

Congress of the United States
Washington, DC 20510

November 6, 2015

The Honorable Norman Bay
Chairman
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Dear Chairman Bay:

We are writing to request that the Federal Energy Regulatory Commission (Commission) convene a technical conference to examine the Commission's implementation of the Public Utility Regulatory Policies Act of 1978 (PURPA), in light of the significant developments in electricity markets that have occurred since the enactment and subsequent amendment of the Act.

As part of the development of broad energy legislation, both the Senate Energy and Natural Resources Committee and the House Energy and Commerce Committee received testimony on the potential need for PURPA policy reform.¹ One witness testified that his company is locked into a PURPA "must purchase" contract at rates that are 43 percent higher than the market price – forcing customers to pay an incremental \$1.1 billion over the next 10 years for electricity that is not even needed.² A technical conference examining the Commission's implementation of PURPA would assist with the building of a public record and provide Congress with valuable insight into whether changes are warranted.

Electricity markets, generation technologies, and investments in the electric grid have changed substantially since PURPA was enacted nearly 40 years ago as part of President Carter's energy plan. Since then, competitive electricity markets and open access policies have emerged and matured, expanding the markets for new generation resources, particularly renewable energy resources. In recognition of these developments, Congress amended PURPA in the Energy Policy Act of 2005 (EPAAct 2005) to eliminate the mandatory purchase requirement where qualifying facilities have access to competitive wholesale markets.³

¹ See, e.g., *Discussion Draft on Accountability and Department of Energy Perspectives on Title IV: Hearing Before the Subcomm. on Energy & Power of the H. Comm. on Energy & Commerce*, 114th Cong. (June 3-4, 2015) and *Energy Infrastructure Legislation: Hearing Before the S. Comm. on Energy and Natural Res.*, 114th Congress (May 14, 2015).

² See, *Hearing Before the S. Comm. on Energy and Natural Res.* (statement of Jonathan M. Weisgall, Vice Pres., Berkshire Hathaway Energy).

³ Energy Policy Act of 2005, Pub. L. No. 109-58, § 1253 (2005).

In the decade since passage of EPAct 2005, electricity markets have undergone an even more significant transformation. Natural gas prices and renewable energy technology costs have decreased substantially, while EPA regulations and abundant domestic natural gas supplies have changed the economics of many coal-fired power plants. Federal tax credits and state renewable energy mandates have expanded opportunities for renewable energy developers, as have state-mandated competitive power procurement and integrated resource planning (IRP) requirements. Distributed energy resources and micro-grids also have grown increasingly popular with electricity consumers. In addition, the Commission's open access transmission requirements and interconnection standards for large and small generators make it possible for renewable energy generators to sell power to multiple buyers, not just the local utility.

In light of these developments, we encourage the Commission to take a comprehensive look at PURPA and its regulations implementing section 210 through a discussion with interested stakeholders, including but not limited to: Commission-regulated and non-regulated electric utilities, owners and operators of qualifying facilities certified under PURPA, competitive electricity suppliers, electricity consumers, trade associations, and state regulators.

In our view, such a technical conference should consider a range of issues, including:

1. Whether the one-mile rule established by the Commission for determining whether facilities are "located at the same site" for purposes of determining their status as small power production facilities under PURPA has been subject to abuse;
2. The treatment of independently-administered, voluntary energy imbalance markets as comparable markets for purposes of implementing the mandatory purchase requirement under PURPA section 210(m)(1)(c);
3. The rebuttable presumption that a qualifying facility with a capacity at or below 20 megawatts does not have nondiscriminatory access to the market;
4. Whether imposing a mandatory purchase obligation under section 210 of PURPA is appropriate where a state regulatory agency determines that an electric utility does not need to acquire capacity from a qualifying facility in order to meet its obligation to serve;
5. Whether imposing a mandatory purchase obligation under section 210 of PURPA is appropriate where the electric utility is subject to a state-required IRP process and competitive resource procurement process that provides an opportunity for qualifying facilities to compete for identified resource needs; and
6. Methods used by states to establish avoided cost rates, including (i) comparison of avoided cost rates with rates produced by competitive power purchase solicitations; (ii) updating of avoided cost rates to reflect rates resulting from competitive solicitations; and (iii) modification of the length of qualifying facility contracts through the avoided cost rate setting process.

We are hopeful that a technical conference evaluating these issues can identify any potential administrative or legislative reforms that may be necessary to ensure the appropriate

role for PURPA in today's electricity marketplace. Thank you for your consideration of our request, and we look forward to your response.

Sincerely,



Lisa Murkowski
Chairman
United States Senate
Committee on Energy and Natural Resources



Fred Upton
Chairman
United States House of Representatives
Committee on Energy and Commerce



Ed Whitfield
Chairman
United States House of Representatives
Subcommittee on Energy and Power

Cc:

The Honorable Cheryl A. LaFleur
Commissioner, Federal Energy Regulatory Commission

The Honorable Tony Clark
Commissioner, Federal Energy Regulatory Commission

The Honorable Colette D. Honorable
Commissioner, Federal Energy Regulatory Commission