FERC’s Recent Ruling(s) on PURPA: Competitive Procurement Option

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PRESENTED FOR
EUCI Online Conference

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Agenda

- Competitive Procurement in PURPA History
  - Motivation
  - Implementation

- Competitive Procurement in Order 872
  - Overview
  - Core Design Options and Requirements
  - Mandatory Purchase Option
  - Capacity Needed
  - Independent Administrator
## Competitive Procurement in PURPA History

### Motivation

- **Determining avoided cost customarily an administrative process**
- **“But-for” analyses have been challenging from the start**

<table>
<thead>
<tr>
<th>Method</th>
<th>Pros</th>
<th>Cons</th>
</tr>
</thead>
<tbody>
<tr>
<td>Next planned unit</td>
<td>No modeling</td>
<td>Scale/ timing mismatch</td>
</tr>
<tr>
<td>Marginal capacity and energy (“peaker”)</td>
<td>Captures marginal cost</td>
<td>May require modeling</td>
</tr>
<tr>
<td>Comparative system-wide costs</td>
<td>Comprehensive</td>
<td>Requires extensive modeling</td>
</tr>
<tr>
<td>Fuel index rates</td>
<td>Transparency</td>
<td>Doesn’t capture capacity value</td>
</tr>
</tbody>
</table>

Other hazards can include general errors in avoided cost methodology, such as the inclusion of sunk costs or failure to consider avoidable power purchases.
Competitive Procurement in PURPA History

Motivation

This has led to:

- Controversy over methods, *ex ante* and *ex post*.
- With only price rationing, adverse practical outcomes:
  - Over-abundance of offered QF supply.
  - Associated operating and planning problems.
Competitive Procurement in PURPA History
Motivation

Past events of over-supply:

- Early California experience a harbinger of today’s challenges.
- Standard Offer 4 (SO4) in the 1980s
- After fostering a large amount of QF capacity, SO4 was suspended in 1985.
- This was repeated elsewhere in the country.
- LBNL reported capacity offered by QFs 10-20 times required amounts.

More recent examples of over-supply:

- Burgeoning solar QFs in North Carolina
- Explosive growth since 2013
- In just five years, grew from 1% to 12% of statewide capacity, or more than 50% annually
Competitive bidding under PURPA has been a natural consideration to:

- Replace administrative methods with market process.
- Limit the amount of QF capacity to utility capacity needs.
- Rank QF operating and other characteristics.
## Competitive Procurement in PURPA History

<table>
<thead>
<tr>
<th>Year</th>
<th>Event Description</th>
<th>QF Growth in Period</th>
<th>Overall MW</th>
<th>Renewable Portion %</th>
</tr>
</thead>
<tbody>
<tr>
<td>1978</td>
<td>&lt;&lt; PURPA Enacted</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1980</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1985</td>
<td>&lt;&lt; SO4 contracts in CA suspended</td>
<td>7,253</td>
<td>7%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>&lt;&lt; 1988 “Bidding NOPR” (RM88-5)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1990</td>
<td>&lt;&lt; Approximately 10 states had some type of bidding mechanism</td>
<td>19,479</td>
<td>4%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>&lt;&lt; &quot;Montana Rule&quot; requiring competitive bidding</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1995</td>
<td>&lt;&lt; Industry restructuring diverts attention from PURPA</td>
<td>15,425</td>
<td>1%</td>
<td></td>
</tr>
<tr>
<td>2000</td>
<td></td>
<td>9,451</td>
<td>3%</td>
<td></td>
</tr>
</tbody>
</table>
| 2005 | << EPAct 2005 |                     | 13,760 | 7% |}
| 2010 | << FERC ruled the Montana Rule posed “Unreasonable Obstacles” | 2,975 | 121% |
| 2015 | << FERC repeated concerns raised in MT in Windham Solar LLC and Allco Finance Ltd. | 8,430 | 105% |
|      | << Utility bidding programs in CO, FL, GA, MI, NV, NC, OK, OR |              | 7,463 | 130% |
| 2020 | << Orders 872 and 872-A |                     |            |                     |
State Bidding Programs Cited as Requiring Reform by Intervenors in Order 872

<table>
<thead>
<tr>
<th>State</th>
<th>Issue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Colorado</td>
<td>Utilities can waive competitive solicitation requirements</td>
</tr>
<tr>
<td>Florida</td>
<td>No Independent Evaluator</td>
</tr>
<tr>
<td>Nevada</td>
<td>Too narrow</td>
</tr>
<tr>
<td>North Carolina</td>
<td>Self-build gets preferential treatment</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>Utilities can waive competitive solicitation requirements</td>
</tr>
</tbody>
</table>
Attempt to codify lessons of past efforts:

(i) Open and Transparent Processes, including*
   • transmission constraints
   • levels of congestion, and
   • interconnections

(ii) Option for Full Compliance via All Source Auctions
   • to satisfy identified utility capacity needs
   • accounting for “required operating characteristics of the needed capacity”

(iii) Regular Intervals

(iv) Oversight by Independent Administrator

(v) Post-Solicitation Certification Report

* subject to appropriate confidentiality safeguards
Competitive Procurement in Order 872 (July 2020)
Core Design Options and Requirements

1. Satisfying Mandatory Purchase Obligation
   - Exclusive
     - No
   - Residual
     - Per statute (possibly subject to zero capacity and variable energy rates)
     - Yes
       - As-available energy only

2. Capacity Needed
   - System “Required Operating Characteristics”

3. Independent Administrator
   - Role Limited to “Oversight”
   - Other Requirements
Competitive Procurement in Order 872 (July 2020)
Mandatory Purchase Obligation

QF Concerns
- Solicitation process should not be used in any way to curtail or delay a utility’s obligation to purchase from QFs

Utility Concerns
- Gaming of residual purchase obligation
  (QFs should not be able to force their power on utilities if they lose fair auctions)

Order 872-A (November 2020)
- No revisions on these points
Competitive Procurement in Order 872 (July 2020)
Capacity Needed

<table>
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<tr>
<th>Supply Option</th>
<th>QF Only</th>
<th>All-Source</th>
</tr>
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### QF Concerns
- Some QF-only solicitations can be overly limited to meet a small, segregated portion of utility needs.
- Complexity of scoring to meet "IRP" criteria
- Not clear that small QFs can be competitive
- System required operating characteristics should not be defined only for non-QF generation or utility favored generators

### Utility Concerns
- Rates for purchases should not be based on an avoided cost set by determining the cost of procuring energy and/ or capacity to fulfill a state regulatory...mandate

### Order 872-A (November 2020)
- States can recognize non-energy factors such as RPS requirements in "required operating characteristics"
A competitive solicitation should be administered and scored (not just overseen by an independent evaluator) by a qualified independent party, not the utility.

States are in the best position to determine the need for “oversight by an independent administrator”; this criterion should be deleted.

A competitive solicitation should be administered and scored by an independent entity.
Bob Mudge is a Principal of The Brattle Group in the Washington DC office. A former banker, he has played a central role in developing financeable contract structures for large public and private infrastructure projects, numerous power project financings, utility mergers and acquisitions and bankruptcy restructuring.

Mr. Mudge has provided expert testimony in diverse forums on matters with a bearing on project finance feasibility and/or impact, including the U.S. District Court for the Southern District of New York, the Massachusetts Superior Court, the Maine Department of Environmental Protection, and the American Arbitration Association as well as the Federal Energy Regulatory Commission and public utility commissions in Massachusetts, Missouri, and Alberta.
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