Remarks of Kenneth Rose, Ph.D.
for the Federal Energy Regulatory Commission's
Technical Conference on Implementation Issues Under the Public Utility Regulatory Policies Act of 1978
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Thank you for the opportunity to address this important topic. I will try to be brief and to the point.

PURPA implementation is a longstanding issue for the electric supply industry. The 38 years since its passage seems like a long time ago given all the changing in the industry over the years. Remarkably however, PURPA has held up reasonability well, all things considered. Born in the energy crisis of the 1970s, PURPA is still relevant today and many of the protections that PURPA created for "qualifying facilities" are still necessary. In particular, to prevent utilities from refusing to interconnect with and fairly compensate small power generators that use renewable energy and cogenerators for the power they sell to the utility. The question we face today is, are any substantial changes needed to better match PURPA with the 21st century electric supply industry?

This panel is to address the *methods* for calculating avoided cost rates. On this topic, I believe that no significant changes are necessary on the Federal Energy Regulatory Commission's part for calculation of avoided cost rates at this time. The Commission in the past has prescribed guidelines for states and non-regulated utilities to follow; and has not specified particular methodologies to calculate avoided cost rates.[1] In general, under past and current rules, the Commission has provided definitions of avoided costs (§292.101(b)(6) and §292.304), required data be made available for calculating avoided cost rates (§292.302(b)), defined the obligation to purchase (§292.303), and identified factors to be considered when calculating avoided cost

[1] For a discussion of avoided cost rates calculation methods, see Robert E. Burns and Kenneth Rose, PURPA Title II Compliance Manual, March 2014; http://ipu.msu.edu/research/pdfs/PURPA%20Title%20II%20Manual%20Final.pdf

rates (§292.304(e)). However, the Commission has not prescribed avoided cost *methodologies*. I do not believe that the Commission should start now.

Generally, the Commission has left it to the states and non-regulated utilities to determine avoided cost pricing methodologies, following these Commission rulemakings. This has allowed states and non-regulated utilities to develop methods that best fit their circumstances, while the Commission's rules kept them consistent with the intent of PURPA. Moreover, as a practical matter, it cannot be expected that the Commission would determine methods and avoided costs rates for every state and non-regulated utility under its jurisdiction.

In 2006, the Commission implemented the changes mandated by the Energy Policy Act of 2005, in particular, the Commission allowed for the termination of a utility's obligation to purchase power from a qualifying facility under certain circumstances (§292.309). This includes the availability of a wholesale market for electric energy and capacity; generally speaking, this has been applied to regions with established Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs). Utilities can apply to be relieved of the mandatory purchase requirement if they meet the Commission's filing requirements and the market conditions exist as specified in the Commission's rulemaking.

There is an important exception to the termination of the PURPA-mandated purchase obligation—a rebuttable presumption that qualifying facilities with a capacity at or below 20 MW do not have nondiscriminatory access to an eligible wholesale the market (§ 292.309(d)). I would respectfully ask that, if the Commission revisits its PURPA rules, that the Commission retain this provision for small qualifying facilities (at or under 20 MW) and reaffirms the commitment to enforce the PURPA purchase requirement for these facilities.

This exception is in keeping with the original intent of PURPA Title II, that is, to prevent utilities from refusing to interconnect with and fairly compensate small power generators. The reason for the exception still applies, small qualifying facilities do not have the same access to a wholesale market that larger generators that operate in these markets possess. To do so requires expertise and experience that is expensive, but necessary to successfully operate in these RTO/ISO markets. Moreover, and unfortunately, these market have only become more

complex as they have changed over years of their operation, and they will likely continue to be very complex for the foreseeable future.

Of course, nothing in the Commission's regulations requires any electric utility to pay more than its avoided costs for purchases, and I am not arguing that the Commission should (or could) require that. However, the Commission must guard against utilities trying to use the current market conditions to evade their responsibility under the law. It can be left to the state commissions and non-regulated utilities to continue to use, maintain, and develop new methodologies for determining avoided cost rates for small facilities, as they have done so for over three decades, and for regions where it still applies, all qualifying facilities—large and small.

An important aspect of the Commission's role has also not changed—that is the Commission's backstop authority. PURPA requires state commissions and non-regulated utilities to comply with the Commission's PURPA rules. While, as noted, the Commission generally defers to states on many details, such as determining the avoided cost rate methodologies, the Commission does act when the law is not being properly implemented. I ask that the Commission also maintain this important role if any rule changes are made.

Thank you again for this opportunity to speak to you today. I would be happy to answer any questions you may have and look forward to our panel discussion on this important topic.