
FEDERAL ENERGY REGULATORY COMMISSION



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NEWS RELEASE

NEWS MEDIA CONTACT:

Barbara A. Connors
(202) 502-8680

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FINAL RULE REVISES PURPA MANDATORY PURCHASE OBLIGATION FOR ELECTRIC UTILITIES, AS MANDATED BY ENERGY POLICY ACT

The Federal Energy Regulatory Commission today finalized a rulemaking modifying the mandatory power purchase obligation for electric utilities under the Public Utility Regulatory Policies Act of 1978 (PURPA). The rulemaking implements a mandate of the Energy Policy Act of 2005.

“Today the Commission acts to implement another part of the Energy Policy Act of 2005, namely the provisions relating to termination of the PURPA mandatory purchase obligation. The approach we take is consistent with the statute, and faithful to Congressional intent,” said Chairman Joseph T. Kelliher.

The Commission finds that the Midwest Independent Transmission System Operator, PJM Interconnection, ISO-New England and the New York Independent System Operator provide wholesale markets which meet the statutory criteria for member utilities to qualify for relief from the mandatory purchase obligation. It also establishes a rebuttable presumption that qualifying facilities (QFs) above 20 MWs net capacity have non-discriminatory access to these four markets and that electric utility members should be relieved of their mandatory purchase obligation.

These regional transmission entities meet the statutory test by operating the transmission facilities of their member utilities and providing open-access transmission services. They also administer auction-based, day-ahead and real-time markets (“Day 2” markets), and within these regions bilateral long-term contracts are available to market participants and qualifying facilities, the Commission found.

The Commission further determined that the Electric Reliability Council of Texas (ERCOT), the regional reliability entity in Texas, offers comparable competitive wholesale power market access and meets the statutory criteria making electric utilities in ERCOT also eligible for relief from PURPA’s mandatory purchase obligation.

The Commission emphasized, however, that it is not terminating the purchase obligation of any utility with today's final rule. Electric utilities must file applications for relief and QFs in the above markets may under the rule be able to rebut the presumption of access to markets because of operational characteristics or transmission constraints.

With respect to all markets, the rule establishes a rebuttable presumption that, except for QFs with a net capacity of no greater than 20 MWs, QFs have nondiscriminatory access to markets if they are eligible for service under a Commission-approved open access transmission tariff, or a reciprocity tariff filed by non-jurisdictional transmission owners.

Recognizing the special circumstances faced by smaller QFs, those 20 megawatts and smaller, the final rule also establishes a rebuttable presumption that the purchase obligation remains in effect in all markets. To rebut the presumption, the filing utility must demonstrate for each small QF that the QF has nondiscriminatory access to the market.

The rule establishes filing requirements for electric utilities to seek relief from the purchase obligation and also provides for reinstatement of the mandatory purchase obligation upon a showing that the conditions for terminating the requirement are no longer met.

The Commission said it was premature to evaluate the California Independent System Operator and Southwest Power Pool markets since they have ongoing market design efforts and have only "Day 1" markets. The rule defines "Day 1" markets as those offering "auction based real-time markets but not auction based day-ahead markets." However, the Commission found that their markets met a portion of the statutory standard as they relate to transmission and interconnection services in "Day 1" markets and member utilities may rely on these partial findings if they file to terminate the mandatory purchase obligation.

Today's action continues to support QF development by ensuring that where the requirements of the PURPA regulations are met, QF development will, as determined by Congress, be stimulated by market forces. Where those requirements have not been met, QF development will continue to be encouraged through the mandatory purchase obligation, the Commission stated.

Section 1253(a) of the Energy Policy Act added a new section 210(m) to PURPA, which provides for termination of a utility's obligation to purchase electric energy from QFs, and to sell electric energy to QFs, upon a finding that QFs have nondiscriminatory access to:

- independently administered, auction-based day-ahead and real-time wholesale markets for electric energy and wholesale markets for long-term sales of capacity and electric energy; or
- transmission and interconnection services that are provided by a Commission-approved regional transmission entity pursuant to an open-access transmission tariff that affords nondiscriminatory treatment to all customers, and competitive wholesale markets that provide a meaningful opportunity to sell capacity and energy on a short-term and long-term basis; or
- wholesale markets for the sale of capacity and electric energy that are at a minimum of comparable competitive quality as those described above.

The Commission said the regulations adopted in the final rule reflect Congress' intent to differentiate between three types of market structures, each of which present differing factors in determining whether there is a sufficiently competitive market to support elimination of the purchase requirement.

The final rule preserves existing contracts and also sets out a process by which a QF may seek reinstatement of the requirement to purchase electric energy if certain conditions are met.

PURPA was designed to overcome obstacles that QFs faced in trying to interconnect their operations with a utility and in finding a market for their power. Under section 201 of PURPA, cogeneration and small power production facilities which meet certain operating and ownership standards may become QFs. Under the Commission's current regulations, a QF's power output must be purchased by an electric utility and the utility is also required to sell power to QF.

Increased competition in wholesale electric markets, the Commission's Open Access Transmission Tariff and interconnection rules have worked to eliminate undue discrimination in transmission service.

The final rule, "New PURPA Section 210(m) Regulations, Applicable to Small Power Production and Cogeneration Facilities," takes effect 60 days after publication in the *Federal Register*.