

ONE HUNDRED SIXTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

November 8, 2019

The Honorable Neil Chatterjee
Chairman
Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426

Dear Chairman Chatterjee:

We write to express our concern regarding the Federal Energy Regulatory Commission's (FERC) recent notice of proposed rulemaking (NOPR) revising its regulations implementing sections 201 and 210 of the Public Utility Regulatory Policies Act (PURPA).¹ PURPA is an important law that protects competition, encourages development and deployment of more clean and efficient electricity generation, spurs innovation, and ensures equitable, affordable rates for consumers.

While the energy landscape has changed since Congress passed PURPA in 1978, the statute continues to play an essential role in ensuring independent small power producers and co-generators can compete with incumbent utilities. Consumer preferences, state policies, technological change, and economic trends are favoring renewable resources over traditional fossil generation. This encouraging transition is bringing us a cleaner, more efficient grid.

Over the years, Congress has continued to consider a wide range of proposals to reform PURPA but has chosen not to alter PURPA's three basic tenets of: (1) encouraging the development of qualifying facilities (QFs); (2) preventing discrimination against QFs by incumbent utilities; and (3) ensuring rates are equitable and affordable for customers. We are concerned that FERC's NOPR puts these three principles at risk.

While FERC has authority to make some changes in its implementation of PURPA, FERC's NOPR essentially constitutes a wholesale rewrite of the statute by the Commission—something Congress has repeatedly refused to do. We have encouraged the Commission to use its authority to fine tune its regulations, and the 2016 technical conference provided FERC with information to evaluate the effectiveness of its implementation and enforcement of PURPA.

¹ Pub. L. No. 95-617, 92 Stat. 3117 (1978).

However, FERC's proposals to change avoided cost calculation and reduce the 20 megawatt (MW) rebuttable presumption would make it extremely difficult for any QF to obtain financing. This would effectively gut PURPA and completely reverse course on competitive market development—a policy clearly enshrined by Congress in the Energy Policy Acts of 1992 and 2005 because it encourages innovation and benefits consumers and the environment. Equally concerning is that many of these proposals seem to have little to no record to support them.

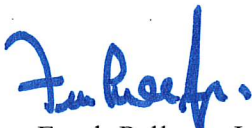
To better understand this proposal and FERC's decisions, we request responses to the following questions by no later than November 25, 2019:

1. FERC has proposed eliminating the requirement that a QF must have an option to select a fixed-price, long-term contract for energy.
 - a. Why did FERC eliminate this requirement?
 - b. Why does FERC think that eliminating this requirement would not impair a QF's ability to obtain financing in *all* regions of the country?
 - c. What evidence in the record supports this determination?
 - d. What assessments did FERC undertake to determine the effects this change would have on the ability to finance QF projects?
2. Section 210 states that FERC "shall prescribe...and...revise, such rules as it determines necessary to encourage cogeneration and small power production...." For many small renewable electricity generators, the fixed-price long-term contract option for energy has proven to be an important path for QFs to secure financing.
 - a. Please explain how this proposal is not contrary to FERC's statutory obligation to encourage QF development under PURPA.
3. How does eliminating the fixed price contract requirement and its replacement with liquid hub energy pricing satisfy the obligation for non-discriminatory rate treatment toward QFs in *all* regions of the country, including regions not associated with a Regional Transmission Organization?
4. It is difficult to determine what in the record supports FERC's proposal to reduce the threshold for the rebuttable presumption of non-discriminatory access to competitive wholesale markets from 20 MW to 1 MW for small power production.
 - a. Please detail what evidence FERC gathered to support this proposal in the NOPR. Please provide detailed evidence from the record.

- b. Why, specifically, did FERC change the threshold to 1 MW?
 - c. Does FERC contend that QFs of less than 20 MW capacity now have non-discriminatory access to markets and, if so, please provide evidence to support this assertion.
 - d. Was this proposed change discussed at the 2016 technical conference?
 - e. What assessments, if any, did FERC undertake to justify its determination?
 - f. Please explain how this proposal is consistent with FERC's statutory obligation to encourage QF development under PURPA.
5. It is unclear that there is sufficient evidence to support a number of FERC's NOPR proposals, such as eliminating the requirement a QF have an option to select a fixed-price, long-term contract for energy or the change from 20 MW to 1 MW.
- a. Please explain why FERC chose not to issue an advanced notice of proposed rulemaking on these proposals in order to build some record evidence.
6. FERC appears to have determined it appropriate to increase ten-fold, from one mile to 10 miles, the distance for establishing an irrebuttable presumption that facilities are separate entities.
- a. Please explain how FERC reached this determination.
 - b. What in the record supports 10 miles as the correct number?
 - c. What assessments, if any, did FERC undertake to justify its determination?

Thank you for your prompt and thorough response to this request. If you have questions, please do not hesitate to contact Rick Kessler or Tuley Wright of the Committee staff at (202) 225-2927.

Sincerely,



Frank Pallone, Jr.
Chairman



Bobby L. Rush
Chairman
Subcommittee on Energy

The Honorable Neil Chatterjee

November 8, 2019

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cc: The Honorable Richard Glick
The Honorable Bernard McNamee