

October 9, 2017

Navigating PURPA 210 Obligations and Distributed Generation Deployment

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Overview

Questions to Ponder?

- **How Does PURPA Affect Distributed Generation Deployment?**
- **Does Federal Law Preempt Local Laws on Distributed Generation?**
- **What are the Interconnection Requirements for a PURPA Project versus a Distributed Generation Project?**
- **Can a Resource be Eligible for Net Metering and PURPA Compensation?**

What is Distributed Generation?

Distributed Generation generally refers to non-centralized sources of electric generation using resources such as wind, photovoltaic, combined heat and power, and diesel, usually located behind the meter at or near consumers' homes or businesses.



Distributed Generation and Qualifying Facilities

Are all Distributed Generation Resources Qualifying Facilities?

- A Distributed Generation resource must meet the requirements of a Qualifying Facility under PURPA law and regulations in order to be a QF.
- Distributed Generation resources that do not make wholesale sales do not need to become Qualifying Facilities unless state retail sales and/or net metering laws require. (See *Minn. Stat. Section 216B.164 (2016)*)

Are Distributed Generation resources subject to the requirements of PURPA, the Federal Power Act or state retail sales laws?

- It depends. If a Distributed Generation resource makes a wholesale sale for resale, there may be compliance obligations under the Federal Power Act. *Yet, a Distributed Generation resource making a wholesale sale as a Qualifying Facility is exempt from several regulatory burdens imposed by the Federal Power Act. See 18 C.F.R. § 292.601*

Distributed Generation and Qualifying Facilities Rates for Compensation



Distributed Generation and Qualifying Facilities Interconnection Obligations

Qualifying Facilities

- PURPA obligates an electric utility to interconnect with the Qualifying Facility bearing reasonable interconnection costs.
- Jurisdictional issues arise depending upon the ultimate purchaser.

Distributed Generation

- Interconnection will be subject to local rules unless the Distributed Generation resource interconnects with FERC jurisdictional transmission facilities.
- When FERC jurisdiction is implicated, FERC interconnection policies will apply.



Distributed Generation Interconnection Obligations

NARUC Standards

- Developed in 2003 in response to FERC promulgation of Interconnection Standards but not uniformly followed.
- States and many jurisdictions have adopted varying approaches

California Approach

- CPUC adopted Rule 21 endeavored to streamline approach for State's IOUs.
 - Addresses five options for the interconnecting customer:
 1. Isolated operation, unconnected to the utility's distribution system;
 2. Interconnected by not exporting power to the distribution system;
 3. Interconnected and incidentally exporting power;
 4. Net energy metering; or
 5. Exporting power for sale.

Distributed Generation and Net Metering

Net Metering Programs -Fostering the Deployment of Distributed Generation Resources

- Conventional net metering
 - Relies on single meter.
- Aggregate net metering
 - Allows a customer to offset electricity use from multiple meters using a single generating facility.
- Virtual net metering
 - Allows multiple customers to offset electricity use from one or more shared facilities.
- Dual metering
 - Measuring consumption and output through separate meters.

Net Metering versus PURPA

Is a Sale under a Net Metering Program the same a sale by a QF under PURPA?

- Net metering programs have generally credited customers with distributed generation resources with a full retail rate.
 - Distributed Generation customer afforded credits for excess generation against monthly usage.
 - Trend has evolved to reduce full retail credit.

Does a sale of energy from a Distributed Generation resource present questions involving FERC jurisdiction?

- FERC has taken the position that a FERC-jurisdictional sale occurs if a net metering customer delivers more power to the utility than it consumes over the course of a relevant or applicable billing period.
 - *However, what is the relevant billing period?*

QF or Distributed Generation?

The classification of a project will turn on many considerations.

- Local laws
 - Do distributed generation projects need to be a QF to participate in a net metering project?
- Rate for compensation
 - Avoided cost rate compensation.
 - Traditional retail rate compensation driving distributed generation deployment.
 - *Do new rate structures which provide less than a full retail rate credit change a project's status?*

Questions remain regarding rate flexibility for distributed generation customers participating in net metering programs.

- FERC has declined to date to address the question of whether a state virtual net metering pilot program's compensation for net excess generation from distributed generation at a price that exceeds a utility's avoided costs is inconsistent with PURPA. *See Southern Maryland Electric Cooperative 157 FERC ¶ 61,118 (2016)*

Strategic Consideration

Managing and addressing expectations requires working knowledge of PURPA and state laws governing distributed generation.

- Obligations under PURPA
 - Obligation to purchase
 - Obligation to interconnect
 - Obligation to sell
- Distributed generation policies
 - Eligibility for net metering
 - Other utility practices and rates
 - Underlying rate structures

Reference Cases

PRI Energy Systems, 26 F.E.R.C. ¶ 61,177 (1984) (Explaining that “rather than prohibiting retail sales by qualifying facilities, Congress intended that the question of whether qualifying facilities may be permitted to make retail sales must be resolved in State forums as a matter of State law.”).

New PURPA Section 210(m) Regulations Applicable to Small Power Production and Cogeneration Facilities, Order No. 688, FERC Stats. & Regs. ¶ 31,233 (2006), *order on reh’g*, Order No. 688-A, FERC Stats. & Regs. ¶ 31,250 at P 138 (2007) (“Whether a contract or obligation exists would depend on state law.”), *appeal denied sub nom. American Forest and Paper Assoc. v. FERC*, 550 F.3d 1179 (D.C. Cir. 2008)

California Public Utilities Commission, 133 FERC ¶ 61,059 (2010) (Explaining that a multi-tiered QF compensation structure implemented by the California Public Utilities Commission that compensated certain QFs at a higher rate than others was consistent with PURPA.)

Order No. 69, FERC Stats. & Regs. ¶ 30,128 at 30,870-71 and *Pub Serv. Co. of N.H. v. N.H. Elec. Coop. Inc.*, 83 FERC ¶ 61,224, at 61,998- 99 & n.9 (1998) (*PSNH*) (Stating that the obligation to purchase QF power supersedes and conflicting contractual arrangements.)

Western Farmers Electric Cooperative, 115 FERC ¶ 61,323 (2006) (Explaining that “The Commission has consistently held that the avoided costs of an all-requirements customer to be those of its all-requirements supplier.”)(citation omitted).

Reference Cases Continued

Reference Cases Continued

Conn. Light & Power Co., 70 FERC ¶ 61,012 (1995), *reconsideration denied*, 71 FERC ¶ 61,035 (1995), *appeal dismissed*, 117 F.3d 1485 (D.C. Cir. 1997) (“The Commission's regulations, in turn, expressly provide that ‘[n]othing in [the Commission's regulations] requires any electric utility to pay more than the avoided cost for purchases.’”).

MidAmerican Energy Company, 94 FERC ¶ 61,340 (2001) (finding that a one month time interval is a reasonable time interval to net generation and consumption).

Calpine Corp. v. FERC, 702 F.3d 41 (DC Cir. 2012) (affirming that FERC does not have the authority to set a netting interval for a sale of station power to a generator to determine whether the provision of station power constitutes a retail sale.); *See also So. Cal. Edison v. FERC*, 603 F.3d 996 (D.C. Cir. 2010).

Additional Resources

Distributed Generation – An Overview of Recent Policy and Market Developments, American Public Power Association, November 2013, available at <http://www.publicpower.org/files/pdfs/distributed%20generation-nov2013.pdf>

PURPA Title II Compliance Manual, March 2014 Sponsored by the American Public Power Association, the Edison Electric Institute, the National Association of Regulatory Utility Commissioners, and the National Rural Electric Cooperative Association, available at https://www.publicpower.org/files/PDFs/PURPA%20Title%20II%20Manual%20Final_w-cover.pdf

Model Interconnection Procedures and Agreement for Small Distributed Generation Resources, National Association of Regulatory Utility Commissioners, 2003, available at <http://pubs.naruc.org/pub/536DBB8C-2354-D714-519F-7869624489AE>

<http://www.dsireusa.org/>

Questions?

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