

**RESOLUTION MAKING DETERMINATIONS
CONCERNING PURPA STANDARDS**

WHEREAS, the Public Utility Regulatory Policies Act of 1978 (“PURPA”) was enacted to encourage (1) the conservation of energy supplied by electric utilities, (2) the optimal efficiency of electric utility facilities and resources, and (3) equitable rates to electric consumers;

WHEREAS, PURPA requires nonregulated utilities such as the Fayetteville Public Works Commission (“PWC”) to consider specific standards set forth in PURPA (the “standards”) and determine whether each standard should be implemented;

WHEREAS, PWC provided public notice that it had commenced consideration of the standards and set a public hearing date for February 22, 2023 to allow for written and/or oral comment from intervenors and others from the public;

WHEREAS, at the February 22, 2023, public hearing PWC presented evidence regarding the standards, identified and discussed issues related to the standards, and provided opportunity for written and/or oral comment from the public; and

WHEREAS, PWC has completed its consideration and determination process for the applicable standards in accordance with the requirements of PURPA.

THEREFORE, LET IT BE RESOLVED BY THE COMMISSIONERS OF THE FAYETTEVILLE PUBLIC WORKS COMMISSION THAT:

1. PWC declines to adopt the PURPA standards set forth in 16 U.S.C.A. §§ 2621(d)(1) – (7), (9), (11) – (17), and (19) – (21) regarding cost of service, declining block rates, time-of-day rates, seasonal rates, interruptible rates, load management techniques, integrated resource planning, energy efficiency investments in power generation and supply, net metering, fuel sources, fossil fuel generation efficiency, time-based metering and communications, interconnection, rate design modifications to promote energy efficiency investments, smart grid information, demand-response practices, and electric vehicle charging programs based on, and for the reasons established by, the evidence presented by PWC staff at the February 22, 2023, public hearing and as more specifically set forth in Exhibit 1 attached hereto and incorporated herein by reference.

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2. PWC takes judicial notice of the relevant North Carolina Utilities Commission's orders and records as more specifically described in Exhibit 1 as additional evidence of the reasons for which PWC declines to adopt the PURPA standards.

ADOPTED this 8th day of March, 2023.

FAYETTEVILLE PUBLIC WORKS COMMISSION

Ronna Rowe Garrett, Chairperson

ATTEST:

Evelyn O. Shaw, Secretary

Exhibit 1

The Public Utility Regulatory Policy Act (“PURPA”) of 1978 was enacted into law to encourage (1) conservation of energy supplied by electric utilities, (2) optimal efficiency of electric utility facilities and resources, and (3) equitable rates for electric consumers.¹ PURPA sets forth that “each nonregulated electric utility shall consider” each applicable standard set forth in PURPA and then “make a determination concerning whether or not it is appropriate to implement such standard.”² PURPA defines a “nonregulated utility as “any electric utility other than a State regulated utility.”³ Although PWC is required to consider and make a determination as to each applicable “shall consider” standard, PURPA recognizes that “nothing in this subsection prohibits any state regulatory authority or non-regulated electric utility from making any determination that it is not appropriate to implement any such standard.”⁴

Subject to the receipt and review of additional comments or evidence, if any, PWC staff has prepared this Exhibit 1, which provides staff’s recommendation for each applicable PURPA standard. PURPA contains twenty-one (21) “shall consider” standards, of which eighteen (18) are applicable to PWC.⁵ PWC staff has grouped the “shall consider” standards based on similar issues that the standards concern. Those groups are as follows:

1. Rate-making

- Cost of Service
- Declining Block Rates
- Time-of-Day Rates
- Seasonal Rates
- Interruptible Rates
- Time-Based Metering and Communications

2. DSM/EE

- Load Management Techniques
- EE for Power Generation & Supply
- Fossil Fuel Generation Efficiency
- Demand-Response Practices

3. Planning

- IRP
- Fuel Sources

4. Grid

- Interconnect
- Smart Grid Information

5. Renewables

- Net Metering
- EV Charging Programs

PWC staff provides recommendations regarding each of the groups of the PURPA “shall consider” standards as follows:

1. Rate-making Consideration

Seven of the PURPA standards concern customer rate and design and specifically cover cost of service,⁶ declining block rates,⁷ time-of-day rates,⁸ seasonal rates,⁹ interruptible rates,¹⁰ time-based metering and communication,¹¹ and rate design modifications to promote energy efficiency investments cost.¹² PWC’s prior ratemaking considerations and decisions have

¹16 U.S.C.A. §2611

²16 U.S.C.A. § 2621(a)

³*Id.*

⁴*Id.*

⁵Note that 16 U.S.C.A. § 2621(d)(8) concerning investments in conservation and demand management and § 2621(d)(10) regarding consideration of the effects of wholesale power purchases on utility cost of capital and related issues only apply to a State regulated electric utility, and that § 2621(d)(18) only applies to the State.

⁶16 U.S.C.A. § 2621(d)(1)

⁷*Id.* at § 2621(d)(2)

⁸*Id.* at § 2621(d)(3)

⁹*Id.* at § 2621(d)(4)

¹⁰*Id.* at § 2621(d)(5)

¹¹*Id.* at § 2621(d)(14)

¹²*Id.* at § 2621(d)(17)

addressed, at least in part, each of the standards. Although PWC staff considers cost of service for each class of its electric customers when developing its rates, staff cannot guarantee that PWC's rates will reflect the cost of service "to the maximum extent practicable,"¹³ which would be required if the standard is adopted. Pursuant to PWC's ratemaking authority, PWC has adopted time-of-use rates that incorporate the varying seasonal and time-of-use costs. PWC has also adopted rate schedules that promote energy efficiency investments, which is part of the requirements set forth in the applicable standard. The rates adopted by PWC do not include declining block rates for any of its customer classes, which is consistent with the applicable PURPA standard. PWC has not adopted a specific interruptible rate, because, in part, PWC plans capacity to meet the needs of any potential interruptible customers. That said, PWC's Service Regulations and Charges specifically advise that "PWC does not guarantee a continuous supply of any utility but shall use reasonable diligence in providing uninterrupted delivery of a utility" and that PWC may "interrupt or suspend the delivery or usage of utilities" when, among other categories, "[t]he demand for the delivery or usage of utilities exceeds PWC's ability to supply them."

PWC has statutory ratemaking authority that is not regulated by a State regulatory authority. While the PURPA standards related ratemaking concern issues that PWC has addressed, in part, PWC staff recommends that the Commission decline to adopt any of the standards in order to preserve the full extent of PWC's ratemaking authority and to allow flexibility for future ratemaking decisions.

2. Design Side Management and Energy Efficiency

The applicable PURPA standards regarding design side management and energy efficiency include strict language that would require PWC to offer to its electric consumers such load management techniques" that will (a) be practicable and cost-effective, (b) be reliable, and (c) provide useful energy or capacity management advantages to the electric utility.¹⁴ and to charge rates that "encourage investments in, and expenditures for, all cost-effective improvements in the energy efficiency of power generation, transmission, and distribution."¹⁵ The standards likewise require an adopting electric utility to develop and implement a plan to increase the efficiency of any fossil fuel generation. Lastly, the standards require promoting the use of demand-response and demand flexibility during periods of "unusually high demand."¹⁶

The overarching purpose of load management standards is to reduce system load during extreme peak periods in order to avoid expensive capacity expansions, peak fuel expenditures, and/or purchased power costs. As a wholesale purchaser of electricity, PWC has limitations with respect to its ability to implement each of these standards in full and as required by the strict language of PURPA. While PWC utilizes various indirect load management techniques for its various customer classes, such as time-of-use rates and differing coincident peak rates based on monthly customer demand, there are practical limitations of those considerations. Moreover, PWC has established rates that provide pricing signals to promote economic efficiency.

The relevant PURPA standards concerning demand-response practices requires that "[e]ach electric utility shall promote the use of demand-response and demand flexibility practices by commercial, residential, and industrial consumers to reduce electricity consumption during periods of unusually high demand."¹⁷ PWC uses indirect methods through its ratemaking authority to motivate changes in electric use by its customers, such as rates designed to lower electricity use typically at times of high demand. This is accomplished through PWC's time-of-use rates for

¹³*Id.* at § 2621(d)(1)

¹⁴*Id.* at § 2621(d)(6)

¹⁵*Id.* at § 2621(d)(9)

¹⁶*Id.* at § 2621(d)(20)

¹⁷*Id.* at § 2621(d)(20)

residential customers and the coincident peak rates for commercial and industrial customers. PWC recently adopted optional Whole Home/Business rates that provide customers with additional incentives for off peak energy use by introducing a new super off-peak rate that is 50% less than PWC's current off-peak electric rate.

PWC staff recommends that the Commission decline to adopt the PURPA standards related to design side management and energy efficiency in order to preserve the full extent of PWC's ratemaking authority and retain maximum flexibility for PWC to ensure that it meets its statutory, contractual, and operational obligations.

3. Planning

PURPA proposes that “[e]ach electric utility shall employ integrated resource planning”¹⁸ and “develop a plan to minimize dependence on 1 fuel source and to ensure that the electric energy it sells to consumers is generated using a diverse range of fuels and technologies, including renewable technologies.”¹⁹ PWC has completed integrated resource planning several times, including when evaluating and negotiating its power supply agreement with Duke Energy Progress. Those evaluations have concerned, in part, fuel sources from which PWC ultimately derives its electric energy. More recently, and as part of its 2022 Strategic Plan, PWC recognized a need to “Complete an Integrated Resource Plan to determine power resource” as one of PWC's “Key Initiatives.” To accomplish that goal, PWC published a request for proposals for “Power Generation Resources Planning Services” (PWC2021035) and, after evaluating the responses, entered into a service agreement with GDS Associates, Inc. to complete an integrated resource plan. GDS Associates, Inc. prepared an integrated resource plan with input from PWC staff and presented that plan with PWC staff to the Commission and public at one of PWC's regularly scheduled meetings. PWC also complies with the North Carolina requirements regarding Renewable Energy Portfolio Standards.

PWC staff recommends that the Commission decline to adopt the PURPA standards related to planning issues in order to retain maximum flexibility for PWC to ensure that it meets its statutory, contractual, and operational obligations.

4. Grid Considerations

The PURPA standards related to grid considerations strictly require that an “electric utility shall make available, upon request, interconnection service to any electric consumer that the electric utility serves”²⁰ and for an electric utility to provide direct access to information concerning prices, usage, intervals and projects on a daily basis, and sources of power provided by the utility.²¹ PWC allows interconnection to its system as appropriate and consistent with specific terms and conditions and after certain technical specifications are met. PWC also provides information to its customers and the public regarding pricing, usage, intervals, and sources. That said, PWC is limited with respect to its contractual obligations and operational needs as to being able to fully comply with the proposed PURPA-related grid consideration.

Therefore, PWC staff recommends that the Commission decline to adopt the PURPA standards related to planning issues in order to retain maximum flexibility for PWC to ensure that it meets its statutory, contractual, and operational obligations.

¹⁸*Id.* at § 2621(d)(7), (16)

¹⁹*Id.* at § 2621(d)(12)

²⁰*Id.* at § 2621(d)(15)

²¹*Id.* at § 2621(d)(19)

5. Renewable Transformation

PURPA has introduced standards that would require an electric utility to “make available upon request net metering service to any electric consumer that the electric utility serves.”²² The standard does not provide any guidance or leniency concerning circumstances when net metering would not be appropriate for a specific customer or request. PWC has adopted its Buy All Sell All rate, which is a form of net metering. PWC also complies with the provisions of PURPA related to qualifying facilities, which also include net metering issues.

In addition, the newest PURPA standard requires a utility to “consider measures to promote greater electrification of the transportation section[.]”²³ As previously mentioned, PWC recently adopted its Whole Home/Whole Business rate, which is intended, in part, to encourage electric vehicle owners to charge during low demand hours and that lessen the electric vehicle impacts on the electric system during higher demand times.

Due to the ongoing renewable transformation for electric utilities, PWC staff recommends that the Commission decline to adopt these PURPA standards in order to retain maximum flexibility for PWC to ensure that it meets its statutory, contractual, and operational obligations.

6. North Carolina Utilities Commission

The North Carolina Utilities Commission (“NCUC”), as the State regulatory authority for North Carolina, has considered and made determinations regarding several of the PURPA standards discussed in this Exhibit 1. The NCUC has considered and made a determination regarding:

- 16 U.S.C.A. § 2621(d)(12)-(14) in the relevant record and the NCUC’s December 11, 2006, Order Declining to Adopt Standards in Docket No. E-100, Sub 108
- 16 U.S.C.A. §§ 2621(d)(11) and (15) in the relevant record and the NCUC’s August 8, 2007, Order Affirming Preliminary Conclusion of Prior State Action in Docket No. E-100, Sub 107
- 16 U.S.C.A. §§ 2621(d)(16)-(19) in the relevant record and the NCUC’s December 19, 2007, Order Declining to Adopt Federal Standards in Docket No. E-100, Sub 123

PWC staff recommends that the Commission take judicial notice of the relevant North Carolina Utilities Commission’s orders and records in Docket No E-100, Sub 108; Docket No. E-100, Sub 107; and Docket No. E-100, Sub 123 as additional evidence of the reasons for which PWC should declines to adopt the PURPA standards set forth in 16 U.S.C.A. § 2621(d).

²²*Id.* at § 2621(d)(11)

²³*Id.* at § 2621(d)(21)