PURPA

Adapting To A Changed Market

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Context: Electricity Market of 1978

- Vertically Integrated Monopolies Dominant / Limited Competition
- Closed Transmission Access – Voluntary Only
- Fuel: Shortages and High Prices
- Very High Costs for Renewables
- Regulatory Constraints on Incentives for Innovation
- Absence of Market Based Pricing
- No Organized Regional Markets
- Economic and Technological Constraints on Demand Side
- Primitive Price Signals
- Demand Response Limited to Interruptible Tariffs

Congressional Intent / Response to Energy Crisis - 1978

- Promote Efficiency in Generation
- Promote Alternative Forms of Generation
- Introduce Limited Competition in Generation (QF’s only)
- Enable More Non-Utility Generation
- Reduce Dependence on Fossil Fuels
- Not Unduly Alter State-Federal Jurisdictional Split in Electricity
- Not Adversely Impact Consumer Prices
- Encourage Innovation
- Conserving Energy
- Ending Tariffs Promoting Consumption

Basic Construct of PURPA

- Utilities Required to Purchase from QF’s at “Avoided Cost”
- “Avoided Cost” to Be Determined by Each State
- QF’s Defined as Co-Generation, Hydro, and Renewables
- Mandated Exploration of Demand Side Options

PURPA Implementation Issues: Wide Divergence in State Approaches

- No Consistency Among States Defining “Avoided Costs”
  - Some States Vastly Overestimated “Avoided Costs” (Stranded Asset Issues)
  - Some States Underestimated “Avoided Costs”
  - Diversity Derived From Highly Subjective Administrative Determination
- Differing Views on Terms of Purchasing QF Power (contract length, capacity or energy)
- Diversity in Defining QF
- Gamesmanship in Acquiring QF Status
- Divergence in Promoting Alternative Technologies

PURPA Implementation Issues: Federal Intervention

- FERC Preempted States to Impose Competitive Rather Than Administrative Determination of “Avoided Cost”
  - Effort to Discipline Wildly Divergent State Determinations
- Introduced Concept of “All Source” Bidding
- Energy Policy Act of 2005: No Mandatory Purchase for Generation Participating in Competitive Market (20MW presumption)

Electricity Market Evolution Since 1978

- Robustly Competitive Generation Market
  - Competition Heavily Focused on Energy, not Capacity
  - Cost Based Prices Displaced by Market Based Prices.
- Massive Reduction in Vertical Market Power
- Organized Regional Markets
- Very Sophisticated, Market Based, Price Signals (time and location)
- Open Wholesale Access
- Demand Response
- Smart Technology Widely Available
- Abundant Supply of Inexpensive Natural Gas
- Dramatic Reduction in Costs for Renewables
- Significant Advances in Energy Efficiency

Broad Policy Issues Regarding PURPA Going Forward

- Impact of Administrative Preference for Certain Resources
  - Risks of “Picking Winners”(Broader Than Just QF’s)
  - Dilution of Competition
  - Reduced Flexibility in Market Evolution
  - Locking In Long Term Contractual Obligations
  - Endless opportunity for Gamesmanship/Political Interference (e.g. “QF Machines,” One Mile Rule)
- Defining “Avoided Cost” in Competitive Market (e.g. Capacity vs,. Energy)
- Updating PURPA Rules to Contemporary Market Realities

FERC’s Proposed PURPA Rule Revisions

Rates

•Grant states 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

•Grant states additional flexibility to allow QFs to retain their rights to fixed energy rates, but to base them on projections of what energy prices will be at the time of delivery during the term of a QF’s contract

•Grant states the flexibility to set “as available” QF energy rates for:

- oQFs selling to electric utilities located in organized wholesale power markets at the locational marginal price in those markets,or
- oQFs selling to electric utilities outside of the organized wholesale power markets at competitive prices from liquid market hubs or calculated from a formula based on natural gas price indices and heat rates

•Allow states to set energy and capacity rates based on competitive solicitations (such as requests for proposals) conducted in a transparent and non-discriminatory manner.

FERC’s Proposed PURPA Rule Revisions

One-Mile Rule

•Modify the “one-mile rule” for determining whether affiliated QFs should be considered part of a single facility for purposes of determining whether it is a qualifying small power production facility.

○There would continue to be an irrebuttable presumption that facilities one mile apart or less constitute a single facility.

○Parties could show that facilities that are located more than one mile apart, but less than 10 miles apart, constitute a single facility.

○There would be an irrebuttable presumption that facilities 10 miles apart or more are separate facilities.

Obligation to Purchase

•Revise the regulations that provide for termination of a utility’s obligation to purchase from a QF with nondiscriminatory access to certain markets.

○The rebuttable presumption that QFs with a net capacity at or below 20 megawatts do not have nondiscriminatory access to those markets would be reduced to 1 MW for small power production facilities (but would remain unchanged for cogeneration facilities). (over)September 19, 2019FERC Actions RegardingRM19-15-000

FERC’s Proposed PURPA Rule Revisions

Self-Certification
•Allow an entity to protest a QF self-certification or self-recertification without having to file, and pay for, a declaratory order

Legally Enforceable Obligation
•Require states to establish objective and reasonable criteria to determine a QF’s commercial viability and financial commitment to construction before a QF is entitled to a contract or legally enforceable obligation

CONCLUSION

- FERC's Proposed Rule Revisions Regarding PURPA Constitute Significant Steps Toward
  - Making PURPA Compatible With Market Realities and Competition
  - Limiting Gamesmanship in Defining QF's
- PURPA Retains Value
  - To Assure Market Entry for All Resources
  - To Encourage States
    - Foster Innovation
    - Improve Efficiency in Production and Use of Energy
  - BUT: Without Distorting Prices and Unduly Disturbing Market