UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Implementation Issues Under the Public Utility Regulatory Policies Act of 1978	**)** **)**	**Docket No. AD16-16-000**

COMMENTS OF THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

The National Association of Regulatory Utility Commissioners ("NARUC") appreciates the opportunity to provide comments to the Federal Energy Regulatory Commission ("FERC" or "Commission") in response to the September 6, 2016 Notice of Inviting Post-Technical Conference Comments[1] following its June 29, 2016 technical conference to discuss implementation issues related to the Public Utility Regulatory Policies Act of 1978 ("PURPA").[2] The Commission is seeking comments on two issues: (1) the use of the "one-mile rule" to determine the size of an entity seeking certification as a small power production qualifying facility ("QF"); and (2) minimum standards for PURPA-purchase contracts.

I. COMMUNICATIONS

All pleadings, correspondence, and other communications related to this proceeding should be addressed to the following person:

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1 Implementation Issues Under the Public Utility Regulatory Policies Act of 1978; Notice Inviting Post-Technical Conference Comments, 81 Fed. Reg. 64455 (September 20, 2016).

2 16 U.S.C. § 2601 *et seq*. (2012).

II. COMMENTS

NARUC values this opportunity to offer comments on PURPA implementation issues because Congress charged State Commissions with implementing FERC's PURPA regulations and approving QF contracts. State Commissions are also obliged to ensure reliable service and reasonable rates. At times, these obligations can be difficult to balance. In fact, some State Commissions have found that PURPA's goal of promoting QF development is out of balance with the obligations to ensure rates that are just and reasonable. The PURPA statute and FERC implementing regulations both recognize the need to be concerned about ratepayers and the public interest when promoting PURPA's goal – specifying that avoided costs must be "just and reasonable to the electric consumers . . . and in the public interest" and "shall not discriminate against [QFs]."[3]

To address some of these concerns, NARUC offers comments on both of the matters about which the Commission issued questions. Focusing on these matters can ameliorate some of the issues that State Commissions face, but not all. NARUC looks forward to continued discussions about PURPA and its necessary evolution in order for State Commissions to continue to meet their obligations and for the goals of PURPA to be achieved.

A. One-Mile Rule

The one-mile rule is a reference to Section 292.204(a) of the Commission's regulations. It states that small power production facilities are considered to be at the same site if they are located within one mile of each other, share the same energy resource, and are owned by the same person(s) or its affiliates.[4] NARUC supports the use of a rebuttable presumption, if the burden is

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3 16 U.S.C. § 824a-3(b); 18 C.F.R. § 292.304 (2015).

4 18 C.F.R. § 292.204(a) (2015).

on the QFs; in other words, the QFs should have to prove that they are not within one mile of each other, do not share the same resource and are not jointly owned, if a prima facie review reveals a joint interest. As our members' experiences, particularly in the West, have demonstrated, the one-mile rule can be accommodated by QFs in a way that may comply with the letter of the law, but circumvent the spirit of the rule.

The Commission has questioned whether, as an alternative to a rebuttal presumption, it should modify the rule to either increase or decrease the spacing of the facilities. Issues like the disaggregation of what would be large, non-complying projects into smaller, complying projects to take advantage of the "must purchase" obligation of PURPA[5] and of more favorable rates[6] cannot be addressed by simply increasing or decreasing the spacing of the facilities. A change in spacing would simply alter the details of *how* the rule was circumvented, not *whether* it was circumvented.

FERC should allow states to employ a more fact-based analysis using criteria such as those proposed by Commissioner Paul Kjellander, Idaho Public Utilities Commission,[7] and the Edison Electric Institute;[8] however, FERC also should clarify that State Commissions retain the discretion to determine whether PURPA is being circumvented. State Commissions need more tools, not more restraints.

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[5] 18 C.F.R. § 292.303 (2015).

[6] *See* Speaker materials of Commissioner Paul Kjellander, Idaho Public Utilities Commission, at the June 29, 2016 PURPA Conference at 4-5, FERC Docket No. AD16-16-000 (June 29, 2016) ("Kjellander materials").

[7] *See* Kjellander materials at 6-7.

[8] *See* Speaker materials of Joel Schmidt, on behalf of Edison Electric Institute, at the June 29, 2016 PURPA Conference at 4, FERC Docket No. AD16-16-000 (June 29, 2016).

B. Minimum Standards for PURPA-Purchase Contracts

The appropriate minimum length of a PURPA contract cannot be predetermined for all possible sets of circumstances. FERC should not try to establish it in advance. Whether a contract length is “appropriate” may need to be based on a risk assessment, which can only be done after examining the facts and circumstances of the particular situation because contract length is but one part of the PURPA contract equation. Thus, contract length should be negotiable based on other terms of the contract, not a set length to be enforced in all myriad of circumstances presented across the nation. States should continue to have the discretion to set minimum contract lengths when appropriate for the circumstances in the state, rather than having a federal standard that applies to all.

Technological advancements that continue to lead to changing resource mixes and the volatility of fuel prices increase the difficulty of projecting future costs. Avoided cost calculations are further complicated because QFs enter the market outside of an integrated resource planning process; these difficulties are exacerbated the longer the term for which the calculations are done. Flexibility in setting the contract length can allow regulators to mitigate the risks when calculating the avoided cost. State Commissions should be allowed to adjust contract length to ensure that ratepayers are not harmed as required by PURPA.

Moreover, neither PURPA nor FERC regulations discuss a QF’s ability to obtain financing as a factor to be considered.

Establishing new criteria for contract terms would remove discretion currently afforded to the State Commissions. This discretion is important because topology, market structures and the need for additional, intermittent energy varies significantly across the country. These differences necessitate different approaches to avoided cost calculations. State Commissions are best situated to incorporate local considerations as to whether any particular QF contract or the need for QF energy is fair to ratepayers, non-discriminatory to QFs and in the public interest.

Lastly, the size threshold for requiring standard rates should not be changed.

III. CONCLUSION

NARUC thanks the Commission for considering its comments. We look forward to working with you to ensure that PURPA is meeting the needs of both QFs and ratepayers by maintaining flexibility and discretion for State Commissions as they fulfill their PURPA duties.

Respectfully submitted,

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Dated: November 7, 2016

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary of this proceeding.

Dated at Washington, D.C.: November 7, 2016

Respectfully submitted:

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