

Procedures for Implementing the "PURPA Standards" in the Energy Independence and Security Act of 2007

E-Forum Presentation by
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Reference Manual

- Reference Manual and Procedures for Implementation of the "PURPA Standards" in the Energy Independence and Security Act of 2007*
- Currently available at:
<http://www.naruc.org/Publications/EISStandardsManualFINAL.pdf>
- Only part of the manual is covered here – "Overview and Background," "Implementation Procedures," and a summary of the standards

Historical Background

- ❑ Public Utility Regulatory Policies Act (PURPA) of 1978
- ❑ PURPA originally included six federal standards
- ❑ The Energy Policy Act of 1992 amended PURPA section 111(d) and added four additional federal standards
- ❑ The Energy Policy Act of 2005 added five new federal standards to PURPA section 111(d) -- (11) net metering, (12) fuel diversity, (13) fossil fuel generation efficiency, (14) time-based metering and communications, and (15) interconnection

The "Energy Independence and Security Act of 2007"

- ❑ The new federal standards added to the "Energy Independence and Security Act of 2007" (EISA):
 - (16) "*Integrated Resource Planning*"
 - (17) "*Rate Design Modifications to Promote Energy Efficiency Investments*"
 - (16) "*Consideration of Smart Grid Investments*"
 - (17) "*Smart Grid Information*"
- ❑ That is not a misprint on our part, the standard numbers are repeated in the statute

Additional PURPA 111(d) Standards (EISA sec. 532)

(16) INTEGRATED RESOURCE PLANNING

Each electric utility shall—

(A) integrate energy efficiency resources into utility, State, and regional plans; and

(B) adopt policies establishing cost-effective energy efficiency as a priority resource.

Additional PURPA 111(d) Standards (EISA sec. 532)

(17) RATE DESIGN MODIFICATIONS TO PROMOTE ENERGY EFFICIENCY INVESTMENTS

(A) IN GENERAL.—The rates allowed to be charged by any electric utility shall—

- (i) align utility incentives with the delivery of cost-effective energy efficiency; and
- (ii) promote energy efficiency investments.

(B) POLICY OPTIONS.—In complying with subparagraph (A), each State regulatory authority and each nonregulated utility shall consider—

- (i) removing the throughput incentive and other regulatory and management disincentives to energy efficiency;
- (ii) providing utility incentives for the successful management of energy efficiency programs;
- (iii) including the impact on adoption of energy efficiency as 1 of the goals of retail rate design, recognizing that energy efficiency must be balanced with other objectives;
- (iv) adopting rate designs that encourage energy efficiency for each customer class;
- (v) allowing timely recovery of energy efficiency-related costs; and
- (vi) offering home energy audits, offering demand response programs, publicizing the financial and environmental benefits associated with making home energy efficiency improvements, and educating homeowners about all existing Federal and State incentives, including the availability of low-cost loans, that make energy efficiency improvements more affordable.

Additional PURPA 111(d) Standards (EISA sec. 1307) (16) CONSIDERATION OF SMART GRID INVESTMENTS

(A) IN GENERAL.—(Each State shall consider requiring that, prior to undertaking investments in nonadvanced grid technologies, an electric utility of the State demonstrate to the State that the electric utility considered an investment in a qualified smart grid system based on appropriate factors, including—

- (i) total costs;
- (ii) cost-effectiveness;
- (iii) improved reliability;
- (iv) security;
- (v) system performance; and
- (vi) societal benefit.

Additional PURPA 111(d) Standards (EISA sec. 1307(A)&(B))

(17) SMART GRID INFORMATION

(A) STANDARD.—All electricity purchasers shall be provided direct access, in written or electronic machine-readable form as appropriate, to information from their electricity provider as provided in subparagraph (B).

(B) INFORMATION.—Information provided under this section, to the extent practicable, shall include:

(i) PRICES.—Purchasers and other interested persons shall be provided with information on—

- (I) time-based electricity prices in the wholesale electricity market; and
- (II) time-based electricity retail prices or rates that are available to the purchasers.

(ii) USAGE.—Purchasers shall be provided with the number of electricity units, expressed in kwh, purchased by them.

(iii) INTERVALS AND PROJECTIONS.—Updates of information on prices and usage shall be offered on not less than a daily basis, shall include hourly price and use information, where available, and shall include a day-ahead projection of such price information to the extent available.

(iv) SOURCES.—Purchasers and other interested persons shall be provided annually with written information on the sources of the power provided by the utility, to the extent it can be determined, by type of generation, including greenhouse gas emissions associated with each type of generation, for intervals during which such information is available on a cost-effective basis.

The "Energy Independence and Security Act of 2007" (continued)

- ❑ There is also a "non-PURPA" federal standard in Section 374 of EISA:
"Additional Incentives for Recovery, Use, and Prevention of Industrial Waste Energy"
- ❑ This standard is not an amendment to PURPA
- ❑ While it has some similar provisions as PURPA, this standard has distinctive requirements written as part of the standard's statutory language
- ❑ This standard will be discussed in this presentation after the PURPA standard requirements

The PURPA Purposes

- ❑ As stated in the 1978 law, PURPA was to encourage (PURPA section 101):
 - 1) conservation of energy supplied by electric utilities,
 - 2) optimal efficiency of electric utility facilities and resources, and
 - 3) equitable rates for electric consumers
- ❑ These purposes are independent of one another and are not listed in order of preference or priority

State- and Utility-Specific Determination

- ❑ Each state commission and nonregulated utility must make its own independent determination on the new PURPA standards
- ❑ States have different laws and procedures, some have already addressed the issues raised by the standards, and some may have already adopted comparable standards
- ❑ Each state and affected nonregulated utility needs to consider how the standards fit with their conditions, procedures, and prior actions
- ❑ The manual and this forum are not a substitute for a state- and utility-specific analysis

Procedural Requirements

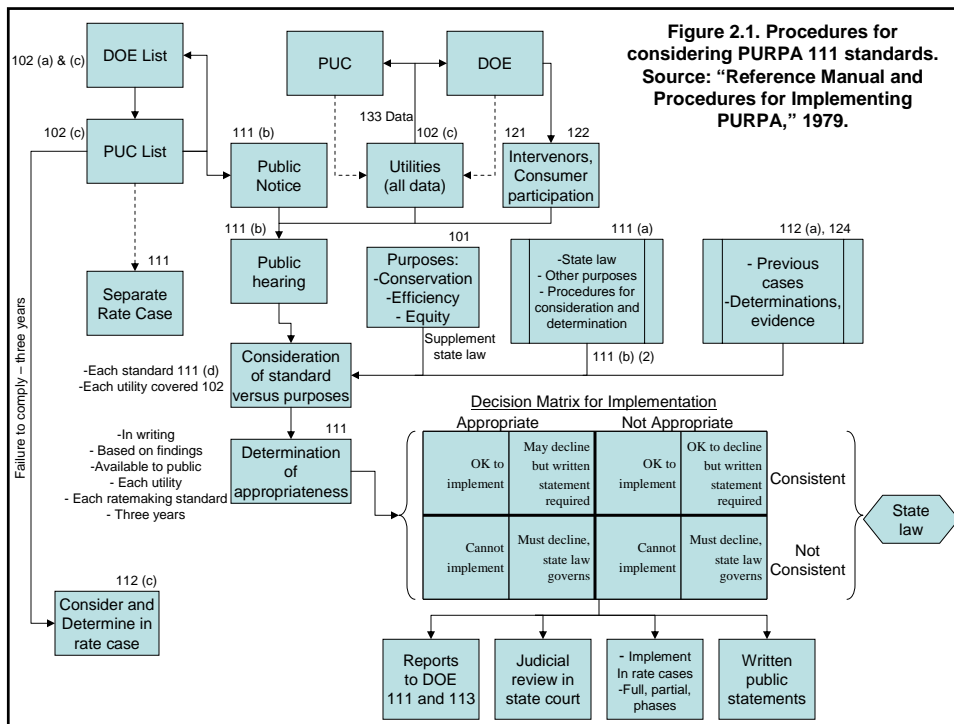
- ❑ PURPA stated that (section 111(a))
“each state regulatory authority . . . and each nonregulated electric utility shall consider each standard” and then “make a determination concerning whether or not it is appropriate to implement such standard”
- ❑ PURPA also states that
“nothing in this subsection prohibits any state regulatory authority or nonregulated electric utility from making any determination that it is not appropriate to implement any such standard”

Procedural Requirements (continued)

- ❑ State commissions and nonregulated utilities are required to consider the standards, but not required to adopt them
- ❑ State commissions and nonregulated utilities may implement any standard, decline to implement any standard, or adopt different or modified standards from those described in the statute (Section 117(b))
- ❑ However, if they decline, they are required to state in writing the reason for their decision and make that statement available to the public (Section 111(c))
- ❑ State commissions and nonregulated utilities may also take into account prior determination on the standards if it complies with the requirement of Title I of PURPA (Section 112(a))

Procedural Requirements (continued)

- ❑ PURPA specifies the “procedural requirements for consideration and determination” that state commissions and nonregulated utilities are to follow (Section 111(b)(1))
 - ❑ that is, provide a public hearing, after public notice, and make a determination:
 - 1) in writing,
 - 2) based upon findings and evidence presented in a hearing, and
 - 3) available to the public
- ❑ This appears to allow a range of consideration of the federal standards, from a “paper” hearing to a full evidentiary hearing



Procedural Steps

1. DOE publishes a list of utilities that the Title I provisions apply (DOE list of covered utilities at: www.oenergy.gov/purpa.htm)
2. State commissions identify and notifies DOE of each electric utility covered by Title I and over which the state commission has ratemaking authority
3. State commissions and nonregulated utilities decide on the hearing process to consider the federal standards
4. Issue public notice or orders, as appropriate under state law, of forthcoming hearings on federal standards

Procedural Steps (continued)

5. State commissions and nonregulated utilities prescribe filing requirements for data, information and analysis
6. Conduct public hearings using procedures established by the state commissions or nonregulated utilities and consistent with PURPA provisions
7. Consideration of each ratemaking standard generally, and for each utility, considering:
 - three purposes of PURPA
 - other purposes identified by the state commission or nonregulated utility pursuant to state law findings and
 - findings and evidence from previous hearings

Procedural Steps (continued)

8. Determine appropriateness of each federal standard,
 - in writing, available to the public,
 - based on evidence in hearing,
 - for each utility,
 - by the deadlines prescribed, and
 - in relation to the three purposes of PURPA and other state law purposes
9. Decide on implementation of each federal standard for each utility (for each customer class):
 - considering other purposes, if identified
 - complying with state law
 - ordering implementation if so decided (full, partial, or phased-in)
 - explaining in writing if not implemented

Failure to Comply

- ❑ If a state commission or nonregulated utility fails to comply and does not consider the PURPA standards, then they are to be considered and a determination made in the first rate proceeding three years after the law was enacted (Section 112(c))
 - or after December 19, 2010, for all four standards
- ❑ There are no monetary penalties specified in the statute for noncompliance
- ❑ An action may be brought to enforce the requirements to an appropriate state court
- ❑ *This applies to all four of the PURPA standards (EISA amended PURPA for standards labeled "(16)" and "(17)")*

Application

- ❑ PURPA requirements apply to utilities with total annual retail sales greater than 500,000 Megawatthours
- ❑ Wholesale sales are explicitly excluded from this sales calculation
- ❑ The baseline year for the retail sales calculation is two years before the year when the standards are being considered
- ❑ The burden of determining eligibility under the Title I requirements falls on the utility companies
- ❑ State commissions need to indicate whether the utility is state jurisdictional
- ❑ Which companies are covered is more complex today than in 1978, because of the changing structure of the industry

Four Basic Categories of Utilities and How They May Be Affected

1. **Vertically integrated utilities that generate all or some of the company's power needs and distribute power to retail customers, and have total annual retail sales greater than 500,000 MWh**
 - these utilities can implement all four of the new federal standards
2. **Distribution only companies that own no generation, and have total annual retail sales greater than 500,000 MWh**
 - would most likely be able to implement the new federal Smart Grid standards (the section 1307 standards) and standard (17) of section 532 (Rate Design Modifications to Promote Energy Efficiency Investments)
 - these may also apply to transmission only companies, to the extent that they are covered under PURPA

Four Basic Categories of Utilities (continued)

2. continued -- it would have to be determined if these companies would be in a position to implement standard (16) of section 532 (Integrated Resource Planning or IRP)
 - however, if the utility is buying power supply from someone else for resale to its own retail consumers, it may still have an obligation to consider whether to adopt the standard indirectly, through its power supply contracts
 - the statute is not explicit on this point

Four Basic Categories of Utilities (continued)

3. **Generation owning companies with retail customers, and total annual retail sales greater than 500,000 MWh**
 - would be able to implement new federal standard (16) of section 532 (Integrated Resource Planning) and standard (17) of section 532 (Rate Design Modifications to Promote Energy Efficiency Investments)
 - however, because these companies do not own distribution facilities and do not control the metering of customer usage and connection to the distribution system, they would not be in a position to implement the Smart Grid standards of section 1307

Four Basic Categories of Utilities (continued)

4. **Companies that are generation only with no retail customers that sell wholesale only or those that have total annual retail sales of less than 500,000 MWh in the baseline year**
 - they would not be subject to the new federal standards

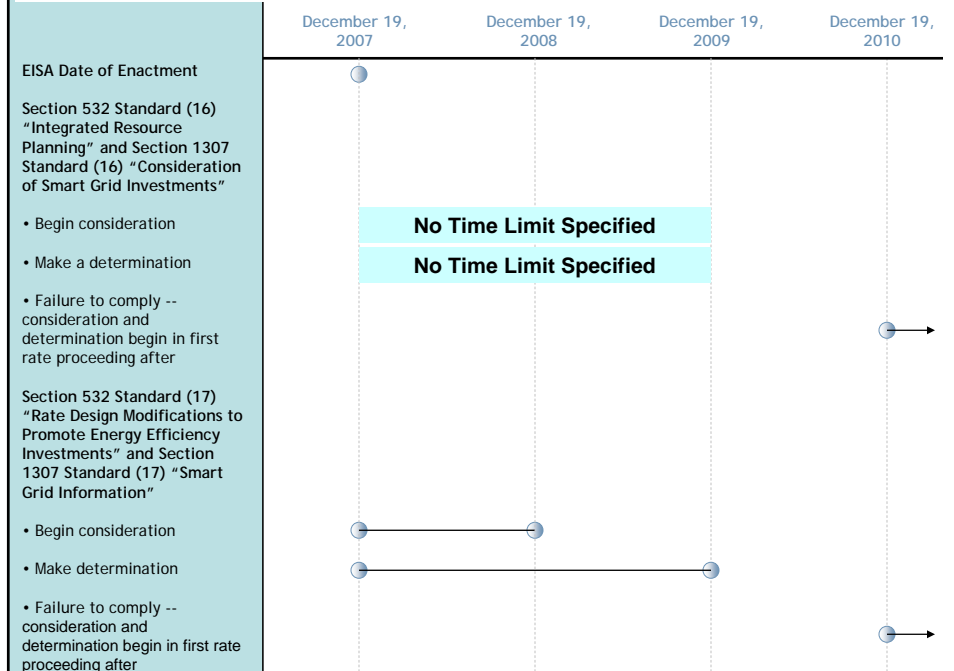
Compliance Deadlines

- ❑ For the two PURPA standards labeled “(16),” “Integrated Resource Planning” and “Consideration of Smart Grid Investments” -- *there is no time limit specified*
- ❑ This is based on a “plain” interpretation of section 1307(b) of the statute
- ❑ While this is likely an error in the statute, we are left with little choice than this interpretation since we cannot infer Congressional intent

Compliance Deadlines

- ❑ For the two PURPA standards labeled “(17),” states and nonregulated utilities have
 - ❑ one year after enactment (until December 19, 2008) to begin consideration of the standards or set a hearing date for the consideration, and
 - ❑ up to two years (until December 19, 2009) to complete the consideration and make a determination on whether or not to adopt the additional standards

Figure 2.2. Compliance deadlines for the EISA PURPA standards



Prior State Actions for PURPA Standards

- ❑ Prior state actions are grandfathered if:
 - 1) the state implemented the standard or comparable standard,
 - 2) the state commission or utility has conducted a proceeding considering implementation of the standard or comparable standard, or
 - 3) the state's legislature voted on implementation of the standard or comparable standard
- ❑ If these conditions are met with respect to a standard, the obligation to consider the standard is waived and no new consideration process is required
- ❑ *This grandfathering provision, however, only applies to the standards labeled "(17)" – again due to likely an error in the statute*

Prior State Actions (continued)

- ❑ The two PURPA standards labeled “(16)” have no prior state action waiver since PURPA was amended previously (in 2005) to refer to specific standards and the 2007 statute only amends PURPA for the standards labeled as “(17)”
- ❑ States and nonregulated utility are, therefore, required to consider and make a determination on the standards labeled “(16),” *even if they had previously considered those standards or comparable standards*
- ❑ If there were prior actions by the state or nonregulated utility, that could be considered when making a decision on whether or not to adopt the standard

Prior State Actions (continued)

- ❑ For the standards labeled “(17),” there was no time limit specified as to when these prior state actions should have occurred for the waiver to apply
- ❑ It is up to state commissions and nonregulated utilities “to determine whether they substantially conformed to the requirements of the title and the courts will be able to review this determination” (from the PURPA Conference Committee Report)
- ❑ Proceedings begun prior to enactment does not require restarting the entire proceeding (for standards labeled “(17)”)

State Authority

- ❑ PURPA and the three purposes are intended to supplement state law -- not to override state law
- ❑ States and nonregulated utilities may consider other purposes that are not specified by PURPA
 - they are not required to take actions that conflict with state law
- ❑ The intention was to preserve the discretion of state commissions and nonregulated utilities that is provided by state law – *except* to the extent that Title I imposes procedural requirements, such as requirements to hold hearings

Authority to Intervene and Participate

- ❑ The Secretary of Energy, any affected electric utility, or any electric consumer of an affected electric utility can intervene and participate in any proceeding that is conducted
- ❑ Any intervenor or participant shall have access to information available to other parties in the proceedings if the information is relevant to the issues in the proceedings and obtained through reasonable discovery rules of information -- as prescribed by the state commission or nonregulated utility

Consumer Representation and Compensation

- ❑ A utility is liable to provide compensation directly to consumers if no alternative means is available to assure representation of electric consumers and if a consumer's participation substantially contributed, in whole or in part, to the approval of the position advocated by the consumer
 - ❑ the utility may be liable to compensate the consumer for reasonable attorney's fees, expert witness fees, and other reasonable costs
- ❑ May collect from a utility by civil action in a state court, unless the commission or nonregulated utility has adopted a procedure for compensation and includes an award of the compensation in its order in the proceeding

Consumer Representation and Compensation (continued)

- ❑ A second compensation mechanism provides that the state, state commission, or nonregulated utility may have a program to otherwise provide adequate compensation to consumers
- ❑ In this case, compensation is not required from the utility if an alternative means for providing adequate compensation is provided to those who,
 - (1) have or represent an interest that would not otherwise be adequately represented in the proceeding and such representation is necessary for fair determination in the proceeding, and
 - (2) represent an interest that is unable to effectively participate or intervene in the proceeding because they cannot afford to pay reasonable attorney's fees, expert witness fees, and other reasonable costs of preparing for and participating or intervening in the proceeding
- ❑ "may include an adequately funded office of public counsel"

Judicial Review and Enforcement

- ❑ Federal court jurisdiction is limited PURPA (section 123) and gives state courts primary review and enforcement jurisdiction
- ❑ As provided by existing law, the U.S. Supreme Court can consider any action upon appeal from the highest court of a state
- ❑ Any electric utility or electric consumer who also has a right to intervene and who is denied that right, may bring an action in federal court to enforce that right, having first tried to enforce that right in state court

Judicial Review and Enforcement (continued)

- ❑ Intervenor or participants must first go to state court to enforce this right, but are not required to appeal through the state court system
- ❑ The federal court can only require that the intervenor be allowed to participate to the extent provided under the Title I, and cannot require any particular outcome

Judicial Review and Enforcement (continued)

- ❑ Review of determinations and enforcement of Title I requirements in state courts
 - any person, including the Secretary of Energy, can obtain a review of any determination made under Title I with respect to any electric utility (except one that is a federal agency) in state court, if the person intervened or otherwise participated in the original proceeding or if state law permits such review
 - also, any person may bring an action to enforce the requirements in the appropriate state court

Judicial Review and Enforcement (continued)

- ❑ Provides enforcement authority for the obligation that state commissions and nonregulated utilities have to hold hearings, make determinations, and comply with all other Title I requirements
- ❑ Enforcement authority does not provide independent authority to attack a final determination of a state commission or nonregulated utility

Non-PURPA Standard (sec. 374)

- ❑ Intended to encourage “waste energy recovery” projects that generate “net excess power”
- ❑ This standard does not specify a minimum size of utility over which the standard applies, as does Title I of PURPA
- ❑ *This means that it must be considered by state commissions for all their jurisdictional utilities and by all nonregulated utilities*

Sec. 374 Non-PURPA Standard (continued)

- ❑ This standard requires that within six months of receiving a request from a project sponsor, owner, or operator, a state commission or nonregulated electric utility is to provide public notice and conduct a hearing on the standard and, based on the hearing, consider and make a determination on whether or not to implement the standard
- ❑ Similar to PURPA standards, nothing prohibits a state commission or nonregulated electric utility from deciding that it is not appropriate to implement the standard

Sec. 374 Non-PURPA Standard (continued)

- ❑ The general language of the standard to be considered is stated in subsection (b):

“(b) STANDARD FOR SALES OF EXCESS POWER.—For purposes of this section, the standard referred to in subsection (a) shall provide that an owner or operator of a waste energy recovery project identified on the Registry that generates net excess power shall be eligible to benefit from at least 1 of the options described in subsection (c) for disposal of the net excess power in accordance with the rate conditions and limitations described in subsection (d).”

Sec. 374 Non-PURPA Standard (continued)

- ❑ Section 372 of the statute contains details on the “Registry” of facilities and related tasks for EPA’s Administrator
- ❑ This includes a requirement for the Administrator to conduct an “ongoing survey” of all major industrial and commercial “combustion sources” in the U.S. and where they are located
- ❑ Within nine months of enactment (September 19, 2008) the Administrator is to publish rules for the criteria of sites to be included in the Registry

Sec. 374 Non-PURPA Standard (continued)

- ❑ To be included on the Registry, a project has to be “economically feasible by virtue of offering a payback of invested costs not later than 5 years after the date of first full project operation (including incentives offered under this part)” (section 372(b)(2)(A))

- ❑ However, if the project is developed or used “for the primary purpose of making sales of excess electric power” it cannot qualify for the Registry

Sec. 374 Non-PURPA Standard (continued)

- ❑ The Secretary of Energy is to provide technical support at the request of the owner or operator of a facility on the Registry and offer partial funding of up to one-half the total cost of feasibility studies to determine if the facility would have a payback period of five years or less (§372(c))

- ❑ One year after enactment (December 19, 2008), the EPA Administrator is to establish the “Registry of Recoverable Waste Energy Sources” and specify the location of the facilities, based on the criteria established by the statute and the Administrator’s implementing rulemaking (§372(d)(1)(A))

- ❑ The Administrator is to update the Registry “on a regular basis” and make the Registry available to the public on EPA’s website (§372(d)(1)(B))

- ❑ Any “State, electric utility, or other interested person may contest the listing of any source or site by submitting a petition to the Administrator” (§372(d)(1)(C))

Sec. 374 Non-PURPA Standard (continued)

- ❑ Consideration of the standard must be made after public notice and hearing and the determination must be in writing, based on evidence presented, and be available to the public (subpart (e)(1)) -- this is nearly identical to PURPA section 111(b)(1)
- ❑ Subpart (e)(2) allows the EPA Administrator to intervene in a proceeding to calculate energy and emissions possibly saved by using one or more of the four options for the sale of power described in subpart (c), calculate the costs and benefits to ratepayers and utilities, and advocate for waste energy recovery opportunities
- ❑ Consolidation is permitted (subpart (e)(3)(B)) of multiple projects that are simultaneously seeking consideration in a proceeding with the same utility as long as full attention is paid to the individual circumstances and merits and an individual judgment is reached with respect to each project

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Sec. 374 Non-PURPA Standard (continued)

- ❑ As with the PURPA standards, state commissions and nonregulated utilities can
 - either implement the standard or decline to implement the standard (subpart (f)(1))
 - if the state commission or nonregulated utility declines to implement the standard, the reason why it was declined must be stated in writing and that statement must be available to the public (subparts (f)(2)(A) and (B))

Sec. 374 Non-PURPA Standard Differences from PURPA

- Subpart (f)(2)(C) does not obligate a state authority or utility directly, but does require the EPA Administrator to submit to Congress an annual report with “a description of the lost opportunities for waste-heat recovery” from projects adversely affected by non-implementation of the standard
- The Administrator in its report must specifically identify the utilities and the quantity of energy and emissions savings potential that was lost
- Subpart (f)(2)(D) provides that if a state commission or nonregulated electric utility declines to implement the standard, a project sponsor may submit a new project petition at any time two years after the date on which the state commission or nonregulated utility declined to implement the standard

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Sec. 374 Non-PURPA Standard Differences from PURPA

- there is no specified deadline to begin consideration of the standard or to make a decision
- the standard states (374(a)(1)) that “not later than 180 days after the receipt” by a state commission or nonregulated electric utility “of a request from a project sponsor or owner or operator”
- in other words, the six month clock for the standard’s consideration and for when a determination must be made begins when a request is received, not for a period of time after the statute’s date of enactment and with separate deadlines for consideration and determination, as with the PURPA standards

Sec. 374 Non-PURPA Standard Differences from PURPA

- separate consideration and determinations are needed for each project, unless, multiple projects are consolidated using the provision that allows simultaneous consideration in a proceeding with the same utility (section 374(e)(3)(B))

Sec. 374 Non-PURPA Standard Differences from PURPA

- the stated three purposes of the PURPA Title I (PURPA section 101) are not present in this standard, and there is no reference to another basis for a decision
- there is no grandfathering provision -- projects are considered on a project-by-project basis or multiple projects are consolidated for hearing, but with each project receiving a separate evaluation and determination
- project sponsors can resubmit a petition for a project after two years after the date a state commission or nonregulated utility declined to implement the standard

Sec. 374 Non-PURPA Standard (continued)

- ❑ Four alternatives for the sale of power from an eligible waste energy recovery project (subpart (c)):
 - 1) Sale of net excess power to utility
 - 2) Transport by utility for direct sale to third party
 - 3) Transport over private transmission lines
 - 4) Agreed on alternatives

Sec. 374 Non-PURPA Standard (continued)

- ❑ There are four main parts to subsection (d) that outlines the standard's rate criteria and options for the sale of power
 - part (1) defines three terms: (A) per unit distribution costs, (B) per unit distribution margin, and (C) per unit transmission costs
 - part (2) specifies that these rate definitions are to be used for the sale of power for options (1) and (2) of subpart (c), and for the rate applications described in part (3) of subpart (d)
 - two rate applications are specified in part (3)
 - (A) rates applicable to sale of net excess power and
 - (B) rates applicable to transport by utility for direct sale to third parties
 - part (4) specifies limitations

Equations from Section 374(d)(1)(A) and (B)

$$\text{Per Unit Distribution Cost (kWh)} = \frac{\text{Depreciated Book Value of Dist. System}}{\text{Utility Sales}}$$

$$\text{Per Unit Distribution Margin (for regulated utilities)} = \text{Per-Unit Gross Pretax Profit} = \text{Rate-of-Return on Distribution Assets} \times \text{Per Unit Distribution Cost}$$

$$\text{Per Unit Distribution Margin (for nonregulated utilities)} = \text{Per-Unit Contribution to Net Revenues} = \frac{\text{Net Revenue Payment or Contribution Gross Revenues of the utility}}{\text{Per Unit Distribution Cost}}$$

(this quotient, expressed as a percentage, is not to be less than 10%)

Sec. 374 Non-PURPA Standard (continued)

- "(C) PER UNIT TRANSMISSION COSTS.—The term 'per unit transmission costs' means the total cost of those transmission services purchased or provided by a utility on a per-kilowatthour basis as included in the retail rate of the utility"

Sec. 374 Non-PURPA Standard (continued)

- "(3) APPLICABLE RATES.—
 - (A) RATES APPLICABLE TO SALE OF NET EXCESS POWER.—
 - (i) IN GENERAL.—Sales made by a project owner or operator of a facility under the option described in subsection (c)(1) shall be paid for on a per kilowatt hour basis that shall equal the full undiscounted retail rate paid to the utility for power purchased by the facility minus per unit distribution costs, that applies to the type of utility purchasing the power.
 - (ii) VOLTAGES EXCEEDING 25 KILOVOLTS.—If the net excess power is made available for purchase at voltages that must be transformed to or from voltages exceeding 25 kilovolts to be available for resale by the utility, the purchase price shall further be reduced by per unit transmission costs."

Sec. 374 Non-PURPA Standard (continued)

- "(B) RATES APPLICABLE TO TRANSPORT BY UTILITY FOR DIRECT SALE TO THIRD PARTIES.—
 - (i) IN GENERAL.—Transportation by utilities of power on behalf of the owner or operator of a project under the option described in subsection (c)(2) shall incur a transportation rate that shall equal the per unit distribution costs and per unit distribution margin, that applies to the type of utility transporting the power.
 - (ii) VOLTAGES EXCEEDING 25 KILOVOLTS.—If the net excess power is made available for transportation at voltages that must be transformed to or from voltages exceeding 25 kilovolts to be transported to the designated third-party purchasers, the transport rate shall further be increased by per unit transmission costs.
 - (iii) STATES WITH COMPETITIVE RETAIL MARKETS FOR ELECTRICITY.—In a State with a competitive retail market for electricity, the applicable transportation rate for similar transportation shall be applied in lieu of any rate calculated under this paragraph.⁵⁶

Sec. 374 Non-PURPA Standard (continued)

□ "(4) LIMITATIONS.—

(A) IN GENERAL.—Any rate established for sale or transportation under this section shall—

(i) be modified over time with changes in the underlying costs or rates of the electric utility; and

(ii) reflect the same time-sensitivity and billing periods as are established in the retail sales or transportation rates offered by the utility.

(B) LIMITATION.—No utility shall be required to purchase or transport a quantity of net excess power under this section that exceeds the available capacity of the wires, meter, or other equipment of the electric utility serving the site unless the owner or operator of the project agrees to pay necessary and reasonable upgrade costs."