

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Implementation Issues Under the Public
Utility Regulatory Policies Act of 1978

Docket No. AD16-16-000

Opening Statement of
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(ELCON)

ELCON appreciates the opportunity to participate in this Technical Conference on PURPA Implementation.

PURPA Title II is extremely important to the US manufacturing community. It supports the economic viability of the following steam-driven industrial sectors: Agricultural Products, Building Materials, Chemicals, Food Processing, Glass, Mining, Oil & Natural Gas, Paper & Forest Products, Pharmaceuticals, Rubber, Steel, and Textiles.

My comments will address ELCON's assessment of how PURPA is working today, our thoughts on avoided cost methodologies, and several recommendations for FERC's consideration going forward.

There is no question that PURPA works and the Commission should resist changes to its regulations implementing the 1978 act that amount to the repeal of the act. Our concern is that attempts to limit regulatory arbitrage associated with avoided cost payments may result in other "reforms" imposing collateral damage to the huge existing fleet of industrial QFs with a proven track-record as highly efficient, reliable and clean energy resources. Over 60 GW of combined heat and power (CHP) or cogeneration was developed in the US since PURPA's enactment. The vast majority of it

is industrial QFs. Industrial cogeneration is a technology that is embedded in an industrial process. It is part of the load.

The Mandatory Purchase Obligation, where applicable, and Supplementary, Backup and Maintenance Power Services at just and reasonable rates are even more important today than when PURPA was enacted. Industrial QFs are impossible without these essential services.

If the claims that QFs are locking in buyback rates that exceed avoided costs and that the capacity from these resources are not otherwise needed are true, then it reflects a failure of state regulators to properly implement PURPA, not a failure of PURPA. As FERC has explained, “in order to maximize the incentives for QFs, the Commission sets the price for purchases from QFs, absent negotiations, at the statutory ceiling. Thus, the avoided cost rate is neither more nor less than the price the utility would have paid for comparable power from other sources, including other wholesale sources.” The entitlement of QFs under PURPA and the FERC regulations to payment of rates based upon the utility’s “full avoided cost” and not a lesser rate (unless the QF and utility mutually agree) was upheld by the United States Supreme Court in *American Paper Institute* (461 U.S. 402).

States can obviously do a better job with avoided cost calculations – this is not rocket science. Uncertainties abound in everything a utility does including new additions to their rate base or the setting of customer rates. PURPA and the FERC regulations already prohibit states from using avoided costs as a policy tool to discourage economically viable resources (with rates that are below avoided costs) or to encourage or subsidize uneconomic resources (with rates that exceed avoided costs). It is time to enforce, not change, PURPA and FERC regulations.

ELCON members are increasingly diversifying their deployment of Distributed Energy Resources that are Qualifying Small Power Producers at capacity ratings below 20 MWs. These resources typically use biomass, waste and/or renewable energy and should qualify for Order 688’s rebuttable presumption that it does not have

nondiscriminatory access to wholesale markets and is eligible to require the electric utility to purchase its electric energy.

In conclusion we encourage the Commission to consider the following three recommendations:

First, the Commission should issue a Policy Statement reaffirming its support for PURPA. Specifically, the Commission should reaffirm the original intent of the act to promote cogeneration and certain small renewable power producers. The Policy Statement would help the Commission rationalize its policies and regulations implementing PURPA in the face of the dramatic changes taking place in the industry including when, and if, the Clean Power Plan is implemented.

Second, the Commission should direct its capable staff to prepare a guidance document on the applicability of the various avoided cost methodologies. The audience for this document would be state commissions and utilities. We do not believe that there is one best method, and it is important that states be given maximum flexibility to fulfill their statutory responsibilities. Staff guidance would include its assessment of the pros and cons of each methodology, best practices, and options for addressing the pricing anomalies that exist in wholesale markets created by federal subsidies.

Third, the Commission needs to acknowledge that its implementation of section 210(m) is flawed and, at least in part, responsible for the huge drop-off in new cogeneration development beginning in 2005 – the year section 210(m) was enacted. The Commission is urged to require its jurisdictional ISOs and RTOs to offer a standard QF tariff that a QF may use to more easily access the bewildering array of energy and capacity services that are available in the organized markets. In open-access states, this might include the procurement of supplemental, backup and maintenance power, and providing a “self-supply” capability in which the surplus power from one site can be used to offset purchases off the grid at another site of the same company. Given the short-term nature of the organized markets, the tariff cannot offer published fixed rates for these services. The tariff could be structured to accommodate both “as available” power and transactions that can be scheduled in advance. The intent is to provide the

QF with a more user friendly interface with these markets. Forcing QFs to be experts on the market design of organized markets violates the spirit if not the outright intent of PURPA sections 201 and 210 to promote these clean and efficient technologies.

Thank you again for the opportunity to share our views on PURPA. I look forward to your questions and the panel discussion. ✎

Dated: June 7, 2016