UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Qualifying Facility Rates and Requirements	Docket No. RM19-15-000
Implementation Issues Under the Public Utility Regulatory Policies Act of 1978	Docket No. AD16-16-000

COMMENTS OF THE INDUSTRIAL ENERGY CONSUMERS OF AMERICA

December 3, 2019

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The Industrial Energy Consumers of America ("IECA") welcomes the opportunity to submit these Comments in response to the Federal Energy Regulatory Commission's ("FERC" or "Commission") September 19, 2019, Notice of Proposed Rulemaking ("NOPR") on qualifying facility ("QF") rates and requirements and implementation issues under the Public Utility Regulatory Policies Act of 1978 ("PURPA").[1] As explained in these Comments, IECA respectfully requests that the Commission ensure that any changes to its existing regulations are designed to address specific and well-documented problems with PURPA implementation in a manner that is consistent with Congress's goal of promoting QF development and energy conservation. This point is especially important as it relates to industrial self-supply QFs because the Commission has failed to identify industrial QFs as a specific source of causation of higher electric rates. In fact, instead, industrial self-supply QFs reduce electricity costs to other electricity consumers as described in these following comments. According to the Energy Information Administration, in 2017, industrials sold 28,470,855 MWhs of electricity to the grid, which represents only 0.7 percent of U.S. demand. Such an insignificant volume makes it unlikely that industrial self-generation via combined heat and power ("CHP") or small power

[1] *Notice of Proposed Rulemaking*, 168 FERC ¶ 61,184 (2019).

production QFs are negatively impacting the grid or other ratepayer costs. A targeted approach is of vital importance to IECA members who are energy-intensive manufacturers that rely on both cogeneration and small power production QFs to self-supply their electricity requirements and manage their electricity expenditures in order to remain nationally and globally competitive.

I. DESCRIPTION OF IECA

IECA is a nonpartisan association of leading manufacturing companies with $1.0 trillion in annual sales, over 3,700 facilities nationwide, and with more than 1.7 million employees. It is an organization created to promote the interests of manufacturing companies through advocacy and collaboration for which the availability, use and cost of energy, power or feedstock play a significant role in its ability to compete in domestic and world markets. Of particular importance in this proceeding is the fact that many IECA members rely on cogeneration and small power production QFs to manage their electricity costs, which represent a significant cost of doing business. IECA members represent a diverse set of industries including chemical, plastics, steel, iron ore, aluminum, paper, food processing, fertilizer, insulation, glass, industrial gases, pharmaceutical, building products, automotive, independent oil refining, and cement. Any changes to the Commission's PURPA regulations will likely have a direct financial impact on IECA's members.

II. INTRODUCTION

PURPA states, "the Commission *shall prescribe*, and from time to time thereafter revise, *such rules as it determines necessary to encourage cogeneration and small power production*" and require electric utilities to offer to sell electricity to, and purchase electricity from, QFs. 16 U.S.C. § 824a-3(a) (emphasis added). PURPA remains the law, and the Commission has a continuing obligation to implement it. Any changes to the Commission's PURPA regulations must be consistent with Congress' intent to promote the development of cogeneration *and* small

power production QFs and must be carefully crafted to address only specific and adequately substantiated problems with PURPA implementation.

In the NOPR, the Commission proposes a package of reforms to its PURPA regulations. Citing changes in circumstances – such as technological advances and the discovery of new natural gas reserves – the Commission concludes, "the majority of renewable resources in operation today do not rely on PURPA." NOPR at ¶¶ 3-4. The NOPR's conclusion erroneously suggests that PURPA is less important to cogeneration and small power production QF development today than it was in the past. Encouraging the development of QFs – particularly those relied upon by IECA members, which include some of the nation's most energy-intensive industrial users of electricity – is a goal that remains critically important and relevant, notwithstanding the changed circumstances cited by the NOPR. The abundancy of natural gas resources and the Commission's conclusion that "the majority of renewable resources in operation today do not rely upon PURPA" are irrelevant to the reasons why PURPA remains critical to industrial self-supply of electricity.

Moreover, absent from the Commission's list of changed circumstances is the fact that many major integrated utilities have shifted to expanding their rate base through the development of their own renewable resources. Utilities are making such investments in renewable resources instead of purchasing energy and capacity from independent power producers, including QFs. IECA is troubled that the "concerns" about the current PURPA regulations referenced by the Commission[2] are coming from such utilities as part of an apparent strategy to undermine the development of cost-effective independent power production resources, including industrial self-supply, to favor utilities' less competitive self-builds. PURPA should not be reformed to tilt the

[2] NOPR at ¶ 4.

playing field in utilities' favor. PURPA should not be reformed to impede the pro-competitive policies that Congress enacted. PURPA's role in promoting QF development and safeguarding QFs against discriminatory treatment by utilities remains as relevant in many areas of the country as it did when PURPA was first implemented.

Another important goal of PURPA is to "maximize the efficient use of the energy and conserve natural gas and petroleum." NOPR at ¶ 15 (citing 42 U.S.C. § 8301(b)(7)). The inside-the-fence QFs used by manufacturers include both CHP cogeneration units as well as small power production units that either utilize a waste heat to power recovery ("WHP") process[3] or rely on wind, solar or other renewable energy sources.[4] The March 2016 U.S. Department of Energy report entitled, "Combined Heat and Power (CHP) Technical Potential in the United States" documents existing and potential industrial CHP and WHP. Industrial CHP can produce electricity at up to 80 percent efficiency, as compared to around 34 percent for conventional coal or gas-fired combined cycle power generation and stand-alone steam production. CHP can use clean domestic energy sources, because over 83 percent is efficiently fueled by natural gas, biomass, or waste fuels. WHP facilities use waste heat from the manufacturing process to generate power. IECA companies also have have inside-the-fence self-supply wind and solar renewable energy facilities that are classified as small power production QFs. As a result, industrial CHP, WHP (small power production), and renewable energy (small power production) facilities also advance PURPA's energy conservation goal while simultaneously reducing electricity costs.

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[3] Examples include glass, cement, steel, aluminum, plastics, and tires.

[4] The potential for additional development and deployment in the industrial sector remains significant. *See* U.S. Department of Energy, "Combined Heat and Power (CHP) Technical Potential in the United States at 18-30 (March 2016) available at: https://www.energy.gov/eere/amo/downloads/new-release-us-doe-analysis-combined-heat-and-power-chp-technical-potential.

Moreover, the ability to secure QF status and the rights associated with such status have played, and will continue to play, a critical role in allowing IECA members' respective manufacturing facilities to control their energy costs. IECA members are industrial customers with energy-intensive manufacturing operations throughout the Unites States that compete globally. Energy costs represent a significant percentage of members' total operating costs of producing their products. The use of cogeneration and small power production QFs is essential for members to remain competitive in the global economy where many competitors are subsidized by their country. A vibrant and thriving U.S. manufacturing sector is crucial to the nation's economic prosperity and security, and QF ownership has contributed to the viability of this sector.

Industrial inside-the-fence self-generation of power, whether it is CHP, WHP, or renewable energy, not only provides benefit to the industrial customer, it provides benefits to other electricity consumers. Self-generation of power decreases the cost of power, or helps avoid increases to the cost of power and transmission costs, to other electricity consumers, and should be encouraged. First, the industrial customer, rather than the utility, capitalizes the costs of the self-generation facility. If the industrial customer had purchased the same electricity volume off the grid, it would have required the utility to build new generation capacity, thereby increasing the costs to other retail ratepayers, as those costs are added into the rate base. Second, inside the fence self-generation helps avoid transmission congestion and reduces transmission losses on the grid. Self-generation systems are distributed energy resources. Avoiding transmission congestion reduces energy and capacity costs to consumers, and minimizes the need for costly new transmission facilities. The ability to own and operate QFs, and sell what is relatively small

amounts of power to utilities at avoided cost rates, has contributed to the manufacturing sector's competitiveness since PURPA was enacted more than 40 years ago.

Industrial self-generation also benefits grid reliability. At night, when all other ratepayers are using less electricity, manufacturing operations are typically running. Because rates typically drop at night, industrials often turn down self-generation output and buy off the grid. These grid purchases allow the grid to keep spinning reserves operating, which is essential for grid reliability, and also reduces the costs to other ratepayers. If not for industrial self-generation facilitated by PURPA, this efficiency and reliability outcome could not be possible.

IECA also emphasizes that it approaches PURPA issues both from a QF owner perspective and a large electricity consumer perspective. According to the EIA, in 2017, despite self-generation, the industrial sector purchased 85 percent of its power from the grid. As such, IECA member companies are, like other manufacturers, somewhat uniquely situated to balance the interests of QF developers with the interests of consumers. The NOPR should strike that same balance. Where abuses of PURPA are sufficiently documented and warrant action, the Commission should act in a narrow focused manner. In all other respects, the Commission should continue to foster the pro-competitive and pro-conservation objectives that Congress sought to foster in PURPA.

III. COMMENTS

A. If the Commission Adopts the Proposed Change to the Rebuttable Presumption Threshold, QFs of 20 MW or Less That Are Used For Self-Supply Should Be Exempt.

The Commission's regulations currently provide electric utilities with the opportunity to challenge or rebut the presumption that QFs with a net capacity of 20 MW or smaller do not have nondiscriminatory access to competitive markets for their output, even if those utilities and QFs are located in RTO/ISO regions. 18 C.F.R. § 292.309(d). If a utility is successful, then it may

terminate its mandatory obligation to purchase a small QF's output. The NOPR proposes to revise existing regulations by reducing the rebuttable presumption for small power production QFs from 20 MW to 1 MW, while preserving the 20 MW threshold for cogeneration QFs. NOPR at ¶ 126. IECA opposes part of the NOPR's proposal. The NOPR correctly proposed to exempt CHP from any reduction in the 20 MW threshold, but any Final Rule should make the same distinction for small power production QFs that are used for self-supply and those that are not. Such self-supply small power production QFs should satisfy the "fundamental use test" that is currently applicable only to cogeneration QFs or other indicia indicative of a customer self-supply arrangement.

The NOPR discusses the "maturation of organized electric markets" as the main reason for changing the threshold for small power production QFs. NOPR at ¶ 127. Even though the electric markets may have matured, this does not mean that all owners of small power production facilities that self-supply industrial facilities have become sophisticated players in these markets. For IECA members, cogeneration ***and*** small power production QFs are used to produce electricity to self-supply[5] their manufacturing processes as a way to reduce costs[6] and remain competitive in their industries. Manufacturing is their priority. Unlike merchant-owned electric generation resources, these self-supply QFs are not in the business of generating and selling electricity. The amount of net electricity sold is generally small[7] and may be available on an

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[5] In 2017, the industrial sector self-generated 143,758,288 MWh of cogeneration, which accounts for 15% of industrial electricity demand or 4% of U.S. electricity demand overall. *See* U.S. EIA, EIA, State-level generation and fuel consumption data, Generation and thermal output, Electricity available at: https://www.eia.gov/electricity/data.php.

[6] In 2017, the industrial sector alone purchased 984,297,945 MWh of electricity or 25% of U.S. electricity demand. *See* U.S. Energy Information Administration, Table 2.2 Sales and Direct Use of Electricity to Ultimate Consumers (2008-2018) available at: https://www.eia.gov/electricity/annual/html/epa_02_02.html.

[7] In 2017, according to the U.S. EIA, industrials sold 28,470,855 MWh of electricity, which represents only 0.7 percent of U.S. demand. *See* U.S. Energy Information Administration, Electricity Data, at: https://www.eia.gov/electricity/data.php.

irregular basis depending on manufacturing production schedules. QFs that are used for self-supply, particularly those at 20 MW or less, do not have personnel who are dedicated 24/7 to wholesale market sales. The mandatory purchase obligation under PURPA provides an important protection for small QFs with limited resources and a lack of wholesale market expertise. If a utility desires to terminate its obligation, the existing regulations provide a reasonable process for seeking to do so. Therefore, the 20 MW threshold found in the Commission's regulations governing a utility's mandatory purchase obligation should be preserved for all self-supply QFs. For industrial QFs, the Commission's rationale does not provide an adequate justification for change.

The NOPR's proposal to treat cogeneration and small power production facilities differently is based on a false perception of small power production QFs. According to the NOPR, small power production facilities "are constructed solely to produce and sell electricity." NOPR at ¶ 130. The NOPR also posits that "it is fair to expect that small power production facilities above 1 MW can acquire the administrative and technical experience necessary to obtain nondiscriminatory access to a market." NOPR at ¶ 127. By contrast, as to cogeneration QFs, the NOPR states, "the production and sale of electricity is a byproduct of these [industrial, commercial, residential or institutional] processes rather than fundamentally for sale to an electric utility." NOPR at ¶ 130. For this reason, the NOPR concludes that "owners of cogeneration facilities might not be as familiar with energy markets and the technical requirements for such sales." NOPR at ¶ 130.

The NOPR's discussion of small power production QFs fails to recognize that such resources also contribute to industrial processes and self-supply arrangements just like cogeneration facilities do. Moreover, when industrial customers own small power production

QFs, these industrial customers face the same challenges in understanding the rules and regulations of sophisticated energy markets that are faced by industrial customer owners of cogeneration QFs. The type of generation technology makes no difference in whether the industrial customer personnel are sufficiently staffed, trained, and equipped to engage daily in wholesale energy markets. Most are not. The reasoning for maintaining the 20 MW rebuttable presumption for cogeneration QFs, but not for small power production QFs that self-supply, does not match up with the reality of non-merchant QFs. Consequently, if the Commission adopts the NOPR's proposal to reduce the mandatory purchase obligation threshold from 20 MW to 1 MW for small power production QFs, then the Final Rule and the associated regulatory language should recognize an exemption for small power production QFs that self-supply and meet the "fundamental use test" that currently applies only to cogeneration facilities. Specifically, IECA proposes that Section 292.309 should read as follows:

> (2) For purposes of § 292.309(a)(1), (2), and (3), there is a rebuttable presumption that a qualifying small power production facility (i) with a capacity at or below 1 megawatt or (ii) with a capacity at or below 20 megawatts that satisfies the fundamental use test in § 292.205(d)(3) does not have nondiscriminatory access to the market.

To be clear, IECA is not proposing a change to the existing fundamental use test as it applies to cogeneration facilities. Rather, IECA's proposal envisions using the relevant portions of the fundamental use test to identify "self-supply" small power production QFs for purposes of exempting such facilities from the NOPR's proposal to reduce the 20 MW mandatory purchase obligation threshold. Under IECA's proposal, as to self-supply small power production QFs that

can meet the fundamental use test (e.g., behind-the-meter generating facilities installed on the premises of a retail customer and whose output is used "fundamentally for industrial, commercial, residential or institutional purposes" and "not intended for sale to an electric utility"), the 20 megawatt threshold for determining the applicability of the mandatory purchase obligation should continue to apply. 18 C.F.R. § 292.205(d)(3). In sum, small power production QFs that meet the "fundamental use test" constitute "self-supply" QFs that should be exempt from the Commission's proposed reduction to the 20 MW threshold as all cogeneration QFs are.

In conclusion, IECA opposes the NOPR's proposal to reduce the rebuttable presumption threshold for self-supply small power production QFs from 20 MW to 1 MW. There is no sound basis for treating "self-supply" small power production QFs differently from all cogeneration QFs. Consequently, the 20 MW threshold should continue as-is for all types of self-supply QFs.

B. While the Use of Market Forces To Calculate Avoided Cost May Be Non-Objectionable in RTO/ISO Regions, It Is Inappropriate for Use Outside of Those Regions.

The NOPR proposes to allow states to exercise discretion to set the energy component of the rate a purchasing utility pays for a QF's energy output based on market prices rather than on a purchasing utility's administratively determined avoided cost rate. For electric utilities located in RTO/ISO markets, states could require QF energy rates for "as available" energy to be based on either RTO/ISO energy real time or day ahead energy market's locational marginal price ("LMP") in effect at the time the energy is delivered. With respect to electric utilities located in non-RTO/ISO markets, the NOPR proposes that QF energy rates paid could be based on competitive prices determined by: (1) liquid market hub energy prices; or (2) formula rates based on observed natural gas prices and a specified heat rate. NOPR at ¶ 32. As discussed below, any reforms to the avoided cost determinations in non-RTO/ISO markets should be focused on requiring adequate transparency and public notice and comment procedures so that consumers

have adequate opportunities for participation, not on creating artificial links to pricing hubs that may lack liquidity or formula rates that lack transparency and accountability.

1. IECA Does Not Object To The Use of LMP as the Avoided Cost Rate for Electric Utilities' Purchases of QF Energy in RTO/ISO Regions.

Under the NOPR proposal, states would have the flexibility to use the LMP as the "as available" energy rate for QFs selling to electric utilities in organized electric markets. As the Commission notes, LMPs "reflect the true marginal cost of production, taking into account all physical constrains, and these prices would fully compensate all resources for the variable cost of providing service." NOPR at ¶ 44 (citing Order No. 831, 157 FERC ¶ 61,115 at P 7 (2016)). Moreover, as the Commission also recognizes, prices in an LMP-based rate structure "are designed to reflect the least-cost of meeting an incremental megawatt-hour of demand at each location on the grid, and thus prices vary based on location and time." NOPR at ¶ 44. IECA does not object the Commission's rationale for permitting either real-time or day-ahead nodal LMPs to establish the avoided cost rate for utility purchases of QF energy located in organized markets, such as PJM Interconnection, L.L.C. ("PJM") in the Mid-Atlantic region; ISO New England, Inc. ("ISO-NE") in the New England region; and Midcontinent Independent System Operator, Inc. ("MISO") in the Midwest region. IECA would note that if RTO/ISOs have a capacity market, then QFs should also be compensated with the capacity rate in effect in the zone where the QF is located for the net output of the QF and if the QF is capable of meeting the capacity resource qualifications in that region.

2. IECA Opposes the Proposal To Depart from the Administratively Determined Calculation of Avoided Costs for Purchases Made in Non-RTO/ISO Regions.

The NOPR also proposes to give states the flexibility to set "as available" QF energy rates for QFs selling to electric utilities outside of organized electric markets ("non-RTO/ISO

regions") at competitive prices from liquid market hubs or calculated from a formula based on natural gas price indices and specified heat rates. IECA is concerned that "markets" outside of RTO/ISO markets are not sufficiently competitive, non-discriminatory, and transparent to be used as the basis for calculating a utility's avoided cost payment. The avoided cost must reflect the cost that the purchasing utility can avoid as a result of obtaining energy and capacity from a QF rather than generating the same amount itself or purchasing it from other suppliers. At this time, markets outside of RTO/ISO regions are not structured in a way to generate the competitive prices necessary to approximate a utility's avoided cost. In non-RTO/ISO regions, IECA believes it is prudent to limit the approach for calculating avoided cost to the administratively determined methodology that is currently used. If the Commission is concerned that avoided costs being determined by state commissions are not accurately capturing the incumbent utility's avoided costs, then the Commission should focus on enhancing the transparency and public notice and comment procedures applicable to such determinations. The Commission should not simply assume that non-competitive markets are competitive, or that utility-driven rate formulas are capable of being implemented fairly and without discrimination. In many states, the data and inputs for such determinations must come from the utilities, which compete with QFs to satisify system capacity needs. Stated more clearly, the utility has control of all of the key data for decision making – the QF does not. Those challenges with the existing construct should be the focus of any avoided cost reform efforts.

If, however, the Commission moves forward with relying on a "market-based" approach for calculating the avoided cost rate in non-ISO/RTO regions, there must be assurances that utilities' self-builds face the same market risk exposure as QFs. For example, if QFs are being exposed to variable rates for their energy output, utility-owned generation should also be

exposed to variable rates for energy output. Moreover, there should be comparability between the terms a utility pays a QF for its output and what the utility charges the QF-owning customer for purchases. In addition, information about utilities' avoided costs (e.g., all inputs, assumptions, calculations, methodologies) must be publicly available and published in a format that can be reviewed and audited by interested parties. Transparency is essential to protecting QFs from discriminatory treatment and preventing the stifling of QF development.

IECA urges the Commission to decline to adopt the NOPR proposal to use "market forces" to establish avoided costs in non-RTO/ISO markets. In IECA's view, these markets are not structured in a way that creates or enables dynamically competitive market pricing or that protects a QF from a utility that prefers to own or control its own generation, rather than purchase "as available" QF output. Unless and until such market defects are remedied in non-RTO/ISO regions, the Commission should continue the use of administratively determined avoided costs with the additional safeguards suggested above. We encourage the Commission to require transparency of the avoided rate process.

3. The Use of Competitive Solicitation Is Not Appropriate for Determining Avoided Costs.

The NOPR proposes to allow states to set energy and capacity rates pursuant to competitive solicitation processes conducted pursuant to transparent and non-discriminatory procedures. NOPR at ¶ 82. IECA is concerned that the parameters for competitive solicitations are not sufficiently developed to ensure a well-structured, fairly administered, transparent, and non-discriminatory process for procurement. Therefore, IECA opposes the use of a competitive solicitation process to determine avoided costs at this time. If the Commission seeks to allow states to rely on competitive solicitation process, the Commission should undertake a separate inquiry, with the necessary technical conferences, to develop specific parameters to govern such

competitive solicitation processes. If the Commission moves directly in any Final Rule to rely on competitive solicitation processes, then, at an absolute minimum, it should require the following: If, after undertaking the competitive solicitation, the utility rejects all offers and decides to self-build instead, then the all-inclusive price of the self-build option should establish the avoided cost rate for QFs seeking to develop in that area.

C. Protests Filed in Response To a QF Self-Certification Should Be Accompanied by an Affidavit.

To acquire QF status, a facility owner must file a self-certification with FERC. The NOPR proposes to allow a party to protest a self-certification of a facility without being required to file a separate petition for declaratory order and to pay the associated filing fee. NOPR at ¶ 148. In general, IECA does not oppose the NOPR proposal to allow protests of QF status without payment of a filing fee. To protect QFs from frivolous challenges, however, IECA strongly recommends that any protest be required to include not only evidence supporting the claims made (as the NOPR proposes), but also a supporting affidavit. The affidavit should come from a corporate officer or other duly designated representative of the protesting party, and it should explain in reasonable detail the facts that support the challenges being made. The burden to demonstrate that a self-certification is unfounded should remain with the party or parties that protest a self-certification. Requiring affidavits to be filed with a protest challenging a QF certification filing is necessary to help deter large utilities with more resources from jeopardizing the viability of a QF through frivolous litigation.

D. Criteria for the Determination of Legally Enforceable Obligations Must Balance Protection Against "Sham" Transactions and Avoidance of Barriers To QF Development.

Today, a QF can choose to have its rates based on the avoided costs calculated at the time of delivery or at the time a Legally Enforceable Obligation ("LEO") is incurred. The

Commission's regulations do not specify criteria for determining when a LEO is created. In the NOPR, the Commission proposes to clarify that a QF must demonstrate commercial viability and financial commitment to construct its facility pursuant to objective and reasonable state-determined criteria before the QF is entitled to a contract or a LEO. NOPR at ¶ 136. IECA supports the Commission's efforts to identify criteria for determining when a proposed QF project is sufficiently viable to trigger the electric utility's mandatory purchase obligation. However, IECA urges the Commission to adopt more prescriptive regulatory language at Section 292.304(d)(3), such as the following:

> (3) *Obtaining a legally enforceable obligation.* As a prerequisite to obtaining a legally enforceable obligation, a qualifying facility must demonstrate commercial viability and financial commitment to construct its facility by providing evidence that it has: (a) obtained site control adequate to commence construction of the project at the proposed location; (b) filed an interconnection application with the appropriate entity; (c) secured local permitting and zoning; or (d) satisfied other similar, objective, reasonable criteria determined by the state regulatory authority or nonregulated electric utility.

Clearer parameters in the PURPA regulations is important to prevent "sham" transactions that result in electric utilities incurring costs for projects that never materialize and simply result in those costs being passed on to consumers. However, it is also important to strike the right balance so that legitimate projects are not hampered. IECA urges the Commission to ensure that any regulatory language changes reflect the need to balance the prevention of "sham" projects

with the need to minimize barriers to construction of QFs. In other words, the Commission should be mindful of changes that could unintentionally create barriers to constructing a QF.

E. The Commission's Proposed Changes to the One-Mile Rule Should Be Clarified To Exclude "Self-Supply" QFs.

The Commission's proposed rule would replace the current "one-mile rule" for determining whether generation facilities should be considered to be part of a single facility for purposes of determining qualification as a small power production QF. As revised, the one-mile rule would allow parties to show that generation facilities between one and ten miles apart "actually are a single facility." NOPR at ¶ 9. The purpose of this change is to prevent gaming by companies seeking to circumvent the 80-MW size limitation on small power production facilities by placing related facilities just outside the one-mile boundary.

IECA does not quarrel with this objective. Rather IECA's concern is a limited one. As worded, the proposed rule would allow challenges to a party's self-certification of a facility as a small power production QF that are based on the rebuttable presumption that "facilities located over one and less than ten miles from the facility for which qualification is sought are facilities located at separate sites from the facility for which qualification is sought." NOPR, Proposed § 292.204(a)(2). The NOPR does not distinguish between merchant small power production QFs built to sell electricity to third parties and self-supply QFs (as discussed in the previous section) built primarily to support manufacturing or industrial processes. There are many manufacturing company sites that are of a 10 mile length. IECA urges the Commission to clarify that the current one-mile rule would continue to apply in circumstances where the small power production facilities seeking QF status are used for self-supply.

F. Existing PURPA Contracts Should Be Insulated From Any Regulatory Changes.

The NOPR proposes a number of changes to the Commission's PURPA regulations. The proposed changes that are adopted as a result of this proceeding will necessarily impact future PURPA contracts. The NOPR, however, does not include a general statement that the resulting changes will apply only prospectively and not affect existing PURPA contracts. As a result, IECA urges the Commission to state explicitly that the changes adopted in the Final Rule will become effective prospectively and, therefore, that any existing PURPA contracts will not be affected, at least through the end of the initial term of the contract. Insulating all existing PURPA contracts from regulatory changes is consistent with the public policy supporting the sanctity of contracts and the public policy supporting the nation's industrial base.

G. FERC Should Clarify Its Backstop Authority on PURPA Interpretation and Implementation Disputes.

As the federal agency responsible for implementing and administering PURPA, FERC is essentially the "backstop" authority on any disputes involving the proper interpretation and implementation of disputes that may arise between parties and including state commissions. Given the potential changes that will result from this proceeding, IECA requests that the Commission clarify that QFs will have recourse at FERC if they encounter any PURPA-related disputes associated with the implementation or application of the regulatory changes adopted in any Final Rule, including any implementation or application disputes arising with state commission actions.

IV. CONCLUSION

WHEREFORE, the Industrial Energy Consumers of America respectfully request that the Commission adopt only those targeted changes that are necessary to address specific and substantiated problems with PURPA implementation and consistent with the letter and spirit of PURPA. As discussed in these Comments, the Commission's faithful implementation of PURPA is critical to the continued viability of the industrial customers that rely on their Qualifying Facilities – both cogeneration and small power production - to manage their electricity costs and remain competitive in the national and international marketplaces.

Respectfully submitted,

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On Behalf of the Industrial Energy Consumers of America

Dated: December 3, 2019

CERTIFICATE OF SERVICE

I hereby certify that I have on this date caused a copy of the foregoing document to be served on each person included on the official service list maintained for this proceeding by the Commission's Secretary, by electronic mail or such other means as a party may have requested, in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010.

Dated this the 3rd day of December, 2019, at Washington, D.C.

/s/ Paul Cicio

Paul Cicio