December 3, 2019

The Honorable Neil Chatterjee, Chairman
The Honorable Richard Glick, Commissioner
The Honorable Bernard L. McNamee
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426

RE: Federal Energy Regulatory Commission's "Qualifying Facility Rates and Requirements; Implementation Issues Under the Public Utility Regulatory Policies Act of 1978" 84 Federal Register 53246 (October 4, 2019) [Docket Nos. RM19-15-000 and AD16-16-000]

Dear Chairman Chatterjee, Commissioner Glick, and Commissioner McNamee:

On behalf of National Taxpayers Union (NTU), I am honored to submit the following brief comments regarding the Commission's Notice of Proposed Rulemaking (NOPR) under the Docket Numbers referenced above. We thank you for this opportunity to provide comments regarding FERC's potential changes to PURPA—the Public Utility Regulatory Policies Act.

As a citizen group founded in 1969 to work for less burdensome taxes and more government spending restraint, NTU has a direct interest in energy policy, including the development of a fiscally sustainable power system. Without a generation network that reflects this quality, consumers' and businesses' financial well-being could be threatened, and with it the robust economic activity that contributes to government treasuries. At the same time, lack of fiscal sustainability also raises the pressure for further public-sector intervention, in the form of loans, subsidies, or other policies that burden taxpayers. It is therefore important that PURPA fulfill the ends of a well-functioning power market that evolves with our economy and society.

Due to the national energy crisis, Congress passed PURPA in 1978 to create competitive alternatives to oil use. It did so by mandating electric utilities to purchase renewable energy from independent companies it labeled as qualified facilities (QFs).

Nevertheless, even then, Congress directed FERC to revise its PURPA implementing regulations "from time to time." Given that since PURPA's enactment, renewable energy has transformed from a fledging industry to an impressive, functioning market sector in and of itself, we agree with the Commission's wisdom that this is a suitable point in the energy development space to analyze PURPA's role. Stability and certainty in laws must go hand-in-hand with adaptability, in order to foster an ideal environment for competition and innovation. Indeed, all stakeholders can be well-served by the dialogue that thoughtfully written NOPRs such as the Commission's can engender.

The National Association of Regulatory Utility Commissioners ("NARUC"), the institution that represents all of the 50 states' Public Service Commissioners, released an October 11 whitepaper titled *Aligning PURPA with the Modern Energy Landscape – A Proposal to FERC.* It stated that "more than half of States have their own renewable mandates, and even those which do not, have shown substantial additions in renewable resources, not

because of PURPA, but because of the falling cost curve of renewable technologies such as solar and wind." It went on to say that "PURPA in many situations now works at cross purposes with competition policy" and that "reform of FERC's regulations on PURPA is one of states' top priorities."

For this reason, one crucial area to focus FERC's reform efforts should be the flexibility provided to state regulators. Currently, PURPA is a federally-driven initiative. But by carefully giving states more latitude to establish and meet PURPA mandates based on their unique energy situations and landscapes, the law would have a higher likelihood of reflecting the new, unique aspects of today's markets. It would provide a reasonable basis for establishing pro-market, pro-competitive adjustments to existing policy – benefitting consumers, investors, regulators, and taxpayers alike. Private investment in renewable energy is on the upswing, and care must be taken to respect this trend while avoiding distortionary changes that will do more harm than good. Thankfully, however, FERC's framework appears to be a reasonable starting point for systematically evaluating adjustments to policy.

Additionally, public officials at all levels should consider other policies that might facilitate (or impede) additional development of and investment in alternative energy, again while minimizing distortions. To begin with, decisionmakers should review which Environmental Protection Agency (EPA) regulations might still be standing in the way of wind farm development, or state and local barriers to siting.[1] Moreover, it will be important to determine whether making the federal research & development tax credit permanent has benefited energy investment. Furthermore, in an intriguing *Montana Law Review* article, attorney Lindsey W. Hromadka proposed that the federal tax deduction for private conservation easements be expanded to include renewable energy production as a qualifying conservation purpose.[2]

Finally, according to an analysis from the online solar marketer EnergySage, current tariff policies have increased the average price of a residential solar installations by $960 compared to what the cost would have been in the absence of tariffs.[3] Other trade policies may be impacting renewable deployment further upstream.

While it is outside FERC's purview to actually implement changes to these policies, taking them into account as FERC does its own work would strengthen the understanding between all stakeholders of the relative importance of the NOPR on the docket.

Thank you for your consideration of these comments, and should you have any questions, NTU is at your service.

Sincerely,

Pete Sepp
President

[1] See, for example, https://www.forbes.com/sites/energyinnovation/2017/04/12/barriers-to-renewable-energy-siting-impede-state-climate-goals-innovative-policy-can-help/#5a3283ff18d4
[2] See https://scholarship.law.umt.edu/mlr/vol77/iss2/5.
[3] See https://news.energysage.com/2018-us-solar-tariff-impact-prices/