

FERC PURPA Rule Revisions/Order No. 872: Solar Energy Association United States Court of Appeals (9th) Petition for Review



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09/30/2020

The Solar Energy Industries Association (“SEIA”) filed a September 18th Petition before the United States Court of Appeals for the Ninth Circuit challenging Order No. 872 which revised certain Public Utility Regulatory Policies Act of 1978 (“PURPA”) rules.

The document filed by SEIA was styled:

Petition for Review of the Solar Energy Industries Association and Request for Sixty Day Abeyance (“Petition”)

PURPA was enacted by Congress in 1978 during a period of energy crisis. Goals of the federal statute included:

- Conservation of electric energy
- Increased efficiency in the use of facilities and resources by electric utilities
- Equitable retail rates for electric consumers
- Expeditious development of hydroelectric potential of existing small dams
- Conservation of natural gas while ensuring that rates to natural gas consumers are equitable

The statute established a new class of generating facilities that were provided special rate and regulatory treatment. Such generating facilities are classified as qualifying facilities and are encompassed by one of two categories:

- Qualifying Small Power Production Facilities
- Qualifying Co-Generation Facilities

The regulations originally implementing PURPA were promulgated in 1980. The FERC rule revisions promulgated in Order No. 872 have been described as the first comprehensive revision since 1980.

FERC in promulgating Order No. 872 stated that its purpose was to:

... better align those regulations with the modern energy landscape, while continuing to encourage development of qualifying facilities.

A link to a post describing Order No. 872 can be found [here](#).

SEIA has previously argued that Order No. 872 revises the PURPA regulations in a manner that “discourages the development of qualifying facilities in contravention of the statute’s mandates by:

1. terminating a Qualifying Facility's right to elect a long-term energy rate when delivering energy under a long-term contract;
2. revising the long-standing regulations providing that a Qualifying Facility is not "at the same site" so long as the facilities are located more than one mile apart; and
3. allowing utilities within the boundaries of an Independent System Operator or Regional Transmission Organization ("ISO/RTO") to seek a waiver of the prohibition to purchase from small power production Qualifying Facilities larger than 5 MW despite the fact that few, if any, of such facilities have meaningful access to organized wholesale markets.

A link to the *Petition* can be found [here](#).