



**Federal Energy Regulatory Commission
September 19, 2019
Open Commission Meeting
Staff Presentation
Item E-1**

Good morning Mr. Chairman and Commissioners,

E-1 is a draft notice of proposed rulemaking (NOPR). This draft NOPR proposes to revise the Commission's regulations implementing sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA). This draft NOPR incorporates the record of the 2016 technical conference addressing issues involving PURPA's implementation.

PURPA was enacted as part of a legislative package intended to reduce the country's dependence on fossil fuels by providing incentives to encourage the development of qualifying facilities or "QFs." QFs are either small power production facilities, which are typically renewable generation resources that largely do not rely on fossil fuels, or cogeneration facilities, which make more efficient use of fossil fuels.

Circumstances have changed since the Commission first implemented PURPA in 1980. Advances in technology and the discovery of new natural gas reserves have resulted in plentiful supplies of relatively inexpensive natural gas. Unlike in 1980, when the electric industry was made up principally of vertically integrated utilities, today the electric industry provides open access transmission and there are vibrant wholesale electric markets in much of the country where independent generators can sell their power at competitive prices. In addition, federal and state programs provide further incentives for the development of renewable resources.

Given changes in the energy industry since 1980, this draft NOPR proposes to revise the Commission's PURPA Regulations to permit states more flexibility to rely on competitive prices in setting QF rates and to make certain other changes to address implementation issues that have arisen over the years. The draft NOPR includes a number of changes, including the following:

First, the draft NOPR proposes to grant state regulatory authorities the flexibility to require that energy rates (but not capacity rates) in QF power sales contracts and other legally enforceable obligations vary in accordance with changes in the purchasing utility's avoided costs at the time the energy is delivered.

Second, the draft NOPR proposes to grant states the flexibility to set "as-available" QF energy rates based on market factors or, at the state's discretion, to continue setting QF rates under the existing PURPA Regulations.

Third, the draft NOPR proposes to replace the "one-mile rule" for determining whether generation facilities should be considered to be part of a single facility.

The draft NOPR proposes a tiered approach under which facilities one mile or less apart would be treated as the same facility, facilities more than one mile but less than 10 miles apart would be presumed to be different facilities, which could be rebutted, and facilities 10 or more miles apart would be treated as separate facilities.

Fourth, the draft NOPR proposes to revise the Commission's regulations implementing PURPA section 210(m) to reduce the rebuttable presumption threshold for small power production facilities (but not cogeneration facilities) from 20 MW to 1 MW. This proposed change recognizes that competitive markets have matured since the Commission first implemented section 210(m) of PURPA and the mechanics of participation in such markets are improved and better understood. For cogeneration facilities, the 20 MW presumption would remain.

Fifth, the draft NOPR proposes to clarify that a QF is entitled to a contract or legally enforceable obligation when it is able to demonstrate commercial viability and financial commitment to construct its facility pursuant to objective and reasonable criteria determined by the state.

Finally, the draft NOPR proposes to allow a party to protest a self-certification or self-recertification of a QF without being required to file a separate petition for declaratory order and to pay the associated filing fee.

The draft NOPR seeks comment on these proposed reforms 60 days from the date of its publication in the *Federal Register*.

We are happy to answer any questions. Thank you.