

DECISION MEMORANDUM

TO: COMMISSIONER KJELLANDER
COMMISSIONER RAPER
COMMISSIONER ANDERSON
COMMISSION SECRETARY
COMMISSION STAFF

FROM: KARL KLEIN
DAPHNE HUANG
DEPUTY ATTORNEYS GENERAL

DATE: SEPTEMBER 9, 2016

SUBJECT: FERC'S NOTICE INVITING POST-TECHNICAL CONFERENCE
COMMENTS, FERC DOCKET NO. AD16-16-000

On September 6, 2016, the Federal Energy Regulatory Commission (FERC) issued a Notice inviting comments in follow-up to the June 29, 2016 Technical Conference on implementation issues related to the Public Utility Regulatory Policies Act (PURPA), at which Commissioners Kjellander and Raper were panelists. The Notice specifically requests comments on two matters:

- (1) the use of the "one-mile rule" to determine the size of an entity seeking certification as a small power production qualifying facility (QF); and
- (2) minimum standards for PURPA-purchase contracts.

The Notice, attached hereto, sets a deadline of November 7, 2016, for comments.

RECOMMENDATION

If the Commission decides to respond to the Notice, Staff suggests that the Commission appoint one Commissioner to work with Staff and Legal in preparing draft comments for the Commission's review at a later meeting. The draft can be reviewed and discussed in executive session, if necessary.

COMMISSION DECISION

1. Does the Commission wish to: appoint one Commissioner to work with Staff and Legal in preparing draft comments in response to FERC's Notice, for the Commission's review at a later meeting?
2. Which Commissioner, if any, should work with Staff and Counsel to draft the comments?

Karl Klein
Karl Klein
Daphne Huang
Deputy Attorneys General

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Implementation Issues Under the Public Utility
Regulatory Policies Act of 1978

Docket No. AD16-16-000

NOTICE INVITING POST-TECHNICAL CONFERENCE COMMENTS

(September 6, 2016)

On June 29, 2016, Federal Energy Regulatory Commission (Commission) staff conducted a technical conference to discuss implementation issues related to the Public Utility Regulatory Policies Act of 1978 (PURPA).¹ The Commission invites post-technical conference comments on the following two matters: (1) the use of the “one-mile rule” to determine the size of an entity seeking certification as a small power production qualifying facility (QF); and (2) minimum standards for PURPA-purchase contracts.

All interested persons are invited to file post-technical conference comments on these two matters, including the questions listed in the attachment to this Notice. Commenters need not respond to all questions asked. Commenters may reference material previously filed in this docket, including the technical conference transcript, but are encouraged to submit new or additional information rather than reiterate information that is already in the record. In particular, Commenters are encouraged, when possible, to provide examples in support of their answers. These comments are due on or before November 7, 2016.

For further information about this Notice, please contact:

Adam Alvarez (Technical Information)
Office of Energy Market Regulation
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426
(202) 502-6734
adam.alvarez@ferc.gov

¹ 16 U.S.C. § 2601 *et seq.* (2012).

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Loni Silva (Legal Information)
Office of General Counsel
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426
(202) 502-6233
loni.silva@ferc.gov

Kimberly D. Bose,
Secretary.

Post-Technical Conference Questions for Comment

One-Mile Rule:

PURPA defines a small power production facility as “a facility which is an eligible solar, wind, waste, or geothermal facility, or a facility which (i) produces electric energy solely by the use, as a primary energy source, of biomass, waste, renewable resources, geothermal resources, or any combination thereof; and (ii) has a power production capacity *which, together with any other facilities located at the same site (as determined by the Commission), is not greater than 80 megawatts.*”²

Section 292.204(a) of the Commission’s regulations states that small power production facilities are considered to be at the same site if they are located within one mile of each other, share the same energy resource, and are owned by the same person(s) or its affiliates.³ This is commonly referred to as “the one-mile rule.”

1. Should the presumption inherent in the one-mile rule be made rebuttable? If so, who should benefit from the presumption and who should bear the burden of overcoming the presumption; i.e., should the interconnecting utility or the QF be required to rebut the presumption?
2. Alternatively, should the Commission consider modifying the rule to either require projects seeking QF status to be spaced further apart or allowed to be closer together?
3. Should the Commission consider a more fact-based analysis based on the criteria proposed by Edison Electric Institute (EEI)⁴ and Idaho Commissioner Kjellander,⁵ or some other criteria?

Minimum Standards for PURPA-Purchase Contracts:

In section 210 of PURPA, the Commission was tasked with prescribing and from time to time revising such rules as it determines necessary to encourage cogeneration and small power production.⁶ The Commission’s regulations require each electric utility to

² 16 U.S.C. § 796(17)(A) (2012) (emphasis added).

³ 18 C.F.R. § 292.204(a) (2015).

⁴ See Joel Schmidt, on behalf of EEI Submittal at 4.

⁵ See Idaho Commissioner Paul Kjellander Submittal at 6-7.

⁶ 16 U.S.C. § 824a-3(a) (2012).

provide standard rates for QFs with a design capacity of 100 kW or less and permit such rates for QFs with a design capacity above 100kW.⁷ The Commission has not required any particular minimum contract length or other minimum contract provisions in PURPA-purchase contracts.

1. What is an appropriate minimum length of a PURPA-purchase contract, and are there other minimum contract terms and conditions that a developer needs to secure financing?
2. How would establishing a required minimum contract length or other required contract terms and conditions affect QF development?
3. Should the size threshold for requiring standard rates be changed, and, if so, to what?
4. Section 292.302 of the Commission's regulations⁸ requires electric utilities to provide five and ten years of cost data to state regulatory agencies, and certain small electric utilities are required to provide data to enable QFs to estimate the avoided costs. Section 292.304(e) identifies this data, and state review of such data, as one factor to be used in determining avoided cost rates for QF purchases. To what extent is the data currently being provided? To what extent is this data taken into account and/or is helpful in calculating avoided cost rates?

⁷ 18 C.F.R. § 292.304(c) (2015).