

FERC PURPA Rule Revisions/Order No. 872: Solar Energy Industries Association Request for Rehearing



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The Solar Energy Industries Association (“SEIA”) filed a Request for Rehearing and/or Clarification (“Request”) on August 17th before the Federal Energy Regulatory Commission (“FERC”). See Docket Nos. RM19-15 AD16-16.

The Request addresses Order No. 872 which revised certain Public Utility Regulatory Policies Act of 1978 (“PURPA”) rules.

PURPA was enacted by Congress in 1978 during a period of energy crisis. Goals of the federal statute included:

- Conservation of electric energy
- Increased efficiency in the use of facilities and resources by electric utilities
- Equitable retail rates for electric consumers
- Expeditious development of hydroelectric potential of existing small dams
- Conservation of natural gas while ensuring that rates to natural gas consumers are equitable

The federal statute established a new class of generating facilities that were provided special rate and regulatory treatment. Such generating facilities are classified as qualifying facilities and are encompassed by one of two categories:

- Qualifying Small Power Production Facilities
- Qualifying Co-Generation Facilities

The regulations originally established to implement the PURPA promulgated in 1980. Some changes had been enacted since the original promulgation. However, the FERC rule revisions promulgated in Order No. 872 have been described as the first comprehensive revision since 1980.

The FERC contended in promulgating Order No. 872 that its purpose was to:

... better align those regulations with the modern energy landscape, while continuing to encourage development of qualifying facilities (QFs).

The FERC argued that the rule revision objectives included:

- Grant state commissions the flexibility to require the energy rates (as opposed to capacity rates) in QF power sales contracts and other legally enforceable obligations vary in accordance with changes in the purchasing utility’s avoided costs at the time energy is delivered

- Modify the “one-mile rule” for determining whether generation facilities are considered to be at the same site for purposes of determining whether it is a qualifying small power production facility
- Provide for termination of a utility’s obligation to purchase from a QF with nondiscriminatory access to certain markets
- Require state commissions to establish objective and reasonable criteria to determine a QF’s commercial viability and financial commitment to construction before a QF is entitled to a contract or legally enforceable obligation
- Allow an entity to protest a QF self-certification or self-recertification without having to file, and pay, for a declaratory order

The SEIA in its Request notes by way of introduction that:

. . . where the Commission has provided states with flexibility to apply the Commission’s regulations in a manner that will encourage the development of Qualifying Facilities, SEIA does not oppose the Commission’s updates. Where the Commission has issued regulations that fail to encourage the development of Qualifying Facilities or where the Commission has imposed new regulatory burdens that actively and significantly discourage the development of QFs, SEIA seeks rehearing. In these instances, Order No. 872 is arbitrary, capricious, and not the product of reasoned decisionmaking.

SEIA argues that Order No. 872 revises the PURPA regulations in a manner that “discourages the development of Qualifying Facilities in contravention of the statute’s mandates by:

1. terminating a Qualifying Facility’s right to elect a long-term energy rate when delivering energy under a long-term contract;
2. revising the long-standing regulations providing that a Qualifying Facility is not “at the same site” so long as the facilities are located more than one mile apart; and
3. allowing utilities within the boundaries of an Independent System Operator or Regional Transmission Organization (“ISO/RTO”) to seek a waiver of the to purchase from small power production Qualifying Facilities larger than 5 MW despite the fact that few, if any, of such facilities have meaningful access to organized wholesale markets.

Besides asking for a rehearing SEIA also asks for clarification of certain rule revisions.

Regardless of whether this Request is granted, it is certain that the various interested parties will appeal Order No. 872 to the federal courts.

A copy of the Request can be downloaded [here](#).