

Congress of the United States

Washington, DC 20510

February 11, 2016

The Honorable Norman Bay
Chairman
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Dear Chairman Bay:

We are writing in response to your decision to notice a technical conference in June on the topic of the Public Utility Regulatory Policies Act of 1978 (PURPA).

As you know, in the almost 40 years since the enactment of PURPA, the electricity sector has undergone significant change. Competitive wholesale electricity markets now serve two-thirds of Americans' load and, as a result of innovation, lower costs, and supportive public policy, 13 percent of electric power generated in the U.S. in 2014 was from renewable resources. Over time, PURPA has been integral to the policy framework that has helped increase efficiency and remove barriers to entry for renewable and cogeneration resources.

To be sure, electricity policy has evolved markedly since 1978 in ways that have often eclipsed PURPA in encouraging investment in renewable energy. In fact, in the Energy Policy Act of 2005, Congress reduced the scope of Title II in recognition of the increasing opportunities to build and integrate renewable generation in regions with competitive wholesale markets. The evolution itself of these markets was initiated in part by Title II and further encouraged by Commission policy and by Congress in the Energy Policy Act of 1992. Congress has also repeatedly authorized federal tax credits for producing and investing in renewable generation, most recently in the Consolidated Appropriations Act, 2016, last month.

State policies have also driven the growth in renewable generation. Today, over half of states have renewable portfolio standards that go beyond PURPA to directly require construction of renewable resources. Many states also have competitive procurement requirements. Separately, net metering programs in 44 states have supported the expansion of rooftop solar and other distributed generation. As a result of these policies, in many of the states not already substantially exempt by the Commission under section 210(m) from PURPA's mandatory purchase and sale requirements, PURPA is effectively dormant.

Yet in light of these many related areas of electricity policy, Title II remains a singular federal backstop to support renewable energy in parts of the country that may otherwise have significant barriers. Title II contemplates a diversity of approaches by different states within the perimeter of a consistent federal requirement to purchase and interconnect independent renewable and cogeneration power production. In the past year, legislators and electricity regulators across the country have rolled back or debated rolling back incentives for renewable energy including renewable portfolio standards, energy efficiency resource standards, and net metering programs.

The tenuous and shifting nature of these state policies suggests that the original objectives of Title II remain as relevant today in some jurisdictions as they were in 1978 and in 2005 when Congress last significantly amended PURPA. Until Congress chooses to act again, it would be improper for FERC to narrow the scope of Title II any further.

We echo your sentiment that the Commission's continued implementation of its statutory responsibilities under section 210 of PURPA deserves thoughtful consideration. As such, we hope you will consider addressing the following topics during the technical conference to be held in June:

1. Whether methods currently used by states to calculate avoided costs accurately reflect the full value of all avoided costs provided by qualifying facilities (QFs) including avoided energy, capacity, ancillary service, transmission, and distribution costs;
2. Whether states have used the discretion already authorized under PURPA to remedy perceived oversupplies of proposed QFs, for example through adjusting avoided cost calculations or other practices such as limiting the size of QFs or shortening the maximum lengths of contracts;
3. Whether section 210 appears to be the primary factor driving the development of renewable generation in some states as opposed to the complementary renewable energy policies outlined above;
4. Whether independent state policies, including integrated resource planning, competitive procurement requirements, net metering, and renewable portfolio standards, have generally been stable enough to provide a reliable investment climate for renewable generation;
5. Whether independently-administered, voluntary energy imbalance markets on their own have ever approached the volume and liquidity of the comparable markets contemplated under section 210(m)(1)(C) (as enacted under the Energy Policy Act of 2005) that would send a sufficient market signal to develop independent renewable generation in the absence of a must-purchase requirement;
6. Whether there are currently technologies or categories of facilities (i.e., battery storage, marine and hydrokinetics, or fuel cells) that may be eligible to certify as qualifying facilities but are not currently being built or certified as such;
7. Whether current interconnection processes and timelines under Title II are sufficient or could be improved;
8. Whether FERC's enforcement of section 210 is effective and consistent with PURPA's intent, specifically (1) whether penalties imposed on QFs that have failed to properly certify as such with FERC are commensurate with harm and not unduly burdensome and (2) whether enforcement actions against improper implementation of PURPA by some states have been effective;


9. Whether FERC is adequately making available to lawmakers and the public data collected from qualifying facilities and whether the availability of such data is consistent with Order 732 which reflected the Commission's intent to "publish compiled QF data on the Commission's website" [...] "that could be made available to the public";
10. Whether avoided cost calculations serve a valuable informational function by establishing a competitive benchmark for holding traditionally regulated monopoly utilities accountable for rate proposals; and
11. Whether states have been able to successfully integrate PURPA must-purchase requirements as options in competitive resource procurement plans.

Thank you for your consideration of our request, and we look forward to an informative conference.

Sincerely,



Maria Cantwell
Ranking Member
U.S. Senate
Committee on Energy & Natural Resources



Frank Pallone, Jr.
Ranking Member
U.S. House of Representatives
Committee on Energy & Commerce



Bobby L. Rush
Ranking Member
U.S. House of Representatives
Subcommittee on Energy & Power

Cc:

The Honorable Tony Clark
Commissioner, Federal Energy Regulatory Commission

The Honorable Cheryl LaFleur
Commissioner, Federal Energy Regulatory Commission

The Honorable Colette Honorable
Commissioner, Federal Energy Regulatory Commission