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. The Federal Energy Regulatory Commission (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. Small power production facilities must have a capacity of not greater than 80 MW, and 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.

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, 15 percent of electric generation is from renewable resources versus virtually none in 1978.

In 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.

In addition, in September 2017 the House Energy & Commerce Committee held a hearing to evaluate PURPA’s objectives and effects on consumers. Two months later, Representative Tim Walberg (R-MI) introduced H.R. 4476, the PURPA Modernization Act of 2017. The legislation would amend 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 competitive wholesale markets for purposes of allowing electric utilities to terminate the mandatory QF purchase obligation. The bill would also empower state PUCs and non-jurisdictional entities 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 direct FERC to make its one-mile rule a rebuttable presumption instead of a firm rule to prevent abuse of the rule.

An increasing number of public power utilities are being forced by PURPA’s mandatory purchase obligation to buy power from QFs they do not need, often at rates that are higher than what can be obtained from the market. For public power utilities that are under contract with joint action agencies for all of their power needs, this obligation to buy power from QFs may interfere with their power supply contracts. In addition, 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 American Public Power 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.

NOW, THEREFORE LET IT BE RESOLVED: That the American Public Power Association (APPA) supports the Federal Energy Regulatory Commission (FERC) and Congress examining whether the objectives of the Public Utility Regulatory Policies Act of 1978 (PURPA) have been achieved due to 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 APPA supports FERC amending its one-mile rule to prevent renewable developers from dividing projects into smaller ones so they can qualify as a qualifying facility (QF) and require utilities to purchase their power output under PURPA’s mandatory purchase obligation requirement; and

BE IT FURTHER RESOLVED: That APPA supports legislation in Congress that would direct FERC to make its one-mile rule a rebuttable presumption instead of a firm rule, thus providing 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; and
BE IT FURTHER RESOLVED: That APPA supports legislation in Congress to amend 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 competitive wholesale markets for purposes of allowing electric utilities to terminate the mandatory QF purchase obligation; and

BE IT FURTHER RESOLVED: That APPA supports legislation in Congress to empower state public utility commissions and non-jurisdictional entities, such as public power, 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.