



State Staff Information Sharing “Surge” Call Summary

The Future of PURPA

July 11, 2017

NARUC’s Research Lab hosted a call on Tuesday, July 11, 2017 as part of our “surge” effort to help link state staffers to learn from each other on current events in energy regulation. The call focused on the Public Utility Regulatory Policies Act (PURPA), signed into law in 1978 and still affecting the energy sector today.

President Jimmy Carter pushed PURPA as a pillar of his energy policy to reduce reliance on foreign fossil fuels following the 1973 oil crisis. The law required utilities to buy electricity from small renewable power producers and cogeneration facilities, referred to as “qualifying facilities” (QFs), under long-term contracts at avoided cost rates. States decide how to calculate avoided costs and set other contract terms. PURPA initially encouraged gas-fired generation and later spurred large amounts of renewable generation to enter the market, where projects could tout a long-term contract requiring the purchase of their electricity at often above-market rates to obtain financing. However, several states have begun to rethink their PURPA implementation rules in an era of increasingly cheap renewables and flat electricity demand.

Staff from four states – Michigan, Oregon, Massachusetts, and Montana – gave their perspectives on PURPA’s future.

Michigan

Michigan has not updated its PURPA rules since the state first wrote them in 1982. With 35 PURPA contracts expiring in the near future

and growing attention from solar developers – Michigan currently has just 100 MW of operating solar – the state decided that now would be an appropriate time to rethink the rules. The commission issued an order in 2015 directing staff to form a committee and prepare a report on PURPA implementation.

Like many states, Michigan has found that avoided cost calculations have proven to be inaccurate over long contract terms, with some lasting 20 years or more. The 1982 rules defined avoided cost as the cost of developing a new coal plant, the next cheapest option at the time. Today, with cheaper natural gas combined cycle plants, Michigan’s avoided cost definition has led to comparatively high rates for PURPA providers. In response, the commission is developing a process to recalculate avoided cost every two years. This practice will allow PURPA contracts to better reflect current market conditions. Another change will be raising the limits on QF eligibility for the standard offer tariff from 100 kW to 2 MW. QFs larger than 2 MW would have to negotiate directly with the utility.

The commission has approved the biennial review of avoided cost and the standard offer tariff terms and conditions, but some issues remain unresolved. Commission staff are working to resolve these outstanding issues for the commission to issue another order later this summer.

Oregon

Oregon had an active QF market for years with few policy changes. The state determined

avoided cost through the utility's next avoidable resource as detailed in integrated resource plans (IRPs), submitted every two years.

For the first 15 years of a 20-year contract, QFs receive a fixed price: the utility's next avoidable resource, which has recently shifted to wind. The commission also has rules governing sufficiency periods that may affect the prices QFs receive in these first 15 years. In the case of a sufficiency period, QFs receive market rates for power as forecasted at the time of the contract signing. For the final five years, QFs receive the current market price.

In terms of project size limits, Oregon is both tightening limits and looking at QFs' footprints. Under old rules, to be considered an individual project, a QF must be isolated for five miles and under 10 MW. As renewables became increasingly aggregated, many installations grew closer together and exceeded the 10 MW limit. The commission lowered the eligibility limit for solar QFs to 3 MW and kept the 10 MW overall limit for individual developer – in other words, once a developer builds more than 10 MW, they are no longer eligible for standard contracts and must negotiate directly with the utility.

The commission also added integration charges, sourced mainly from IRPs, to the avoided cost for wind and solar projects. A docket on how to pay for third-party transmission costs when required by QFs remains open and unresolved.

Massachusetts

Massachusetts instituted typical PURPA rules until 1999, shortly after the state's deregulation. As a newly deregulated state, Massachusetts found that it could not calculate avoided cost and wanted to use another rate for QFs. New PURPA regulations allowed the state's three regulated utilities to purchase output from QFs at an hourly spot market rate.

In 2011, a solar developer challenged the 1999 regulations, claiming Massachusetts was inconsistent with FERC rules as stated in 18 CFR 292. Courts agreed, finding that to be consistent with PURPA, states must require utilities to offer a long-term rate calculated at the time the obligation is incurred, not an as-available rate that would change hourly.

With a substantial RPS, large renewable solicitations, and availability of net metering, renewable developers in Massachusetts have other options to stimulate demand. An open rulemaking proceeding issued in March 2017 attracted little attention from renewable developers. The state is currently proposing revised regulations compliant with the court order.

Montana

Montana makes a generous standard rate available to QFs under 3 MW while also allowing QFs up to 80 MW to petition the commission to set terms for contracts with the state's two regulated investor-owned utilities. With one of these utilities participating in MISO, the commission develops policies on an ad hoc basis for NorthWestern Energy.

In 2012, the commission approved the use of avoided cost for the QF standard rate. In 2016, NorthWestern requested that the rate, then set at \$66/MWh, be suspended. The commission agreed, citing a large group of QFs attempting to take advantage of the high standard rate. Importantly, the commission exempted solar QFs between 100 kW and 3 MW from the suspension, provided that the "legally enforceable obligation" (LEO) standard was met: a QF needed both a signed power purchase agreement and an executed interconnection agreement.

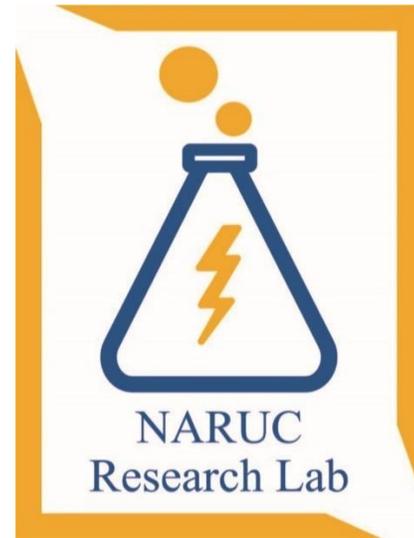
A solar developer receiving the now-suspended rates complained to FERC, which issued a declaratory order stating that Montana's LEO test was in violation of PURPA. FERC stated that Montana's LEO requirements

were inconsistent with PURPA, specifically the interconnection agreement, as this requirement enabled utilities to engage in undue delay. (The solar developer lacked a signed interconnection agreement.) FERC, however, declined to enforce its order, opening the door for the solar developer to take further action in court.

The commission is considering a rulemaking to revisit its LEO standards. Commissioners have expressed concern about long-term standard rates available to QFs. The commission is considering limiting contract length to ten years with a rate update after five years. In the bigger picture, the commission is considering bringing utility-owned generation assets into QF proceedings – symmetrical treatment of utility assets and QFs. This idea is somewhat nebulous and the commission has not expressed a concrete desire to move forward with symmetrical treatment.

Looking Forward

Michigan, Oregon, Massachusetts, and Montana do not represent an exhaustive list of states reexamining their PURPA rules. Developments in these four states are far from conclusive, with several commissions engaged or planning to engage in rulemaking efforts to codify some of the policy positions state staff discussed on the call. NARUC will continue to track new developments in PURPA implementation.



This call was made possible by the U.S. Department of Energy under grant agreement DE-OE0000818. Please address questions to Kiera Zitelman, NARUC Program Officer, at kzitelman@naruc.org.