 **AMERICAN DAMS**

 December 12, 2019

Kimberly Bose, Secretary

Federal energy Regulatory Commission

888 First Street, NE

Washington, DC 20426

**RE: Comments of American Dams in response to the Federal Energy Regulatory Commission’s (Commission) Notice of Proposed Rulemaking (NOPR) regarding Implementation Issues Under the Public Utility Regulatory Policies Act, Docket Numbers RM19-15-000 and AD16-16-000.**

American Dams[[1]](#footnote-1) (<https://Americandams.org>) is the voice for more than 80,000 small dam owners across the United States. Our mission is to educate the public on the benefits of dams, provide information on regulatory and operational matters, and provide guidance to dam owners on how best to operate their dams for the public’s benefits. One of these benefits is hydropower.

**AMERICAN DAMS SUPPORTS THE COMMENTS OF THE NATIONAL HYDROPOWER ASSOCIATION**

American Dams supports the December 3, 2019 comments of the National Hydropower Association (NHA). In particular American Dams concurs that the Commission retain the 20 MW rebuttable presumption for hydropower qualifying facilities because:

1. Hydropower growth and available incentives are significantly lower than other renewables and do not significantly support the development of new hydro, or even the continuation of existing hydro;
2. Hydropower is statutorily required to be built for purposes beyond just power generation; and,
3. The hydropower use of PURPA is not the driving force behind the need to reform PURPA.

With respect to item 2. above, new hydro is required to provide both recreation enhancements and fishery mitigation, including fish passage, oftentimes for impacts not caused by the hydropower project. These requirements can have a significant impact on project economics. For example, one project in Virginia required more than a year of negotiations with resource agencies to provide upstream and downstream resident and anadromous fish passage and recreation improvements at an existing non-powered dam. The capital cost of these improvements has a significant impact on the viability of the project and without fair compensation to the hydro owner, the project could become uneconomic, potentially forfeiting the public interest benefits which would not occur without the project.

Further, new small hydro projects and projects undergoing relicensing are frequently operationally constrained to provide run-of-river conditions. The current trend in RTO/ISO systems is to reduce or eliminate a project’s capacity compensation if the project cannot provide at least 75 percent of its rated capacity during the peak annual demand periods, even though the projects provide dependable capacity most of the year. In some cases, this can exceed 20 percent of annual revenues.

**SPECIFIC COMMENTS OF AMERICAN DAMS ON RM19-15-000**

**Paragraph 20**

Although renewable resources benefit from the availability of federal tax credits and from Renewable Portfolio Standards, these benefits are not extended to hydropower in the way they have been for other renewables like solar and wind. The Commission should factor this into the final rulemaking.

**Paragraph 22**

The Commission notes that “since 2005 QFs have made up only 10 to 20 percent of all renewable resource capacity in service in the United States. Consequently, today most renewable resources are not relying on PURPA in order to develop and operate.” The Commission notes that the electric utility industry is rapidly changing, including how utilities contract for renewable resources. Given recent changes, American Dams sees a greater percentage of small hydro owners seeking PURPA benefits, even with existing projects that previously have not sought PURPA certification.

**Paragraph 31**

“The Commission preliminarily finds that using a competitive price will continue to encourage the development of QFs and more closely adhere to PURPA’s requirement that rates for purchases of energy from QFs not only be capped at avoided cost, but also be just and reasonable to the purchasing electric utility’s electric consumers and in the public interest.” American Dams concurs that rates for the purchase of energy from QFs not only be capped at avoided cost, but also be just and reasonable. However, for high capital cost projects like hydro, the Commission should give consideration to longer term public benefits and not just consider short term market pricing. Although the price of renewable energy like wind and solar has fallen considerable since 2000, it may be equally important for the Commission to consider future trends in market pricing. One need only look at hourly pricing changes in California from 2011 to 2019. The hourly price shape has changed drastically during this very short period. Therefore both a short-term and long term perspective should be taken to protect public interests.

**Paragraph 36**

“PURPA requires that the Commission promulgate rules, to be implemented by the states,establishing the rates electric utilities pay for purchases of QF energy. Under PURPA, such rates must: (1) be just and reasonable to the electric consumers of the electric utility and in the public interest; (2) not discriminate against qualifying cogenerators or qualifying small power producers; and (3) not exceed “the incremental cost to the electric utility of alternative electric energy,”which is “the cost to the electric utility of the electric energy which, *but for* the purchase from such cogenerator or small power producer, such utility would generate or purchase from another source.” American Dams strongly supports these PURPA concepts. However, where a utility is vertically integrated, care needs to be taken to ensure that the playing field is level for QFs. If the utility can put the cost of new generation in its rate base, then the QF should be entitled to similar valuation provided that the QF costs are at or less than those of the utility.

**Paragraph 40**

“The record developed in the Commission’s technical conference docket, Docket No. AD16-16-000, where the Commission began its reconsideration of the PURPA Regulations, indicates that allowing QFs to fix their avoided cost rates at the time a LEO is incurred has resulted in overpayments as energy prices generally have declined over the years, leaving the fixed energy portion of the QF rate well above the purchasing electric utility’s actual avoided energy costs at the time of delivery.” American Dams concurs that historically there have been overpayments attributed to fixed avoided cost rates at the time a LEO has been incurred. However, it is important to equally consider the future potential for technological advancements with solar, wind and other renewables. For hydropower projects, once constructed, capital cost repayments are generally fixed. The Commission’s PURPA rules should provide flexibility that would benefit rate payers in the future as well as on a real time basis.

**Paragraph 43**

“The Commission proposes to revise the PURPA Regulations in 18 CFR § 292.304 to add subsections (b)(6) and (e)(1). In combination, these subsections would permit a state the flexibility to set the as-available energy rate paid to a QF by an electric utility located in an RTO/ISO at LMPs calculated at the time of delivery.” American Dams is not opposed to this approach as long as the avoided cost option is also maintained. Should the “as-available energy rate” be utilized, American Dams recommends that the administrative burdens on the QF be minimized. American Dams is concerned that its member companies are being required to provide 15-minute capacity and energy forecasts for the day-ahead market. For a small hydro facility these requirements are overwhelming.

Fair compensation for small hydro projects should include capacity and energy payments, as well as any transmission savings that otherwise would accrue to a utility if it were to purchase energy through the RTO/ISO. This is particularly true when the small hydro is within the territory of a utility.

**Paragraph 45**

“The Commission therefore preliminarily finds that LMP is an accurate measure of avoided costs.” LMP may be representative of short term avoided costs, but it may not be reflective of long term avoided costs for new generation. For resources that can be brought on line in a short time frame (e.g., one year), this seems reasonable, but could be problematic for a hydro project that may require 5 or more years for licensing and several years for construction. American Dams suggests that a LEO for hydro resources could be established once a FERC license or exemption is issued.

**Paragraph 54**

“Natural gas indices coupled with the heat rate of an efficient natural gas combined-cycle generating facility may also be a reasonably accurate measure of avoided cost, at least in those markets where natural gas commonly is the marginal fuel.” American Dams concurs that this is a good surrogate for avoided cost.

**Paragraph 61**

“The Commission therefore proposes to add a new option in § 292.304(d)(1)(iii) permitting fixed energy rates to be based on forecasted estimates of the stream of revenue flows during the term of the contract. In other words, states could rely on market estimates of forecasted energy prices at the times of delivery over the anticipated life of the contract – such estimates are commonly referred to as a forward price curve – to develop a fixed energy rate component for that contract when such estimates reflect the purchasing electric utility’s avoided costs.” American Dam’s concurs with this paragraph. However, the Commission should consider contract terms on the order of the financing period, with potential cost reductions thereafter.

**Paragraph 67**

“However, in that event, the only costs being avoided by the purchasing electric utility would be the incremental costs of purchasing or producing energy at the time the energy is delivered.” While American Dams concurs with this statement, the experience of our members indicates that the purchasing electric utility would otherwise pay a transmission charge to purchase energy if not for the QF selling energy. If a QF is providing the energy, the avoided cost should include all the incremental costs that the utility would otherwise need to pay.

**Paragraph 73**

“This evidence comes in the form of data, described below, showing that independent generators that have not qualified as QFs under PURPA (including renewable resources that could qualify as QFs but have not sought QF status) have been able to obtain financing for new facilities. That owners of such facilities, which do not have recourse to the avoided cost provisions of PURPA, have been able to obtain financing for new projects is highly relevant to the question of whether the existing PURPA avoided cost provisions – including the requirement to enter into contracts with fixed energy rates – are necessary for QFs to obtain financing.” While this may have been true for recently projects, there is evidence that some independent power producers in the PJM system could be experiencing financial challenges because of current low market prices, and the failure of any IPP could affect financing of future facilities. (See response to Paragraph 22.)

**Paragraph 116**

“The Commission also seeks comment on whether item 3c (geographic coordinates) and the Geographic Coordinates instructions on page 4 of the current Form No. 556 should be modified such that reporting of geographic coordinates should be required for *all* applications, rather than only for applications where there is no facility street address (as is now the case).” Identification of geographic coordinates requires only minor effort and should be encouraged for all applications. However, American Dams suggests that other administrative burdens be minimized unless there is a compelling need for such information.

**Paragraph 118**

“As relevant here, the PURPA Regulations establish a rebuttable presumption that QFs with a net power production capacity at or below 20 MW lack nondiscriminatory access to such markets. The Commission now proposes to revise the PURPA Regulations to

reduce the capacity level at which this presumption attaches for small power production facilities, but not cogeneration facilities, from 20 MW to 1 MW.” As argued by NHA, American Dams recommends that hydro facilities maintain the QF qualification at or below 20 MW, rather than the one megawatt proposed by the Commission for the reasons cited by NHA. At a minimum, the Commission should retain QF status for small hydro projects, currently defined at 10 MW. The administrative burdens for small hydro to access wholesale markets are onerous. Some of our members have investigated the PJM wholesale market and determined it too complex and burdensome for their small hydro. From their perspective, wholesale markets are discriminatory and favor larger projects which have the staffing to participate in the markets.

**Paragraph 122**

“The Commission noted that there was agreement among commenters representing both QFs and utilities that small size could affect a QF’s ability to access markets.The Commission explained that smaller QFs often are interconnected at the distribution level and that QFs interconnected at the distribution level may, in practice, lack the same level of access to markets as those connected to transmission lines.The Commission also explained that smaller QFs were more likely to have to overcome obstacles that larger QFs would not have to overcome, such as jurisdictional differences, pancaked delivery rates, and administrative burdens to obtaining access to distant buyers.” American Dams strongly concurs with the Commission’s findings on this issue. This is not limited to one megawatt projects. Hence, American Dams recommends that the Commission maintain the 20 MW threshold, or at a minimum have a 10 MW threshold.

**Paragraph 126**

“Consequently, the Commission believes that small power production facilities below 20 MW should be able to participate in such markets under most circumstances.” American Dams does not see an evidentiary record denoting a one MW threshold. Rather based on the experience of our members a 10 to 20 MW threshold seems appropriate for a QF.

**Paragraph 127**

“Under current market conditions, it is fair to expect that small power production facilities above 1 MW can acquire the administrative and technical expertise necessary to obtain nondiscriminatory access to a market.” We disagree with the Commission’s rationale on this issue. The current economic viability of small hydro facilities is challenged given the low market rates currently in effect. Additional burdens to address additional administrative requirements are not sustainable. Further the technical expertise necessary to access the market could render small hydro facilities uneconomic. The Commission has not demonstrated in its NOPR that a 2 or 10 MW facility can cost-effectively acquire the expertise needed to participate in the wholesale market.

**Paragraphs 128 and 129**

“ … the Commission has taken steps to ease both interconnection and market access for generation resources with small capacities since it first implemented section 210(m) of PURPA. For example, the Commission has required public utilities to provide a Fast-Track interconnection process for some interconnection customers whose capacity is up to and including 5 MW (up from the previous 2 MW threshold)” American Dams appreciates the Commissions Fast-Track approach for interconnections up to and including 5 MW. However, the interconnection process for small hydro projects is anything but fast track. One example is the more than 1 ½ years that it took to complete the interconnection process for an existing project whose license was transferred. It took the RTO/ISO more than one year **afte**r the Commission approved the license transfer to complete the interconnection agreement for a small hydro that had been operating for over 50 years. Although not the subject of this rule making, American Dams submits that interconnection agreements are one of the most pressing needs for the Commission to streamline.

**Paragraph 136**

“As discussed below, however, the Commission proposes to amend § 292.304(d) of the PURPA Regulations to require that a QF demonstrate its commercial viability and financial commitment to construct its facility through objective and reasonable state-determined criteria before being entitled to a LEO.” American Dams concurs that this is a reasonable approach and will protect the public interest.

**Paragraph 138**

“QF developers argue generally that they need the certainty of a LEO to obtain the financing to build their facilities in the first place, as QFs do not have the same ability that the electric utilities have to “rate base” their facilities and, thereby, guarantee capital recovery.” American Dams strongly agrees with this statement. We do not dispute a guaranteed capital recovery for utilities to maintain the electrical grid, however, in order to ensure a level playing field, QFs should have the certainty of a LEO.

**Paragraph 148**

“The Commission proposes to change § 292.207(a) of the PURPA Regulations to allow a party to intervene and to file a protest of a self-certification or self-recertification of a facility without the necessity of filing a separate petition for declaratory order and without having to pay the filing fee required for a declaratory order.” American Dams concurs with the Commission’s proposal for the certification process. It is fair and reasonable.

**Proposed Revisions to Regulations**

“(e) *Transmission to other electric utilities.* If a qualifying facility agrees, an electric utility which would otherwise be obligated to purchase energy or capacity from such qualifying facility may transmit the energy or capacity to any other electric utility. Any electric utility to which such energy or capacity is transmitted shall purchase such energy or capacity under this subpart as if the qualifying facility were supplying energy or capacity directly to such electric utility. The rate for purchase by the electric utility to which such energy is transmitted shall be adjusted up or down to reflect line losses pursuant to § 292.304(e)(4) and shall not include any charges for transmission.” American Dams concurs with this proposed regulation. However, American Dams recommends that if a utility would otherwise pay a transmission charge to purchase energy should the QF energy not be available, that cost should be considered as part of the avoided cost.

**AMERICAN DAMS SUPPORTS COMMISSIONER GLICK COMMENTS DISSENTING IN PART**

American Dams strongly supports Commissioner Glick’s dissenting in part. In particular, American Dams agrees that PURPA’s continuing relevance is an issue for Congress to decide. Most importantly, American Dams supports the Commissioner’s perspective on avoided cost and reducing the 20 MW rebuttable presumption. Avoided cost should not solely be based on instantaneous cost savings, but rather on a longer term horizon and reliability. For over a hundred years, hydropower has shown that it is one of the most reliable forms of generation.

American Dams appreciates the opportunity to comment on the Commission’s NOPR. American Dams would be pleased to provide additional supporting information as requested by the Commission’s staff. American Dams can be reached at (916) 719-7022 or at American\_Dams@yahoo.com.

Sincerely.



Wayne M Dyok,

Executive Director

1. American Dams is located at 305 Otey Street, Bedford, Virginia 24523 [↑](#footnote-ref-1)