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

Congress of the United States

Washington, DC 20510

November 6, 2015

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

Dear Chairman Bay:

We are writing to request that the Federal Energy Regulatory Commission (Commission) convene a technical conference to examine the Commission's implementation of the Public Utility Regulatory Policies Act of 1978 (PURPA), in light of the significant developments in electricity markets that have occurred since the enactment and subsequent amendment of the Act.

As part of the development of broad energy legislation, both the Senate Energy and Natural Resources Committee and the House Energy and Commerce Committee received testimony on the potential need for PURPA policy reform.[1] One witness testified that his company is locked into a PURPA "must purchase" contract at rates that are 43 percent higher than the market price – forcing customers to pay an incremental $1.1 billion over the next 10 years for electricity that is not even needed.[2] A technical conference examining the Commission's implementation of PURPA would assist with the building of a public record and provide Congress with valuable insight into whether changes are warranted.

Electricity markets, generation technologies, and investments in the electric grid have changed substantially since PURPA was enacted nearly 40 years ago as part of President Carter's energy plan. Since then, competitive electricity markets and open access policies have emerged and matured, expanding the markets for new generation resources, particularly renewable energy resources. In recognition of these developments, Congress amended PURPA in the Energy Policy Act of 2005 (EPAct 2005) to eliminate the mandatory purchase requirement where qualifying facilities have access to competitive wholesale markets.[3]

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[1] *See, e.g.*, *Discussion Draft on Accountability and Department of Energy Perspectives on Title IV: Hearing Before the Subcomm. on Energy & Power of the H. Comm. on Energy & Commerce*, 114th Cong. (June 3-4, 2015) and *Energy Infrastructure Legislation: Hearing Before the S. Comm. on Energy and Natural Res.*, 114th Congress (May 14, 2015).

[2] See, *Hearing Before the S. Comm. on Energy and Natural Res.* (statement of Jonathan M. Weisgall, Vice Pres., Berkshire Hathaway Energy).

[3] Energy Policy Act of 2005, Pub. L. No. 109-58, § 1253 (2005).

In the decade since passage of EPAct 2005, electricity markets have undergone an even more significant transformation. Natural gas prices and renewable energy technology costs have decreased substantially, while EPA regulations and abundant domestic natural gas supplies have changed the economics of many coal-fired power plants. Federal tax credits and state renewable energy mandates have expanded opportunities for renewable energy developers, as have state-mandated competitive power procurement and integrated resource planning (IRP) requirements. Distributed energy resources and micro-grids also have grown increasingly popular with electricity consumers. In addition, the Commission's open access transmission requirements and interconnection standards for large and small generators make it possible for renewable energy generators to sell power to multiple buyers, not just the local utility.

In light of these developments, we encourage the Commission to take a comprehensive look at PURPA and its regulations implementing section 210 through a discussion with interested stakeholders, including but not limited to: Commission-regulated and non-regulated electric utilities, owners and operators of qualifying facilities certified under PURPA, competitive electricity suppliers, electricity consumers, trade associations, and state regulators.

In our view, such a technical conference should consider a range of issues, including:

1. Whether the one-mile rule established by the Commission for determining whether facilities are "located at the same site" for purposes of determining their status as small power production facilities under PURPA has been subject to abuse;
2. The treatment of independently-administered, voluntary energy imbalance markets as comparable markets for purposes of implementing the mandatory purchase requirement under PURPA section 210(m)(1)(c);
3. The rebuttable presumption that a qualifying facility with a capacity at or below 20 megawatts does not have nondiscriminatory access to the market;
4. Whether imposing a mandatory purchase obligation under section 210 of PURPA is appropriate where a state regulatory agency determines that an electric utility does not need to acquire capacity from a qualifying facility in order to meet its obligation to serve;
5. Whether imposing a mandatory purchase obligation under section 210 of PURPA is appropriate where the electric utility is subject to a state-required IRP process and competitive resource procurement process that provides an opportunity for qualifying facilities to compete for identified resource needs; and
6. Methods used by states to establish avoided cost rates, including (i) comparison of avoided cost rates with rates produced by competitive power purchase solicitations; (ii) updating of avoided cost rates to reflect rates resulting from competitive solicitations; and (iii) modification of the length of qualifying facility contracts through the avoided cost rate setting process.

We are hopeful that a technical conference evaluating these issues can identify any potential administrative or legislative reforms that may be necessary to ensure the appropriate

role for PURPA in today's electricity marketplace. Thank you for your consideration of our request, and we look forward to your response.

Sincerely,

Lisa Murkowski
Chairman
United States Senate
Committee on Energy and Natural Resources

Fred Upton
Chairman
United States House of Representatives
Committee on Energy and Commerce

Ed Whitfield
Chairman
United States House of Representatives
Subcommittee on Energy and Power

Cc:

The Honorable Cheryl A. LaFleur
Commissioner, Federal Energy Regulatory Commission

The Honorable Tony Clark
Commissioner, Federal Energy Regulatory Commission

The Honorable Colette D. Honorable
Commissioner, Federal Energy Regulatory Commission