

December 7, 2018

The Honorable Neil Chatterjee, Chairman
The Honorable Cheryl A. LaFleur
The Honorable Richard Glick
The Honorable Kevin J. McIntyre,
Federal Energy Regulatory Commission
888 1st Street, NE
Washington, DC 20426

**RE: Implementation Issues Under the Public Utility Regulatory Policies
Act of 1978 (Docket No. AD16-16-000)**

Dear Chairman and Commissioners,

The Global Energy Institute (GEI), an affiliate of the U.S. Chamber of Commerce (“the Chamber”), submits this letter to encourage the Federal Energy Regulatory Commission (“Commission”) to ensure that consumers are protected by undertaking a holistic review of its regulations implementing the Public Utility Regulatory Policies Act of 1978 (“PURPA”) and by acting on the record before it in Docket No. AD16-16-000.¹

The Chamber is the world’s largest business federation. It represents the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The Chamber is dedicated to promoting, protecting, and defending America’s free enterprise system. The mission of the GEI is to unify policymakers, regulators, business leaders, and the American public behind a common sense energy strategy to help keep America secure, prosperous, and clean.

The Chamber represents local, national, and international business of all sizes, and as such we advocate for pro-business policies that create jobs and grow our economy. Reliable electricity at just and reasonable rates is vital to achieving these goals and we are concerned that the Commission’s current rules and regulations implementing PURPA may not reflect today’s market realities, and, as a result impose additional costs across our broad and diverse membership.

While there are aspects of PURPA, such as the mandatory purchase obligation, which are beyond the Commission’s authority to alter, the Commission retains significant discretion in the

¹ The Commission accumulated this record largely through submissions made at a Technical Conference on *Implementation Issues under the Public Utility Regulatory Policies Act of 1978*, held on June 29, 2016 (Docket No. AD16-16-000), and through the associated submissions made thereafter.

development and application of the guidelines implementing PURPA. Due to the significant changes that have occurred since PURPA was enacted in 1978, the Commission should promptly exercise its discretion to modernize its administration of that statute. These industry changes include open access transmission rules, greater competition among generators in organized and bilateral wholesale markets, improvements in and lowered costs of technology, and the intervening implementation of state and federal policies. All of these factors, among others, have contributed to changes in the fuel mix that have substantially increased generation from co-generation and renewable energy resources, such as wind and solar.

Due to these changes, innovations, and policy interventions in the markets, we encourage the Commission to undertake a holistic review of its regulations implementing PURPA with the prompt issuance of a Notice of Proposed Rulemaking proposing necessary modifications to PURPA's implementing regulations.

There are a number of issues that have been raised in the docket pending before the Commission that directly impact the rates paid by electricity customers. Fixed prices for PURPA contracts are often above market rates, resulting in customers paying billions more than necessary to procure renewable energy. In supplemental comments filed with the Commission in this proceeding, the Edison Electric Institute provided estimates in the billions of avoided costs in excess of market rates that PURPA is imposing upon electricity customers.² Another area requiring reform is the one-mile rule, which incentivizes developers to disaggregate projects to meet the 80 MW threshold to obtain Qualifying Facility ("QF") status eligible to receive above-market avoided costs. The same rule leads to developer manipulation of the similar but lower 20 MW threshold in areas managed by regional transmission organizations and independent system operators. In the latter case, manipulation of the one-mile rule requires electric utilities to purchase energy – often at prices above wholesale market costs – from QFs geographically sized below this threshold level that otherwise have nondiscriminatory access to wholesale markets for the sale of capacity and electric energy.

These issues, among others, were discussed during the June 29, 2016 technical conference convened to focus on issues associated with the Commission's implementation of PURPA. When enacting PURPA, Congress intended that customers remain indifferent as to whether their energy is sourced from qualifying small power producers or co-generation facilities, or QFs, as opposed to other resources available to a utility.³ This clear legislative intent is no longer honored by the Commission's administration of PURPA, as customers are now forced to pay above market energy costs in PURPA contracts.

PURPA provides simple directives for purchases of QF power by electric utilities: "the rates for such purchases: 1) shall be just and reasonable to the electric consumers of the electric

² *Implementation Issues Under the Public Utility Regulatory Policies Act of 1978*, Supplemental Comments of the Edison Electric Institute, Docket No. AD16-16-000 at Attachment A (June 25, 2018).

³ "The provisions of this section are not intended to require the rate payers of a utility to subsidize cogenerators or small power producers." Conference Report on PURPA, H.R. Rep. No. 1750, 95th Cong., 2nd Sess. 97-98; "The intention [of Congress] was to make ratepayers indifferent as to whether the utility used more traditional sources of power or the newly encouraged alternatives" of PURPA. *Southern Cal. Edison, San Diego Gas & Elec.*, 71 FERC ¶ 61,269 at p. 62,080 (1995).

utility and in the public interest, and 2) shall not discriminate against qualifying cogenerators or qualifying small power producers.”⁴ In addition, PURPA directs that the rate for purchases of QF power shall not “exceed[] the incremental cost to the electric utility.”⁵ We are concerned that these directives are no longer being fulfilled and that the Commission’s regulations implementing PURPA now act to provide subsidies that promote QFs at the expense of lower electric customer rates.

During the May 17, 2018 Open Meeting, then Chairman McIntyre announced that the Commission would soon restart its review of its regulations implementing PURPA. The Chamber supports the Commission’s proposal to review these rules and regulations, which many view as long overdue given their establishment in the 1980s. We urge the Commission to take a holistic review of its rules and regulations and institute broader reforms as necessary to ensure that regulations implementing PURPA are revised to promote just and reasonable rates for electric consumers.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Harbert", with a stylized flourish at the end.

Karen A. Harbert
President and CEO
Global Energy Institute
U.S. Chamber of Commerce

⁴ 16 U.S.C. § 824-1-3(b) (2012).

⁵ 16 U.S.C. § 824a-3(b) (2012).