

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Parts 292 and 375

Docket Nos. RM19-15-000 and AD16-16-000

Qualifying Facility Rates and Requirements

Docket Nos. RM19-15-000

Implementation Issues Under the Public Utility
Regulatory Policies Act of 1978

AD16-16-000

COMMENTS OF THE NEBRASKA POWER REVIEW BOARD

The Nebraska Power Review Board (NPRB) is an agency of the State of Nebraska, and is the agency with primary jurisdiction over electric suppliers operating in the State of Nebraska. Due to the unique nature of the electric industry in Nebraska, consumer-owned electric suppliers (also commonly referred to as “public power”) provide all electricity at retail to end-use customers. Investor-owned entities own generation assets in Nebraska, but operate only at the wholesale level. Due to this structure, the governing bodies of Nebraska’s consumer-owned utilities (comprised of public power districts, municipalities and cooperatives) are allowed to establish their own retail rates. No State agency, including the NPRB, has authority to approve or modify the rates. The NPRB is responsible for maintaining the retail service area boundaries between retail electric power suppliers in Nebraska, is the approval authority for the creation of public power districts and amendments to public power district charters, and is the approval authority for most generation facilities constructed in Nebraska, as well as transmission and distribution facilities built outside an electric supplier’s retail service area. The NPRB has jurisdiction to conduct hearings to address disputes between electric power suppliers, and in limited circumstances, between customers and their utility.

The NPRB is supportive of the proposed revisions set out in the Notice of Proposed Rulemaking (NOPR) regarding the PURPA regulations in FERC dockets RM 19-15-000 and AD16-16-000. As pointed out in the NOPR, the electric industry has undergone significant changes since PURPA was enacted in 1978. The NPRB believes the proposed revisions are an acknowledgement of these changes, and generally are an appropriate method by which to address the changes. In 1978 PURPA was necessary in order to encourage and enable the nation's nascent renewable generation resources. Since 1978 renewables have become a significant part of the nation's energy portfolio, especially in the Midwest region and the Southwest Power Pool's (SPP) operating area, which includes Nebraska. Renewables frequently constitute a large part of the energy in the SPP market, even reaching a peak penetration record of 76.94% on October 18, 2019. These developments demonstrate that renewables, especially wind and solar, are no longer the emerging technology they were in 1978. The NPRB believes renewables provide a very valuable and productive addition to the nation's energy portfolio. However, as stated in the NOPR, "Circumstances have changed considerably since the Commission implemented its PURPA regulations in 1980." NOPR at page 3, ¶ 3. The NPRB believes that due to the significant changes in the marketplace, including advancements in technology and widespread application of renewables since 1978, among others, that the proposed revisions in the NOPR are appropriate.

In addition, the NPRB would like to draw attention to one regulatory issue. In the NOPR, FERC proposes to grant nonregulated electric utilities and state regulatory authorities that oversee regulated electric utilities the flexibility to incorporate competitive market pricing in the rates paid by electric utilities to qualifying facilities under PURPA. State regulatory authorities that oversee regulated electric utilities and nonregulated electric utilities are collectively referred to in the NOPR as "states". See NOPR page 4, ¶ 4. Nebraska is unique in that all utilities selling electricity at retail in the State are consumer-owned. Each retail utility has a governing body comprised entirely of officials elected by their customers. These include the boards of directors for public power districts, cooperatives, and entities created under the Nebraska Municipal Cooperative Financing Act, city councils and village boards. Under the Federal Power Act, the term "State Commission" is defined to mean "the regulatory body of the State or municipality having jurisdiction to regulate rates and charges for the sale of electric energy to consumers within the State or municipality" 16 U.S.C. § 796(15). In PURPA, the term "State regulatory authority" is defined as "any State agency which has ratemaking authority with respect to the sale of electric energy by any electric utility

(other than such State agency)” 16 U.S.C. § 2602(17). Since neither the NPRB nor any other agency of the State of Nebraska has jurisdiction to approve retail rates for electric power suppliers, Nebraska does not have a “State Commission” or a “State regulatory authority” that is an agency of the State of Nebraska with statewide jurisdiction. Rather, it is the NPRB’s understanding that each of Nebraska’s consumer-owned utilities would qualify as “State Commissions” for purposes of the Federal Power Act and PURPA. Thus, it appears Nebraska is the only state that does not have what would qualify as a “state regulatory authority” with statewide jurisdiction. If it is FERC’s intention that certain changes in the proposed PURPA regulations NOPR be implemented on a statewide basis by a “state regulatory authority”, Nebraska would not have the opportunity to avail itself of that option. Instead, each of Nebraska’s 162 retail power suppliers would have jurisdiction to exercise the discretionary actions described in the NOPR.

Due to the fact that the applicable definitions are set out in the Federal Power Act and PURPA, the NPRB acknowledges that the definitions cannot be amended through regulations. The NPRB is not requesting specific action be taken to address this issue. The NPRB thought it should at least make FERC aware how the discretionary actions set out in the NOPR would be implemented in Nebraska.

For the Board,

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