site from its affiliate. And a facility more than 10 miles from an affiliated small power production QF would be deemed to be at a separate site from its affiliate.

Sixth, the draft final rule allows electric utilities, state regulatory authorities, and other interested parties to challenge an initial self-certification or self-recertification by filing a protest and not having to file a petition for declaratory order and to pay the associated filing fee. This draft final rule clarifies that protests may be made to new certifications (both self-certifications and applications for Commission certification), but in change from the NOPR limits protests to self-**re**certifications and applications for Commission **re**certifications that make a substantive change to the existing certification.

Seventh, the draft final rule revises the Commission's regulations implementing PURPA section 210(m), which provide for the termination of an electric utility's obligation to purchase from a QF with nondiscriminatory access to certain markets. The draft final rule updates the threshold for the rebuttable presumption for small power production facilities (but not cogeneration facilities). As a modification to the NOPR, this draft final rule changes the rebuttable presumption from 20 MW to 5 MW (compared to 1 MW as proposed in the NOPR) and revises the Commission's regulations implementing PURPA to include examples of factors which, among others, QFs may argue show that they lack nondiscriminatory access to such markets.

Finally, this draft final rule clarifies that a QF must demonstrate commercial viability and a financial commitment to construct its facility pursuant to objective and reasonable state-determined criteria before the QF is entitled to a contract or legally enforceable obligation. In a change from the NOPR, the draft final rule states that a QF need only show that it has applied for all required permits and paid all applicable fees, and **not** that the QF has obtained such permits.

The changes in this draft final rule will be effective 120 days after publication in the *Federal Register* and are effective prospectively for new contracts or legally enforceable obligations and for new facility certifications and recertifications filed on or after the effective date of this final rule; this draft final rule does not permit disturbance of existing contracts or LEOs or existing facility certifications.

We are happy to answer any questions. Thank you.