UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Qualifying Facility Rates and Requirements	*	**Docket No. RM19-15**
	*	
Implementation Issues Under The Public Utility Regulatory Policies Act of 1978	*	**Docket No. AD16-16**
	*	
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December 3, 2019

COMMENTS OF THE MASSACHUSETTS ATTORNEY GENERAL MAURA HEALEY

Pursuant to Rules 211, 212, and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the Commission), 18 C.F.R. §§ 385.211, 385.212, and 385.214, and the Commission's September 19, 2019 Notice of Proposed Rulemaking (NOPR) in the above-captioned proceedings, Maura Healey, the Attorney General of the Commonwealth of Massachusetts (Massachusetts Attorney General) provides these comments on the NOPR's proposed changes to chapter 18 C.F.R. Parts 292 and 375 of the Commission's regulations, implementing the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. ch. 46 § 2601 *et seq*. (PURPA). These comments address the NOPR's potential impacts on Massachusetts ratepayers and the Commonwealth's clean energy and greenhouse gas (GHG) emissions reduction requirements.[1]

The Massachusetts Attorney General is the Commonwealth's ratepayer advocate. In that capacity, the Massachusetts Attorney General submits that the NOPR's proposed modification of the rebuttable presumption that a small power production facility of 20 MW or less lacks nondiscriminatory access to competitive organized wholesale markets may make it more difficult and expensive for Massachusetts to meet its clean energy and GHG emissions reductions

[1] By separate filing, the Massachusetts Attorney General has joined with attorneys general from six other states and the District of Columbia, the New Jersey Board of Public Utilities, and the Rhode Island Division of Public Utilities and Carriers to provide multi-state comments on the NOPR.

objectives.[2] With project financing less available and likely more expensive, developers may construct fewer renewable generation projects to serve the needs of the Commonwealth's ratepayers. This development likely will slow Massachusetts's progress towards meeting such needs and increase ratepayer costs. The NOPR's proposed elimination of the fixed energy rate option for small power production facilities also may have a similar, negative impact.[3]

I. Massachusetts Has Adopted Rigorous Policies To Encourage Renewable Energy Generation And Reduce GHG Emissions.

Massachusetts has taken important steps to develop renewable electricity generation and to reduce dependence on fossil fuels, benefiting ratepayers. The Massachusetts legislature enacted the Global Warming Solutions Act (GWSA)[4] in 2008, requiring what the Commonwealth's highest court described as "the most ambitious greenhouse gas reductions for a single state in the entire country."[5] The GWSA obligates the Commonwealth to reduce GHG emissions by 25 percent below 1990 levels by 2020, and 80 percent below 1990 levels by 2050.[6]

The Commonwealth has since enacted and expanded policy measures to achieve the year 2050 emissions reduction requirement.[7] Under the Massachusetts renewable portfolio standard (RPS), retail electricity suppliers must obtain fifteen (15) percent of their supply from clean energy resources by 2020. That requirement increases by 1 percent annually thereafter

[2] NOPR at PP 118 - 130.

[3] *Id*. at PP 65 – 81.

[4] Global Warming Solutions Act, St. 2008, c. 298; *see* MASS. GEN. LAWS c. 21N, §§ 1–9.

[5] *Kain v. Dep't of Envtl. Prot.*, 474 Mass. 278, 282–83 (2016). *See* MASS. GEN. LAWS. c. 21N, §§ 1–9. The GWSA also includes greenhouse gas emissions reduction tracking and reporting, including mandatory reporting from facilities that emit more than 5,000 tons of greenhouse gases per year. *Id*. c. 21N, § 2(a)–(c). *See also MassDEP Emissions Inventories*, MASS.GOV (2018), https://www.mass.gov/lists/massdep-emissions-inventories; *MassDEP Greenhouse Gas Emissions Reporting Program*, MASS.GOV (2018), http://www.mass.gov/eea/agencies/massdep/climate-energy/climate/approvals/about-the-greenhouse-gas-emissions-reporting-program.html.

[6] MASS. GEN. LAWS. c. 21N, § 4(a). The GWSA also requires the Commonwealth to meet interim objectives in 2030 and 2040.

[7] To ensure compliance with the GWSA, the Massachusetts Department of Environmental Protection has promulgated regulations directed at achieving reductions from multiple GHG-emitting resources, including thermal power plants, natural gas infrastructure, and public vehicle fleets. *See* 310 MASS. CODE REGS §§ 7.72–7.75 & 60.05–60.06. Governor Charles Baker has also signed into law An Act to Promote Energy Diversity, requiring the Commonwealth's electric distribution companies to enter into long-term contracts for the purchase of 2,800 megawatts of cleaner energy, including 1,600 megawatts of offshore wind. Massachusetts has also taken measures to reduce carbon emissions from the power sector by establishing a renewable portfolio standard, which encourage greater reliance on clean energy.

(including a minimum of thirty-five percent RPS-eligible resources by 2050). The Commonwealth's Clean Energy Standard (CES) requires that suppliers obtain eighty (80) percent of their supply from clean energy resources by 2050.[8] Solar and wind resources that qualify as RPS-eligible also meet the requirements of the CES.[9] The RPS and CES are complementary policies for meeting the Commonwealth's clean energy requirements.

Consistent with these clean energy initiatives, Massachusetts launched the Solar Massachusetts Renewable Target Program (SMART Program) in 2018. The SMART Program encourages small-scale solar generation (up to 5 MW capacity) development in the Commonwealth to improve electrical grid strength, public health and safety, and further the Commonwealth's efforts to meet clean energy goals and benefit ratepayers.[10] Eligible solar projects may enroll in the declining block incentive program that pays facility owners based on the generation output of participating facilities, including incentive adders and subtractors reflecting generator characteristics, such as project location, generation unit type, and identity of off-taker.[11]

The Massachusetts Attorney General is committed to ensuring that the Commonwealth achieves the RPS, CES, and SMART Program objectives and maintaining just and reasonable rates. In any future, state-level rulemaking implementing the NOPR's proposed changes to the Commonwealth's own PURPA regulations, the Massachusetts Attorney General will continue to advocate zealously to ensure that the Massachusetts regulations are consistent with state clean energy policies and result in just and reasonable rates for customers.

[8] 310 CMR 7.75(4).

[9] *See* 310 CMR 7.75(a)(1)(a)1.a(7). Resources ineligible for RPS may qualify as CES-only resources, including large-scale hydropower. 310 CMR 7.75(a)(1)(b).

[10] 225 CMR 20.01.

[11] 225 CMR 20.07.

II. The NOPR Proposes Material Changes To The Public Utility's PURPA Purchase Obligation.

The NOPR would reduce the megawatt net power production capacity threshold, under which the Commission presumes a small power production facility lacks nondiscriminatory market access, from 20 MW to 1 MW or less.[12] Thus, where a public utility requests relief from entering into "a new contract or obligation to purchase electric energy," it would be required to overcome the rebuttable presumption only for facilities with net power production capacity of 1 MW or less.[13] In effect, the NOPR reduces a public utility's burden in seeking relief from its PURPA purchase obligation for all but the smallest small power production facilities, to which the rebuttable presumption now applies.

The NOPR also permits each state to eliminate a small power production facility owner's option to elect a fixed energy rate at the outset of a legally enforceable obligation.[14] The NOPR instead would provide states with the ability to allow such qualifying facilities (QF) only a variable energy rate during the term of a PURPA contract.[15]

III. The NOPR May Reduce The Commonwealth's Ability To Attain Its Clean Energy Objectives.

PURPA-based compensation is a steady and important source of revenue for many new renewable generation projects. This revenue stream attracts investment to new projects and better ensures project viability. Both of the NOPR's proposed revisions to PURPA summarized above may impede developers' abilities to leverage such PURPA payments to ensure financing for solar and wind generation projects. In turn, the NOPR's changes may render the

[12] NOPR at P 118.

[13] 18 CFR § 292.309(a).

[14] NOPR at P 66.

[15] *Id*. at P 66.

Commonwealth's efforts to meet its clean energy requirements more expensive for ratepayers, particularly where potential investors deem projects that lack PURPA revenues a higher-risk investment and impose more onerous financing premiums on project development, which may flow through to ratepayers.

A. Potential Effects On the Massachusetts RPS and CES

The NOPR would apply the rebuttable presumption only to small power production facilities of 1 MW or less net power production capacity, a material change from the current rule. Since retail suppliers of energy may satisfy RPS and CES requirements by obtaining renewable generation from solar and wind QFs, any reduction in the development of solar and wind QFs may result in fewer RPS- and CES- eligible facilities.

Table 1 below summarizes the number of operating solar and wind generation units in New England, and how the proposed change in the rebuttable presumption may affect such facilities. Table 1 also suggests the most common size range of renewable generation built in New England (*i.e.*, solar and wind facilities generally less than 20 MW nameplate capacity, and greater than 1 MW).

Fuel Type	**Table 1** **Operating Solar And Wind Facilities, New England**		
	Total	**Rebuttable Presumption Applicable (≤ 20 MW)**	**Proposed Rebuttable Presumption Applicable (≤ 1 MW)**
Solar[16]	379	378 of 379	64 of 379
Wind[17]	71	49 of 71	2 of 71

[16] 2018 Form EIA-860 Data – Schedule 3, Solar Technology Data (Operable Units Only, *available at* https://www.eia.gov/electricity/data/eia860/.

[17] 2018 Form EIA-860 Data – Schedule 3, Wind Technology Data (Operable Units Only), *available at* https://www.eia.gov/electricity/data/eia860/.

Based on the information set forth in Table 1, the current rebuttable presumption is applicable to most wind and nearly all solar resources in the region, most of which are generators with nameplate capacity of less than 20 MW and greater than 1 MW.[18] Under the proposed rule, however, most of these generators would be too large to fall under the reduced rebuttable presumption of 1 MW or less. Where a public utility sought to terminate its obligation to enter into new PURPA energy and capacity contracts with one or more of these facilities, it would not be required to rebut the presumption of no nondiscriminatory access to a competitive market, and would obtain the requested relief more easily. Given this reduced burden, public utilities may seek such relief more often. Where public utilities requested and obtained relief from their PURPA purchase obligations for future contracts with such generating resources, the loss of this revenue source may challenge the long-term viability of such facilities.

The revised rebuttable presumption not only would render it more difficult for *some* facilities in New England to retain PURPA revenue streams, but it would do so for those facilities that are most *typical* of the region. Table 1 shows that construction of wind and solar facilities of less than 20 MW has predominated over construction of generation of other megawatt capacity. Such development has likely constituted a competitive business opportunity for investors in the past. The NOPR, however, makes this business model less viable by putting PURPA revenue streams at risk. This action may reduce investor confidence and discourage future development.

That outcome is a negative one for the Commonwealth and its ratepayers.[19] Where such changes discourage development of renewable generation, retail electricity suppliers in the

[18] The Massachusetts Attorney General does not presume that all facilities summarized in Table 1 currently receive PURPA payments for energy and capacity from a public utility pursuant to contract or other obligation.

[19] The regulations permit the Commission to relieve a public utility of its PURPA purchase obligation for "a new contract or obligation for the purchase of electrical energy" only, including renewals of an existing obligation. 18 CFR § 292.309(a) and (b). The Commission's regulations do

Commonwealth will find it more difficult or more expensive to meet RPS and CES requirements. Where investment in New England renewable generation projects assumes more investor risk due to a lack of PURPA revenue stream certainty, such projects will likely incur financing charges that make purchased generation and capacity more expensive, increasing ratepayer costs of meeting RPS and CES requirements.

B. Potential Effects On The SMART Program

The proposed modification of the rebuttable presumption may also result in negative impacts on the SMART Program, as the NOPR's change to the rebuttable presumption may prejudice the same type of small solar facilities (up to 5 MW nameplate capacity) that the Commonwealth seeks to encourage.

A generation facility certified for participation in the SMART Program enters into a long-term contract for a monthly incentive payment from the interconnecting public utility.[20] That payment nets-out any amount received by the certified facility for the sale of generated energy, pursuant to one of several Commonwealth programs, including the Massachusetts version of PURPA.[21] Where a public utility may more easily obtain relief from its obligation under PURPA to purchase energy and capacity from a QF that, separately, is also SMART Program-certified, the facility would be required to seek payment for its generated energy through one of two alternative means. The facility could seek to receive net metering payments for generated energy.[22] The Commonwealth's net metering program, however, is capped at a limited amount of participating megawatt capacity, and may not always remain open to new projects. The

not contemplate relieving a public utility from an *existing* contract or obligation for the purchase of electrical energy under 18 CFR § 292.309. To the extent that the NOPR seeks to effect that result, it is contrary to PURPA and unlawful.

[20] *See* 225 CMR 20.06.

[21] 225 CMR 20.08.

[22] 220 CMR 18.00.

facility owner could also negotiate an off-taker agreement with a third party for the value of energy generated. Whether or not the project owner could identify a willing counterparty and negotiate and execute such an agreement, however, would be uncertain, and create project risk in a manner that contrasts from the revenue certainty of a PURPA payment. Such additional project risk may discourage developers from constructing new solar generation facilities for participation in the SMART Program, contrary to the Commonwealth's clean energy generation goals.

C. Elimination of the Fixed Energy Rate

The NOPR cites limited evidence to support allowing states to eliminate the fixed energy rate option for small power production facilities.[23] The record in this proceeding does not support such a sweeping policy shift overall, particularly since the Massachusetts Attorney General understands that many stakeholders consider the fixed energy rate a key source of revenue for projects.

IV. This Rulemaking Must Not Undermine The Statutory Goal of Supporting Investment In Renewable Energy Generation Projects.

The PURPA purchase obligation plays a material role in the development of QFs, including clean energy resources such as wind and solar generation.[24] A QF that secures energy and capacity payments under PURPA gains a degree of financial certainty and is more viable, and better able to participate in the Commonwealth's clean energy initiatives, including RPS, CES, or the SMART Program. Importantly, where a project has such revenue certainty, it may also have access to lower-cost financing, facilitating lower costs and benefiting ratepayers. The

[23] In fact, the NOPR "does not suggest that this evidence supports the conclusion that substantial non-QF capacity is being financed and constructed without any form of fixed revenue to support financing." NOPR at P 76.

[24] *See* Partial Dissent of Commissioner Glick at P 9 (stating that the NOPR's "proposal to allow utilities to eliminate the fixed-price contract option will make it more difficult – or in some cases impossible – for QFs to obtain financing").

NOPR's proposed revisions to the rebuttable presumption of no competitive market access and elimination of the fixed energy rate may have negative impacts on such financing arrangements in Massachusetts and elsewhere, and should be rejected.[25]

Respectfully submitted,

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[25] At minimum, there is an insufficient record in this proceeding to support such rule changes. Should the Commission wish to investigate the adverse effects of the current regulations in certain markets, including the provisions of the regulations relevant to the market access rebuttable presumption and the fixed energy rate, it must do so in a new proposal after providing notice. For the benefit of stakeholders, the Commission's proposal should set forth the rationale and record supporting any such changes.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been served in accordance with 18 C.F.R. Section 385.2010 upon each person designated on the official service list compiled by the Secretary in this proceeding.

/s/ Liam J. Paskvan
Liam J. Paskvan

Dated at Boston, Massachusetts this 3rd day of December, 2019.