

**Sponsors: Missouri River Energy Services; Idaho Falls Power; Oklahoma Municipal Power Authority; Kansas Power Pool; Nebraska Public Power District**

**In Support of Modernizing 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. The Federal Energy Regulatory  
4 Commission (FERC) and the states were directed to implement PURPA, with FERC determining what  
5 constitutes a qualifying facility (QF) and providing guidance on avoided costs. State public utility  
6 commissions (PUCs) have responsibility for determining the avoided costs for the utilities they regulate  
7 and to establish the rates, terms, and conditions of power purchase contracts and interconnection.

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9 Section 210 of the act governs the purchase of energy from QFs by electric utilities. QFs are divided into  
10 two categories – small power production facility and cogeneration facility. Small power production  
11 facilities must have a capacity of not greater than 80 MW, and PURPA provides that all small power  
12 production facilities located at the same site count toward the 80 MW size limit. Under FERC’s one-mile  
13 rule, the agency deems small power production facilities located more than one mile apart to be located at  
14 different sites. Some renewable developers have spread out power production facilities that are more than  
15 80 MW over a larger area, so as to divide the overall project into smaller ones that meet PURPA’s QF  
16 requirements.

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18 Much has changed in the 40 years since the enactment of the act, 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. Today, 15 percent of electric generation is from renewable resources versus  
23 virtually none in 1978.

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25 In 2016, in response to concerns raised by electric utilities about PURPA, including gaming of the one-  
26 mile rule, as well as concerns from state regulators and QFs, FERC convened a technical conference. Its  
27 purpose was to examine implementation issues with the act. The Commission has not yet taken formal  
28 action in response to the issues raised at the technical conference.

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30 In addition, in September 2017 the House Energy & Commerce Committee held a hearing to evaluate  
31 PURPA’s objectives and effects on consumers. Two months later, Representative Tim Walberg (R-MI)  
32 introduced H.R. 4476, the PURPA Modernization Act of 2017. The legislation would amend PURPA

33 section 210(m) so that small power production facilities of 2.5 MW or greater would be presumed to have  
34 non-discriminatory access to competitive wholesale markets for purposes of allowing electric utilities to  
35 terminate the mandatory QF purchase obligation. The bill would also empower state PUCs and non-  
36 jurisdictional entities to waive the mandatory purchase obligation on a case-by-case basis for small power  
37 production facility QFs if additional power is not needed to meet consumers' electricity needs. In  
38 addition, the legislation would direct FERC to make its one-mile rule a rebuttable presumption instead of  
39 a firm rule to prevent abuse of the rule.

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41 An increasing number of public power utilities are being forced by PURPA's mandatory purchase  
42 obligation to buy power from QFs they do not need, often at rates that are higher than what can be  
43 obtained from the market. For public power utilities that are under contract with joint action agencies for  
44 all of their power needs, this obligation to buy power from QFs may interfere with their power supply  
45 contracts. In addition, it can also impact their long-term generation capacity planning when they are  
46 unexpectedly required to purchase power not accounted for in their integrated resource plan. In enacting  
47 PURPA, the American Public Power Association does not believe Congress ever intended for utilities to  
48 have to buy power they do not need, at rates typically higher than what is available on the market.

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50 **NOW, THEREFORE LET IT BE RESOLVED:** That the American Public Power Association (APPA)  
51 supports the Federal Energy Regulatory Commission (FERC) and Congress examining whether the  
52 objectives of the Public Utility Regulatory Policies Act of 1978 (PURPA) have been achieved due to the  
53 development of wholesale electricity markets, the adoption of open access transmission policies, and the  
54 adoption of state and federal policies to promote renewable sources of power; and

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56 **BE IT FURTHER RESOLVED:** That APPA supports FERC amending its one-mile rule to prevent  
57 renewable developers from dividing projects into smaller ones so they can qualify as a qualifying facility  
58 (QF) and require utilities to purchase their power output under PURPA's mandatory purchase obligation  
59 requirement; and

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61 **BE IT FURTHER RESOLVED:** That APPA supports legislation in Congress that would direct FERC  
62 to make its one-mile rule a rebuttable presumption instead of a firm rule, thus providing utilities and other  
63 stakeholders with potential redress when a renewable developer splits a larger project into smaller ones  
64 located just over a mile apart to meet PURPA's 80 MW QF capacity limit as implemented in FERC  
65 regulations; and

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67 **BE IT FURTHER RESOLVED:** That APPA supports legislation in Congress to amend PURPA section  
68 210(m) so that small power production facilities of 2.5 MW or greater would be presumed to have non-  
69 discriminatory access to competitive wholesale markets for purposes of allowing electric utilities to  
70 terminate the mandatory QF purchase obligation; and

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72 **BE IT FURTHER RESOLVED:** That APPA supports legislation in Congress to empower state public  
73 utility commissions and non-jurisdictional entities, such as public power, to waive the mandatory  
74 purchase obligation on a case-by-case basis for small power production facility QFs if additional power is  
75 not needed to meet consumers' electricity needs.