

The Public Utility Regulatory Policies Act of 1978

Summary

The Public Utility Regulatory Policies Act of 1978 (PURPA) was enacted following the energy crisis of the 1970s to encourage cogeneration and renewable resources and promote competition for electric generation. It also sought to encourage electricity conservation. Implemented by the Federal Energy Regulatory Commission (FERC or Commission) and the states, the statute imposes mandatory purchase obligations on electric utilities for power generated by cogeneration facilities and small power production facilities of 80 megawatts (MW) or less. Much has changed since enactment of the act 40 years ago, including the development of organized wholesale electricity markets and the adoption of policies at FERC to promote open access transmission policies. Utilities and state regulators have raised concerns with the Commission and Congress on PURPA's implementation and needed reforms to its mandatory purchase obligation provisions. In response to the concerns, FERC held a technical conference in 2016 to examine PURPA and legislation was introduced in the House of Representatives in the 115th and 116th Congresses to modernize the statute. The American Public Power Association (APPA or Association) supports FERC examining its implementation of PURPA and believes PURPA needs to be updated to reflect today's energy marketplace.

Background

PURPA was enacted following the energy crisis of the 1970s to encourage cogeneration and renewable resources and promote competition for electric generation. It also sought to encourage electricity conservation. The act requires electric utilities to purchase electric energy from cogeneration facilities and small power production facilities of 80 MW or less in size at a rate that does not exceed the incremental cost to the electric utility of alternative electric energy (referred to as "avoided cost"). FERC and the states were directed to implement PURPA, with FERC determining what constitutes a qualifying facility (QF) and providing guidance on avoided costs. State public utility commissions (PUCs) have responsibility for determining the

avoided costs for the utilities they regulate and to establish the rates, terms, and conditions of power purchase contracts and interconnection.

Section 210 of the act governs the purchase of energy from QFs by electric utilities. QFs are divided into two categories—small power production facility and cogeneration facility. A small power production facility has a capacity of 80 MW or less and its primary energy source must come from a renewable, biomass, waste, or geothermal source. A cogeneration facility is a generator that produces electricity and a second form of thermal energy (such as heat or steam) in a manner that is more efficient than producing both forms of energy separately. PURPA provides that all small power production facilities located at the same site count toward the 80 MW size limit. Under FERC's one-mile rule, the agency deems small power production facilities located more than one mile apart to be located at different sites. Some renewable developers have spread out power production facilities that are more than 80 MW over a larger area, so as to divide the overall project into smaller ones that meet PURPA's QF requirements.

PURPA also requires electric utilities to sell power to QFs at non-discriminatory rates that are just and reasonable and in the public interest. In one recent case, a public power utility's retail rates were challenged at FERC by retail customers, who argued that rates applicable to customers with rooftop solar facilities discriminated against QFs in violation of PURPA. Although FERC declined to initiate an enforcement action in response to the petition, it is possible that other utilities could face similar challenges to their retail rates.

The Energy Policy Act of 2005 made changes to PURPA, including adding a new provision—section 210(m)—that allows an electric utility to terminate the requirement to enter into new QF purchase contracts or obligations if FERC finds the QFs have non-discriminatory access to certain categories of wholesale electric markets. Under its regulations implementing section 210(m), however, FERC presumes that QFs that are 20 MW or smaller do not have non-discriminatory access to the market.

Regulatory and Congressional Action

Much has changed in the 40 years since the enactment of the act, including the development of organized wholesale electricity markets and the adoption of policies at FERC to promote open access transmission policies. Further, state and federal incentives have been adopted to promote generation from wind and solar resources, such as state renewable portfolio standards and the federal Investment Tax Credit and Production Tax Credit. Today, 7.6 percent of electric generation is from these resources versus virtually none in 1978.

In June 2016, in response to concerns raised by electric utilities about PURPA, including gaming of the one-mile rule, as well as concerns from state regulators and QFs, FERC convened a technical conference. Its purpose was to examine implementation issues with the act. The Commission has not yet taken formal action in response to the issues raised at the technical conference. FERC's chairman announced in May 2018, however, that the agency would reenergize its PURPA review initiative, and subsequent statements from FERC indicate that review of its PURPA policies remains a priority. APPA has expressed support for such a re-examination of FERC's PURPA rules.

In September 2017, the House Energy & Commerce Committee's Subcommittee on Energy held a hearing entitled, "Re-evaluating PURPA's Objectives and Its Effects on Consumers." Issues examined at the hearing included:

- The act's role in developing renewable sources of power over the last 40 years and its present-day effects on consumers;
- Whether FERC's implementation and enforcement of the mandatory purchase obligation and exemptions to it under section 210 are appropriate given the changes occurring in electricity markets;
- FERC's regulations establishing a rebuttable presumption that QFs with a net capacity of 20 MW and below do not have non-discriminatory access to competitive wholesale electricity markets for purposes of section 210(m) of PURPA, and whether this threshold remains appropriate today; and
- Whether the Commission's implementation and enforcement of the regulations defining QFs in terms of size and location are consistent with the goals of PURPA and ensuring proper characterization of facilities, among others.

Following the hearing, in November 2017, Representative Tim Walberg (R-MI) introduced H.R. 4476, the PURPA Modernization Act of 2017. The legislation would have amended PURPA section 210(m) so that small power production facilities of 2.5 MW or greater would be presumed to have

non-discriminatory access to wholesale markets for purposes of allowing electric utilities to terminate the mandatory QF purchase obligation. The bill would also have empowered state PUCs and non-jurisdictional entities (i.e., public power utilities and electric cooperatives not regulated by PUCs) to waive the mandatory purchase obligation on a case-by-case basis for small power production facility QFs if additional power is not needed to meet consumers' electricity needs. In addition, the legislation would have directed FERC to relax its strict one-mile rule to prevent abuse of the rule.

The Energy Subcommittee held a legislative hearing on the bill on January 19, 2018, to hear from various stakeholders on whether the act needs to be updated and what actions FERC can undertake administratively to address abuses of the one-mile rule. Several witnesses, including a representative of the National Association of Regulatory Utility Commissioners, expressed their support for the bill. The subcommittee did not mark up the legislation and it died at the end of the 115th Congress.

Rep. Walberg reintroduced his legislation in March 2019 (now H.R. 1502). The Association supports the bill. In June 2019, Senator John Barrasso (R-WY) introduced S. 1790, the UPDATE PURPA Act, that similarly seeks to reform the law.

American Public Power Association Position

APPA has increasingly heard from its members 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. It can also impact their long-term generation capacity planning when they are unexpectedly required to purchase power not accounted for in their integrated resource plan.

In enacting PURPA, the Association does not believe Congress ever intended for utilities to have to buy power they do not need, at rates typically higher than what is available on the market. APPA supports the PURPA Modernization Act because it would direct FERC to relax its one-mile rule so that it is a rebuttable presumption instead of a firm rule. This would provide utilities and other stakeholders with potential redress when a renewable developer splits a larger project into smaller ones located just over a mile apart to meet PURPA's 80 MW QF capacity limit as implemented in FERC regulations. The Association also supports the inclusion of language in the bill to allow self-regulated public power utilities to be relieved of new mandatory purchases from small power production QFs when the public power utilities determine they do not need the additional energy.

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