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C.L. "Butch" Otter
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November 6, 2017

To the Honorable Fred Upton:

Thank you for allowing me to appear and testify before the Subcommittee on Energy on September 6, 2017, at the hearing entitled "Powering America: Reevaluating PURPA's Objectives and its Effects on Today's Consumers." Enclosed are my responses to the post-hearing questions presented by you, the Honorable Richard Hudson and the Honorable Bobby Rush.

Please feel free to contact me if you have any further questions.

Sincerely,

[redacted]

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Powering America: Reevaluating PURPA's Objectives
And its Effects on Today's Consumers

Hearing held September 6, 2017
Before the Subcommittee on Energy,
within the Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C.

Responses to Additional Questions for the Record
November 6, 2017

Response to the Honorable Fred Upton:

1. ***State policies are driving growth in renewable generation. Renewable Portfolio Standards (RPS), tax credits, competitive procurement requirements, and net metering programs are just a few of them.***
    a. ***In light of these more recent pro-renewable policies and mandates (since 1978), do we still need PURPA to drive renewable development?***

The short answer is NO. In fact, in some areas, PURPA is driving cost-effective renewables out of the market. A utility that is overwhelmed with "must-purchase" PURPA power does not have the opportunity to issue a Request for Proposal (RFP) to add renewable energy to its resource mix based on a least-cost bidder. What's more, projects that are not chosen through the RFP process can become QFs and force their generation to be purchased.

2. ***If we set aside PURPA for a moment, do you believe that state policies (including integrated resource planning (IRP), competitive procurement requirements, net metering, and renewable portfolio standards) are stable enough to provide a reliable investment climate for renewable generation?***

Yes – with the caveat that I am an attorney, not an investment expert. State policies supporting the use of renewable generation have been in place for more than a decade and are only gaining momentum. In organized markets (PJM, MISO), renewable projects in excess of 20 megawatts (MW) are presumed to be competitive – and, therefore, must enter the market outside of the benefits provided by PURPA (Energy Policy Act of 2005). Although my State's utilities are not part of an organized market, renewable generation does not seem to be suffering in those markets. In addition, all of the recent research shows that the cost of building renewable generation has come down significantly. Lower costs allow renewable technologies to be competitive with more traditional-type resources. Moreover, utilities are responding more to customer preferences. Customer preference seems to support and promote the use of more renewable generation.

3. Your Commission recently reduced the contract length for QFs in Idaho to just two years. QFs will argue that two years is not a sufficient length of time to enable the QF to secure financing. How do you respond? How did you pick two years?

QFs do argue that two years is not sufficient to secure financing. However, they never actually present their books for verifiable proof of what contract term is needed to secure financing. As a regulator, I have not yet been presented with a case where a QF shows evidence of what is needed for financing – even in our lengthy and comprehensive docket when we reduced the contract length to two years. In addition, FERC regulations require both that ratepayers are not harmed by the purchase of QF power and that QFs are not subject to discrimination. The regulations do not require that a state commission approve contract terms to make a PURPA project financeable without regard to the impact on ratepayers.

The term of a QF contract should not matter as long as the federal "must-purchase" requirement remains. The renewal of a shorter term contract allows avoided cost rates to be updated periodically so that ratepayers are not harmed. The utility's ongoing obligation to purchase the QF power does not change.

The Idaho PUC chose two year PURPA contracts because it reasonably corresponds with the utilities' IRP cycle – when each utility reevaluates what resources will be needed over the long term to reliably serve customers. Matching contract length with the IRP cycle reduces price risk and provides more forecast certainty for the utility and the QF.

a. As a state regulator, are you permitted to examine the QF's books and records, as you would be able to for a regulated utility to verify costs?

NO. We are not entitled to review a QF's costs or projected profit when considering approval of a PURPA contract.

4. In your testimony, you noted that in 1978 battery storage on a utility scale did not exist, but that it should now be eligible for QF status under PURPA. Do you consider energy storage to be a renewable resource that would qualify as a QF under the law?

FERC has actually acknowledged that neither the statute nor the rules identify energy storage/battery storage as a renewable resource eligible for QF status and, therefore, the benefits of PURPA. However, in a single decision issued in 1990, FERC includes battery storage as a renewable resource for purposes of QF certification, but not without limitation. FERC clarified that energy storage facilities are not renewable resources/small power production facilities *per se*. As a State commission, we are bound by the language of the FERC decision.

If my testimony included an assertion that battery storage should be eligible for QF status under PURPA, I misspoke. I do believe it is time to *consider* whether energy storage reasonably fits within the intent of PURPA. Battery storage facilities do not generate energy. The primary energy source behind the battery storage is the actual generation resource. As currently written, I do not believe that energy storage should be presumed to be a renewable resource/small power production facility contemplated by the Act.

a. Would a legislative change be necessary to update PURPA?

Yes. The "must-purchase" obligation is rigid and prohibits states from responding to local and regional circumstances, including considerations of reliability. Disaggregation of QF projects, which are contrary to the intent and spirit of PURPA, also need to be addressed. Finally, there is no statute of limitations proscribing how long a QF has to file a complaint with FERC against an adverse decision made by a state commission. State decisions deserve a determination of finality after a reasonable time.

5. ***As it stands now, under section 292 of FERC's regulations (18 CFR § 292), the "one-mile rule" is not rebuttable and utilities have little recourse to challenge QF projects that attempt to game this restriction.***
    a. ***Should FERC revise its regulations to allow utilities to demonstrate that a QF developer is attempting to split a single large project into multiple smaller ones to receive the benefits of PURPA?***

Yes. Ignoring developers who game the system burdens ratepayers unnecessarily, negatively impacts reliability, and undermines the intent and spirit of the Act.

6. ***State public utility commissions are generally closer to the needs of their consumers than federal agencies. Under PURPA, FERC determines whether a QF meets its basic requirements (e.g., using its one-mile rule), and how avoided costs should be generally set, leaving the specific details to the states.***
    a. ***Are there any areas of PURPA where the states need more ability to make local decisions?***

Yes. Allowing the states a factual review of any grouping of QF projects would readily reveal disaggregation and gaming of the Act. States need the flexibility to be able to determine when a utility is overwhelmed with a "must-purchase" resource. In order to ensure reliability of the electric grid, curtailment parameters could also be set.

7. ***How can FERC support states in implementing PURPA in a way that works for its customers?***

FERC can support states by allowing the states discretion in implementing FERC's truly broad regulations based on local considerations and circumstances. As written, FERC's regulations would allow for broader discretion by the states. However, when QFs file complaints with FERC, the declaratory orders issued are often narrow interpretations of the broadly written rules.

Response to the Honorable Richard Hudson:

1. ***This hearing comes down to fairness and transparency in electricity rates. Consumers are too often paying for technologies that have little to do with generating cheap and***

reliable electricity. That is why I introduced H.R. 1572, the "Ratepayer Fairness Act," which amends PURPA section 111(d) to require that state public utility commissions consider a fair and transparent process when reviewing requests to subsidize "customer-side technologies" – or technologies that only benefit a few users, but are paid for by everyone else. Commissioner Raper, do you agree that fairness and transparency are critical to electricity ratemaking? And, as the only state public utility commissioner on the panel, can you talk about how consumers would benefit from increased fairness and transparency in the ratemaking process?

Fairness and transparency are very important in the ratemaking process. Although, as your question points out, fairness is somewhat relative depending on what side of each issue you fall. Economic fairness is paramount. The economics are often obscured by varying special interests. Consumers benefit from increased fairness and transparency in the ratemaking process by better understanding where their energy comes from – which allows them to be more deliberate in their use. It can help consumers lower their energy bills. Reducing peak demand for energy can help the utility delay construction of new generation – which also reduces the cost to consumers. Transparency in the process allows consumers to participate in a meaningful way as a utility plans for the future needs of its customers.

Response to the Honorable Bobby Rush:

1. ***What happens as a result of long-term avoided costs forecasts underestimating future utility costs?***

If contracts are entered when long-term avoided cost forecasts underestimate future utility costs, the generator is paid pursuant to the terms of the contract. However, the more PURPA power that is contracted by the utility, the more the rates will decline. Avoided cost rates are based on a calculation of the value of the energy to the utility. The more energy that is available, the lower the value it is to the utility. Based on this practical reality, fixed long-term contracts will inevitably overestimate future avoided costs.

   a. ***Under these circumstances, are QFs still obligated to deliver power over the duration of the contract term?***

Yes. Most contracts contain a liquidated damages clause if the QF fails to perform – although there is little a utility can do to recover damages from a QF if the QF is not generating energy to produce revenue.

2. ***Investor-owned utilities are permitted to recover costs, including a return on equity for self-built resources over extended periods of time.***
   a. ***How do utilities justify these resource decisions to the Idaho Public Utilities Commission?***

A utility cannot recover the costs of a self-built resource from ratepayers until the state utilities commission determines that the resource is "used and useful." Integrated Resource Plans are used to show how long a utility is energy and capacity sufficient. The IRP also addresses changes in peak loads, customer growth, etc. The continued economic operation of a utility plant is perpetually reviewed and considered by the state regulatory authority.

b. Does the Commission evaluate the impacts to ratepayers based on long-term avoided cost analyses, similar to QFs?

No. If additional generation is needed the utility presents an analysis to the commission of the most economic way to meet its customers' needs. Prior to recovery from ratepayers, the utility must show that the resource is used and useful. The utility then has an ongoing obligation to show that it is dispatching its resources in the most economic way possible. If a utility overbuilds what is needed to reliably serve its customers, it is the commission's responsibility to only allow recovery from customers for the portion that is used and useful. A key difference between utility resources and QFs is dispatchability. The utility does not have an option to dispatch QF energy. The utility must take the energy whenever the QF generates it.

c. Do ratepayers assume the risks of project cost overruns or errors that are made in the cost estimates provided by utilities?

No. State commissions have the authority to review all costs and expenses for prudency. In reality, cost overruns can occur. But the reasonableness and prudency of expenses incurred by the utility are always reviewed by the state commission prior to inclusion in rates.