U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON ENERGY AND COMMERCE

August 31, 2017

TO: Members, Subcommittee on Energy

FROM: Committee Majority and Minority Staff

RE: Hearing entitled "Powering America: Reevaluating PURPA's Objectives and its Effects on Today's Consumers"

I. INTRODUCTION

The Subcommittee on Energy will hold a hearing on Wednesday, September 6, 2017, at 10:00 a.m. in 2123 Rayburn House Office Building. The hearing is entitled "Powering America: Reevaluating PURPA's Objectives and its Effects on Today's Consumers." The hearing will solicit the views of industry stakeholders, explore the statute's current effects on consumers, and consider whether reforms to modernize the Public Utilities Regulatory Policies Act of 1978 (PURPA) are appropriate due to changes in the power generation sector.

II. WITNESSES

- **Frank Prager**, Vice President of Policy and Federal Affairs, Xcel Energy
- **Todd G. Glass,** Counsel to the Solar Energy Industries Association
- **Kristine Raper**, Commissioner, Idaho Public Utilities Commission
- **Stephan Thomas**, Senior Manager, Energy Contracts, Domtar Corporation
- **Terry Kouba**, Vice President of Iowa Operations, Alliant Energy
- **Darwin Baas**, Director, Department of Public Works for Kent County (Michigan)

III. BACKGROUND

In 1973, the Arab oil embargo exposed the nation's reliance on foreign sources of energy and the crippling effects of this dependency. The Public Utilities Regulatory Policies Act of 1978[1] was enacted in response to this crisis to promote energy conservation and the use of domestic renewable energy. During this period, electricity was typically generated, transmitted, and distributed by a vertically integrated utility with a franchised service territory and most

[1] 16 U.S.C. § 824a-3 (2012).

consumers had no alternative but to take service from their local utility at regulated rates and terms. However, PURPA changed this regulated monopoly model as it required electric utilities to begin to purchase additional output from a new class of generating facilities that receive special rate and regulatory treatment under the law. These facilities are designated "non-utility generators" or more commonly known as "qualifying facilities" (QFs).

PURPA separates facilities into two distinct categories; small power production facilities and cogeneration facilities. A small power production facility is deemed as having a capacity of 80 megawatts (MWs) or less and its primary energy source must come from a renewable, biomass, waste or geothermal resource. Cogeneration facilities are defined as 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. Both types of facilities are required to seek certification as a QF by the Federal Energy Regulatory Commission (FERC).

While FERC is charged with administering PURPA and developing a set of regulations under which the QFs operate, section 210(f) of PURPA leaves the implementation of the regulations to the individual states. However, over the nearly 40 years that PURPA has been in existence, states have implemented the law in various ways depending on many local factors including whether utilities in the state participate in an organized wholesale electricity market. Differences in the types and distribution of renewable resources among the states have also affected how state regulators address matters related to PURPA.

Since PURPA's implementation, the nation's power generation sector has experienced significant changes in the manner and mode by which electricity is supplied to consumers. The rapid deployment of less costly renewable resources in recent years, along with the growth of energy efficiency and demand response products, has changed the long-standing model by which consumers use, and generators supply, electricity. Moreover, little to no growth in demand for electricity nationwide has created an environment where a diverse fleet of generator resources now aggressively compete to supply electricity to a relatively static base of customers. These factors, along with others, have resulted in near-record low electricity prices around the country.

Due to these changes in the power generation sector, now is an appropriate time to revisit the objectives of PURPA, evaluate its current impacts on consumers, and consider whether any reforms are necessary to modernize this law. This hearing will focus on Title II of PURPA – "Certain Federal Energy Regulatory Commission and Department of Energy Authorities."

A. PURPA's Regulatory Regime

Under PURPA, FERC is charged with implementing regulations to establish how resources seek certification for QF status.[2] The benefits that are conferred upon QFs generally fall into three categories: (1) the right to sell energy or capacity to a utility, (2) the right to purchase certain services from utilities, and (3) relief from certain regulatory burdens. Additionally, FERC's regulations set forth the requirements that QFs must adhere to, including restrictions regarding the fuel sources and limitations on the QF's capacity. For example, FERC

[2] 18 CFR § 292.203-207 (2017).

established a requirement limiting the size of qualifying small power production facilities to 80 MW.

PURPA intends for state regulatory authorities to play an important role in implementing and enforcing FERC's rules at the local level. Among its responsibilities, state regulators are charged with developing the methodology used to calculate an avoided cost rate for utilities subject to their jurisdiction.[3] State regulators also play a central role in enforcing any requirement created by a state's implementation of PURPA to ensure that a QF contract is consistent with and protects the State's public interest and does not adversely impact retail ratepayers.

PURPA was most recently amended in the Energy Policy Act of 2005 to allow the mandatory purchase requirements of section 210 to be terminated if FERC determines that a QF has non-discriminatory access to markets that meet specific criteria as provided by FERC regulations.[4] Subsequently, FERC also determined in Order No. 688 that the existence of an open access transmission tariff[5] created a rebuttable presumption that QFs larger than 20 MWs have non-discriminatory access to the relevant wholesale market.[6] In such cases, Order No. 688 holds that electric utilities (also known as "host utilities") may terminate their obligations to purchase output from QFs larger than 20 MWs, but are required to continue purchasing output from QFs with capacities of 20 MWs or smaller unless the host utility can demonstrate that the QF has non-discriminatory access to transmission and a relevant wholesale market.

B. Implementation Issues and Concerns

Since PURPA was enacted nearly 40 years ago, there have been significant changes and developments in how electricity is produced, transmitted, and regulated. The electricity markets that serve consumers today are vastly different with the establishment of competitive structures and open-access transmission policies. While renewable energy from hydropower facilities has contributed to the mix of electricity generation for decades, renewable resources from solar and wind have vaulted from a position of generating virtually no electricity in 1978 when PURPA was enacted to representing approximately 6 to 7 percent of the existing generation today. Total renewable generation now accounts for 15 percent of electric generation nationally. Moreover, last year, renewable additions to the nation's generating capacity represented the majority (63 percent) of utility-scale additions, primarily from wind and solar resources.[7]

Due to this continual evolution of the nation's electricity markets and these changes in renewable energy development, it is appropriate for Congress to reevaluate periodically this statute to ensure its objectives are met and to consider whether any changes are necessary.

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[3] "Avoided costs" means the incremental cost to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source. *See* 18 CFR § 292.292.101(b)(6) (2017).
[4] 18 CFR § 292.309 (2017).
[5] An open access transmission tariff (OATT) requires that a transmission owner or provider furnish all shippers with non-discriminating service comparable to that provided by transmission owners to themselves.
[6] *New PURPA Section 201(m) Regulations Applicable to Small Power Production and Cogeneration Facilities*, Order No. 688, 71 FR 64342 (Nov. 1, 2006), FERC Stats. & Regs. ¶ 31,233 (2006) (Final Rule).
[7] Energy Information Administration, *Electric Generators Report* (2016).

FERC has also recognized the need to review its PURPA regulations and convened a technical conference in 2016 to hear concerns from host utilities, QFs, and state regulators regarding implementation issues.[8] However, FERC has not yet taken any formal action in response to the issues discussed at its technical conference.

Not surprisingly, tensions between various stakeholders regarding PURPA's implementation remain evident in our rapidly changing electricity industry. Among the disputes, host utilities in areas that do not meet the conditions for exemption from PURPA's mandatory purchase obligation argue that the purchase obligation under section 210 requires them to purchase power that they may not need from small QFs (20 MW or smaller) at above-market rates. They claim this displaces lower-cost resources and unnecessarily increases rates to consumers. Alternatively, QF's claim the rebuttable presumption that facilities with a capacity of 20 MW or less do not have non-discriminatory access to markets is valid, and that this provision of PURPA ensures increased competition. In particular, small cogenerators are concerned that removing this presumption would result in less cogeneration power.

Host utilities also claim that such above-market rates result from avoided cost calculations that are set too high for fixed periods and are not responsive to changes in the industry. Meanwhile, certain QFs argue that some state rate calculations do not consider long-term avoided costs and result in rates that are too low, which limits a developer's ability to secure project financing.[9] Other QF developers argue that if host utilities do not offer contracts of sufficient duration to finance a project (*e.g.,* 15-20 years in length), QF viability will be significantly impaired.[10]

Concerns have also been raised that some renewable energy developers are constructing power production facilities larger than 80 MW, but dividing the project into multiple smaller projects to meet PURPA's regulatory requirements and thus have each qualify for QF status.[11] Specifically, host utilities allege that QF facilities are being developed just far enough from each other to comply with FERC's regulations and qualify as separate facilities despite evidence to indicate that the development is actually a single facility.[12] The association representing state utility commissioners has argued that FERC should establish new criteria to assist states in evaluating whether a developer has disaggregated a large project into multiple smaller projects to circumvent FERC's size limitations and undermine PURPA regulations.[13] Alternatively, some QFs argue that the current regulations are clear and that no changes are necessary.[14]

This hearing will provide an opportunity to solicit testimony from parties that are affected by these issues and to consider whether any administrative or legislative reforms may be

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[8] FERC technical conference entitled *Implementation Issues Under the Public Utility Regulatory Policies Act of 1978* in Docket No. AD16-16-000 (June 29, 2016).
[9] Comments of Allco Renewable Energy Ltd. in FERC Docket No. AD16-16-000 (June 7, 2016).
[10] Comments of NewSun Energy LLC in FERC Docket No. AD16-16-000 (November 7, 2016).
[11] Comments of Berkshire Hathaway Energy in FERC Docket No. AD16-16-000 (November 7, 2016).
[12] 18 CFR § 292.204(a)(2) (2017) (Defining FERC's one-mile restriction, *i.e.*, "facilities are considered to be located at the same site as the facility for which qualification is sought if they are located within one mile of the facility….")
[13] Comments of the National Association of Regulatory Utility Commissioners in FERC Docket No. AD16-16-000 (January 5, 2017)
[14] Comments of American Wind Energy Association in FERC Docket No. AD16-16-000 (November 15, 2016).

necessary to benefit consumers and to ensure that PURPA continues to play an appropriate role in our evolving electricity markets.

IV. ISSUES

The following issues may be examined at the hearing:

- PURPA's role in developing renewable sources of power over the past 40 years and its present-day effect on consumers.

- Whether FERC's implementation and enforcement of the mandatory purchase obligation and exemptions to it under PURPA section 210 are appropriate under 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 organized markets, and whether this threshold remains appropriate today.

- Whether FERC'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.

- The various methods by which avoided cost calculations are made by the states and whether improvements to current pricing methodologies exist.

- The circumstances under which utilities may curtail purchases of energy or capacity from QFs and the effect of existing curtailment regulations on grid reliability.

V. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Jason Stanek, Annelise Rickert, or Wyatt Ellertson on the Majority Committee staff at (202) 225-2927, or Rick Kessler on the Minority Committee staff at (202) 225-3641.