

On Promoting Reasonable Policies Under the Public Utility Regulatory Policies Act of 1978

1 The Public Utility Regulatory Policies Act of 1978 (PURPA) was enacted following the energy crisis of
2 the 1970s to encourage cogeneration and renewable resources and promote competition for electric
3 generation. It also sought to encourage electricity conservation. Implemented by the Federal Energy
4 Regulatory Commission (FERC or Commission), the states, and non-regulated electric utilities (a term
5 that encompasses most public power utilities), the statute imposes mandatory purchase obligations on
6 electric utilities for power generated by cogeneration facilities and small power production facilities of 80
7 megawatts (MW) or less located at the same site. PURPA requires electric utilities to purchase electric
8 energy from these “qualifying facilities” (QFs) at a rate that does not exceed the incremental cost to the
9 electric utility of alternative electric energy (referred to as “avoided cost”). PURPA also requires electric
10 utilities to interconnect with QFs and to sell power to QFs at non-discriminatory rates that are just and
11 reasonable and in the public interest.

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13 FERC has authority to determine what constitutes a QF and provides guidance on avoided costs. State
14 public utility commissions (PUCs) and non-regulated electric utilities have responsibility for determining
15 utility avoided costs and to establish the rates, terms, and conditions of power purchase contracts and
16 interconnection.

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18 Much has changed since enactment of PURPA over 40 years ago, including the development of organized
19 wholesale electricity markets and the adoption of policies at FERC to promote open access transmission
20 policies. Further, state and federal incentives have been adopted to promote generation from wind and
21 solar resources, such as state renewable portfolio standards and the federal Investment Tax Credit and
22 Production Tax Credit.

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24 The Energy Policy Act of 2005 made changes to PURPA, including adding a new provision—section
25 210(m)—that allows an electric utility to terminate the requirement to enter into new QF purchase
26 obligations if FERC finds the QFs have non-discriminatory access to certain categories of wholesale
27 electric markets.

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29 Further, in response to industry changes, FERC in 2020 adopted the first programmatic revisions to its
30 PURPA regulations since their initial promulgation. Among other changes, FERC’s revisions to its
31 regulations: (1) allowed more flexibility in determining electric utilities’ avoided cost for energy as costs
32 change over time; (2) clarified that real-time energy prices in organized markets may serve as a measure

of a utility's avoided cost; (3) modified the Commission's longstanding "one-mile rule" for determining whether generation facilities are considered to be at the same site for purposes of determining whether it is a qualifying small power production facility of 80 MW or less; (4) reduced the size of small power production facilities that FERC will presume have non-discriminatory access to organized markets for purposes of section 210(m) from 20 MW to 5 MW; and (5) adopted new requirements for states and non-regulated electric utilities to establish criteria to determine a QF's commercial viability and financial commitment to construction before a QF is entitled to a legally enforceable obligation to sell output to an electric utility. APPA generally supported the changes adopted by FERC.

Although Congress' adoption of section 210(m) and FERC's 2020 revisions to its regulations were positive developments, public power utilities continue to voice concern that PURPA's mandatory purchase obligation has forced them to buy QF power they do not need, often at rates that are higher than what can be obtained from the market. The mandatory purchase obligation can also impact utilities' long-term generation capacity planning when they are unexpectedly required to purchase power not accounted for in their integrated resource plans. APPA does not believe that, in enacting PURPA, Congress intended to force utilities to buy power they do not need, at rates higher than what is available on the market. Further, because distributed energy resources, such as rooftop solar facilities, may be small power production QFs, PURPA's requirements can complicate utility efforts to design fair and reasonable rates and policies for distributed generation.

A separate section of PURPA creates a framework under which Congress requires state PUCs and larger non-regulated electric utilities to formally consider specific electric utility policies or standards. These "must consider" standards are enumerated in section 111(d) of PURPA (16 U.S.C. § 2621(d)), which Congress has periodically supplemented with additional standards, most recently in the 2022 Infrastructure Investment and Jobs Act. While PUCs and non-regulated electric utilities are not required to adopt the enumerated standards, PURPA imposes procedural obligations for consideration of these policies. PURPA can impose these burdens on utilities even if they have already considered or adopted the standards.

NOW, THEREFORE, BE IT RESOLVED: That the American Public Power Association (APPA) encourages Congress to reform the mandatory purchase and mandatory sales obligations imposed on electric utilities by section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA), as these obligations are no longer necessary or appropriate in light of the significant industry changes since 1978,

including the development of wholesale electricity markets, the adoption of open access transmission policies, and the adoption of state and federal policies to promote renewable sources of power; and

BE IT FURTHER RESOLVED: That, absent elimination of mandatory requirements under PURPA section 210, APPA supports prospective legislative and regulatory efforts that minimize the obligations on public power utilities to buy energy and capacity from qualifying facilities (QFs) pursuant to PURPA, and that otherwise provide flexibility in determining the avoided cost rates required to be paid to QFs, in light of industry developments since PURPA was enacted; and

BE IT FURTHER RESOLVED: That APPA supports legislative and regulatory policies under PURPA that allow public power utilities to design their rates, terms, and conditions for retail service in a manner that is fair and reasonable to all customers; and

BE IT FURTHER RESOLVED: That APPA objects to future amendments to section 111(d) of PURPA that would require state public utility commissions and larger non-regulated electric utilities to formally consider additional electric utility policies or standards, as such “must consider” standards impose unnecessary procedural obligations on many public power utilities, and many are duplicative of policies that utilities have already considered or adopted.