

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking Regarding Continued
Implementation of the Public Utility Regulatory Policies
Act and Related Matters.

Rulemaking 18-07-017
(Filed July 26, 2018)

**COMMENTS OF THE INDEPENDENT ENERGY PRODUCERS
ASSOCIATION ON THE ORDER INSTITUTING RULEMAKING
REGARDING CONTINUED IMPLEMENTATION OF THE
PUBLIC UTILITY REGULATORY POLICIES ACT AND
RELATED MATTERS**

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The Independent Energy Producers Association (IEP) submits these comments on the Order Instituting Rulemaking (OIR) regarding the continued implementation of the Public Utility Regulatory Policies Act (PURPA) and related matters. IEP has a long tradition representing Qualifying Facilities (QFs) affected by the Commission’s implementation of PURPA. IEP was a signatory to the QF Settlement Agreement adopted by the Commission in 2010 (Decision 10-12-035).

In *Winding Creek Solar LLC v. Peevey*, the U.S. District Court found that the Commission’s Renewable Market Adjusting Tariff (ReMAT) Program is not PURPA-compliant in at least two independent ways. First, the Commission’s ReMAT Program is not compliant with PURPA in that the program imposes a program MW cap on QF sales to the utility. The court determined that the MW cap was inconsistent with the “must-take” obligation imposed on utilities. Second, the Commission’s ReMAT program’s reverse auction procedure does not satisfy the definition of “avoided cost” in regulations of the Federal Energy Regulatory Commission (FERC).

As part of its PURPA implementation obligation, the Commission must identify the regulated utilities' avoided cost consistent with principles adopted by FERC and reviewed by the courts from time to time. As noted in the OIR, the Rulemaking will consider whether the QF standard offer contract (SOC) available to eligible QFs is suitable for purposes of implementing PURPA and whether the Commission should consider changes to the terms and conditions of the QF SOC to ensure compliance with PURPA. In this regard, the OIR will consider adoption of a price to be paid at the time of delivery where a QF has opted to sell as-available energy to the utility without a contract.¹ The issues the OIR seeks to address include the appropriate energy price to be paid to eligible QFs, the appropriate capacity payment to be paid to an eligible QF, and any additional issues the Commission must address to adopt a new QF SOC that complies with PURPA. IEP concurs with these objectives.

IEP also believes it is now timely for the Commission to assess the conditions that led to the termination by the FERC of the must-buy provision from QFs sized greater than 20 MWs (net) to determine whether the market conditions that existed at the time of the termination persist today. The FERC granted the application terminating the must-buy provision upon a finding that four components of the California market promised QFs non-discriminatory access to wholesale markets comparable to those identified in PURPA section 210(m)(1)(A) and (B), as required under PURPA section 210(m)(1)(C).² The four components of the California market referred to by FERC included California's combined heat and power (CHP) program; California's Renewables Portfolio Standard (RPS) Program; California's Resource Adequacy (RA) requirements; and the California Independent System Operator's implementation of the Market Redesign and Technology Upgrade (MRTU) day-ahead market. Collectively, these four

¹ OIR, p. 7.

² 135 FERC 61,234, Order Granting Application to Terminate Purchase Obligation, Issued June 16, 2011, Docket No. QMF11-2-000, p. 9.

components were believed to satisfy the requirements prescribed in Section 292.309 of the FERC regulations, namely to provide QFs sized greater than 20 MWs non-discriminatory access to:

(1)(i) Independently administered, auction-based day ahead and real time wholesale markets for the sale of electric energy; and (ii) Wholesale markets for *long-term sales of capacity and electric energy*;

(2)(i) Transmission and interconnection services that are provided by a Commission-approved regional transmission entity and administered pursuant to an open access transmission tariff that affords nondiscriminatory treatment to all customers; and (ii) Competitive wholesale markets that provide a meaningful opportunity to sell capacity, including long-term and short-term sales, and electric energy, including long-term, and short-term and real-time sales, to buyers other than the utility to which the qualifying facility is interconnected. In determining whether a meaningful opportunity exists, the Commission shall consider, among other factors, evidence of transactions with the relevant market; or

(3) *Wholesale markets for the sale of capacity and electric energy* that are, at a minimum, of comparable competitive quality as markets described above in paragraphs (a)(1) and (a)(2) of this section.³

Notably, the conditions that led the FERC to terminate the must-buy provision for QFs sized greater than 20 MWs appear to have changed significantly over the years. For example, as a substitute for the historical QF SOC approach to facilitating long-term sales of capacity and energy for QFs sized greater than 20 MWs, the QF Settlement Agreement contemplated a procurement path via the Commission's long-term procurement plan (LTPP) proceeding. Yet, the 2015 LTPP was suspended, and the Integrated Resource Planning (IRP) process that replaced the LTPP has yet to offer QFs sized greater than 20 MWs (particularly CHP QFs) an opportunity to make sales of long-term energy and/or capacity to the utilities. Moreover, since 2014 the Commission has not authorized a utility to conduct an RPS solicitation in which renewable QFs sized greater than 20 MWs would be expected to participate. Finally, the Commission's RA

³ Ibid, p. 2 (emphasis added).

program currently does not provide an opportunity for QFs of any size to make sales of capacity beyond one year.

On the other hand, the utilities continue to make significant investments buying long-term energy and/or capacity from non-QF resources, including various distributed resources and storage resources. Notably, these purchases often are associated with utility-owned assets.

The PURPA OIR presents the Commission with the opportunity to assess the utilities' full avoided cost based on a full accounting of the resources providing capacity and/or energy to the utilities, including utility investments in energy efficiency resources, demand response resources, storage resources, and output from behind-the-meter resources that provide energy and/or capacity to the utility (e.g., Net Energy Metering). Certainly, PURPA requires this assessment of the utilities' full avoided cost for QF resources sized 20 MWs or less. In addition, this OIR presents the Commission with an opportunity to evaluate the extent to which current market conditions match those conditions that existed at the time when the FERC terminated the must-buy obligation for QF resources sized greater than 20 MWs.

Respectfully submitted September 12, 2018 at San Francisco, California.

A handwritten signature in black ink that reads "Steven Kelly". The signature is written in a cursive style with a large, sweeping "S" and a distinct "K" followed by "Kelly".

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