CYPRESS CREEK
RENEWABLES

September 5, 2017

The Honorable Fred Upton
Chairman
Subcommittee on Energy and Power
House Committee on Energy and Commerce
2218 Rayburn House Office Building
Washington, DC 20515

The Honorable Bobby Rush
Ranking Member
Subcommittee on Energy and Power
House Committee on Energy and Commerce
Rayburn House Office Building
Washington, DC 20515

Dear Chairman Upton and Ranking Member Rush:

Thank you very much for convening this week's hearing on the Public Utilities Regulatory Policies Act of 1978 (PURPA). Cypress Creek Renewables is an independent power producer specializing in the development, construction and operation of utility-scale solar farms. As the nation's largest developer of Qualifying Facilities (QF's) under PURPA, we have found the law critical to ensuring competitive access to electricity markets which would otherwise be totally monopolized by the incumbent utility.

At Cypress Creek we have built or are developing QF's in 10 states across the country. In North Carolina, our first and biggest state, we have over 100 solar farms in operation or construction representing a total investment of over $1 billion dollars, with another $2 billion worth in development. In Oregon we have 17 projects either operational or in construction totaling just shy of $500 million in investment, with another $346 million worth in development. Michigan is the most recent state to expand its PURPA implementation to attrack similar investment.

We appreciate the opportunity to provide our views on PURPA implementation as well as bring to the Committee's attention aspects where implementation can and should be improved. As discussed, in your staff's memorandum of August 31, 2017, the purpose of PURPA is to counter the monopoly control of electric power generation by diversifying the universe of suppliers and promoting the development of QFs. PURPA does this by requiring utilities to purchase the output of QFs only if the cost of that power meets the utility's lowest cost for generating new power on its own, and to do so under long-term contracts. Today PURPA provides consumers with affordable, diverse, alternative sources of electricity while effectively driving economic development in small towns and rural counties.

As the Committee undertakes its review of PURPA, we believe it is important to keep in mind three fundamental principles:

1. **By law PURPA ensures the consumer is getting the cheapest possible new power generation.** A bedrock principle of PURPA is that a QF cannot receive a contract for its power *unless that power can be built cheaper than the utility can build new generation for itself..*

2. **PURPA is the only avenue for independent power producers (IPPs) to access the market in many states.** Two-thirds of states still maintain monopoly control of electricity markets. In the relatively few states, such as North Carolina and Oregon, where PURPA has been implemented in compliance with Congressional intent and Federal Energy Regulatory Commission (FERC) directives, PURPA has provided independent power producers access to an otherwise monopolized market. Some states, like Michigan and Washington, are actively working to improve PURPA implementation. However, in the majority of states with regulated monopoly markets, utilities and public service commissions have blatantly failed to comply with PURPA, in some cases even after FERC has ruled against them. There are other states where the public service commissions aren't even aware of their obligations to implement PURPA.

3. **Independent power producers (IPPs) deliver cheaper new power generation than monopoly utilities, at less risk to consumers.** A monopoly utility has an incentive to build expensive new power generation in order to maximize the profits it is guaranteed under the current rate-basing system. To make matters worse, when things go wrong, ratepayers are often left holding the bag. In contrast, an IPP puts its own capital at risk in the marketplace and shoulders all the risk of construction. If we go one dollar over budget, we eat that dollar. If we go several million dollars over budget, we go bankrupt. We do not get to go several hundred million or even billions over budget, and then pass those losses on to the consumer.

With regard to some of the specific issues of PURPA implementation that could benefit from the Committee's oversight, we would highlight for your consideration:

1. **First and foremost, PURPA should be enforced.** There are many states in which the requirements of PURPA are being blatantly ignored and violated by utilities and public service commissions. These violations include failure to publish avoided cost rates, using flawed methodologies to calculate avoided costs, refusal to provide long-term financeable contracts, and avoiding or delaying contract negotiations. In some cases, public service commissions have refused to implement or enforce PURPA even when given clear direction by FERC. The QF developer's ultimate recourse is only in federal court, where the developer must incur significant costs and time delays and faces a severe financial disadvantage relative to the utility.

2. **Where PURPA is enforced, the consumer receives lower cost electricity than in states where it is not enforced.** In Florida, where PURPA implementation has been weak or non-existent, their public service commission recently approved a monopoly utility's cost recovery on 600 MW of utility-scale solar at $1.75/watt. Virtually every utility-scale solar project in the country at this point is getting built for under $1/watt. The same entity that requested the $1.75/watt cost recovery is routinely building solar projects in other parts of the country for under $1/watt. That same entity is even developing QFs in other service territories in Florida which likely cost less than $1/watt. By comparison, in some states QFs are getting built for under $1/watt and selling electricity at under 4.0c/kwh where the retail rate of power averages over 11c/kwh, helping keep downward pressure on consumers' electricity bills.

3. **Utilities manipulate their avoided cost methodologies, applying different standards to their own self-build projects.** In states where utilities are forced to present avoided cost data for the public service commission to set rates for QFs, they routinely propose the least favorable methodology in order to drive down the avoided cost rate while utilizing much higher cost numbers for their own self-build projects. The Committee could investigate a number of ways to level the playing field, either standardizing methodologies, giving QFs an avoided cost figure derived from utility Integrated Resource Plans (IRPs), or requiring utilities to generate power at the same price as the avoided cost rate offered to QFs. In a similar vein, utilities should be required to justify their investments based on the same cost-recovery period established for QF power purchase agreements, as was recently ordered by one public service commission.

4. **Long term contracts hold down costs for consumers and households.** PURPA requires utilities to offer QFs long term contracts, and such contracts provide predictability for QF consumers through either a flat price or a levelized price which remains constant throughout the life of the contract, thereby locking in a steady decrease in the real price of power over time. Particularly at this point in time, *historically low natural gas prices have driven avoided cost rates to historic lows, so it is an opportune time to lock in low power prices for years to come,* and allows long term PURPA contracts to act as an anchor on electricity prices. Therefore public service commissions should not ask what is the shortest possible contract investors and lenders will finance, but what is the longest possible contract that could lock in low cost power for the consumer.

5. **There are other ways to structure electricity market reforms that ensure market access for IPPs and lower cost electricity for consumers.** We are aware and acknowledge that like any 40-year old statute, PURPA sometimes creates inefficiencies in its implementation, and at Cypress Creek we are always more than willing to negotiate alternative market structures with utilities, regulators and/or legislators. We just concluded a successful joint effort with Duke Energy on legislation modifying PURPA implementation in North Carolina and creating a competitive procurement program (in which the utility itself can compete), which together with the preexisting and continued PURPA implementation will result in nearly seven gigawatts of renewable energy deployment in that state by 2022.

   Should utilities, regulators or legislators seek other ways to reform electricity markets to better ensure efficient allocation of resources, there are numerous market alternatives which can be structured to the benefit of consumers:

   a. **Market-first:** requiring utilities to go to the marketplace first to solicit proposals from IPPs for all new power generation. Giving monopoly utilities control over generation investment decisions, even subject to utility commission oversight, has not proven in the public interest. There is no reason that utilities shouldn't be required to justify their investment decisions based on pricing comparison to market alternatives. The Oregon Public Utilities

Commission is studying this form of market structure now and if the Committee is interested in reforming electricity markets this concept would be an excellent place to start.

b. **Alternative rate design:** ensuring investor-owned utilities' shareholder returns are tied to providing consumers the lowest cost electricity, rather than maximizing their capital expenditures.

c. **Consumer choice:** giving the consumer the choice of whom to buy their electricity from. Texas is the best electricity market in America because it gives consumers a choice in the selection of their electric generation supplier. The experience of markets where the consumer is given a choice at the retail level is that prices for the consumer go down. And just as importantly, *consumers are increasingly demanding a choice*, both for more options on price and service as well as the source of their electricity. Texas has proven that free markets and low taxes deliver the best product for the consumer.

Thank you again for your consideration of these important topics. We would very much appreciate working with you on any reforms the Committee might consider, and are always willing to work with our utility partners to negotiate fair improvements to current market structures. Please let us know how we can be helpful to you as you consider PURPA's implementation in today's power markets.

With kind regards, I am

Sincerely,

Matt McGovern
Chief Executive Officer
Cypress Creek Renewables