

May 12, 2022

New PURPA 111(d) Standards in the 2021 Infrastructure Law

What Co-ops Need to Know

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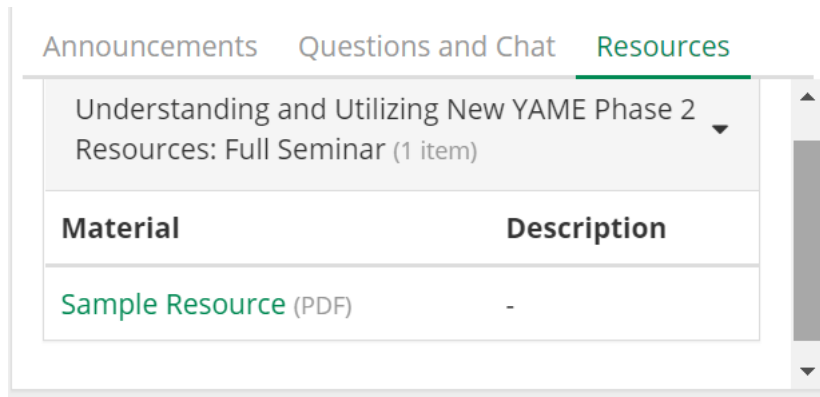
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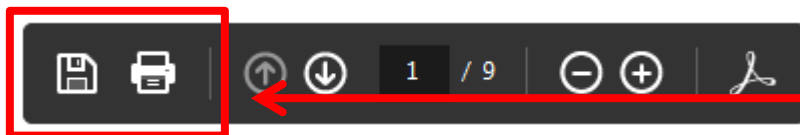
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Today We'll Cover

- What is PURPA 111(d)?
- History of adding new standards
- What's included under the 2021 infrastructure law (IIJA)?
- Does my co-op need to take action?
- What does my co-op need to do to comply? By when?
- When considering these standards, how can my co-op assess whether to adopt them?
- Some thoughts around next steps

What is PURPA 111(d)?

Title I – Public Utility Regulatory Policy Act (PURPA) of 1978

- Purpose: Encouragement of investments in conservation and efficient use of facilities by electric utilities and equitable rates to electric customers
- Codified at **16 U.S.C. 2621** – **Consideration and determination respecting certain ratemaking standards**
 - *“Each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility **shall consider** each standard established by subsection (d) and **make a determination concerning whether or not it is appropriate to implement** such standard to carry out the purposes of this chapter. For purposes of such consideration and determination in accordance with subsections (b) and (c), and for purposes of any review of such consideration and determination in any court in accordance with section 2633 of this title, the purposes of this chapter supplement otherwise applicable State law. **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, pursuant to its authority under otherwise applicable State law.**”*

PURPA 111(d) Standards Enacted Over the Years

PURPA 1978	EPAct 1992	EPAct 2005	EISA 2007
Cost of Service	Integrated Resource Planning	Net Metering	Integrated Resource Planning (Energy Efficiency)
Declining Block rates	Investments in Conservation and Demand Management	Fuel Sources	Rate Design Modifications to Promote Energy Efficiency Investments
Time-of-day Rates	Energy Efficiency Investments in Power Generation and Supply	Fossil Fuel Generation Efficiency	Consideration of Smart Grid Investments
Seasonal Rates	Effects of Wholesale Power Purchases on Utility Cost of Capital; Effects of Leveraged Capital Structures on the Reliability of Wholesale Power Sellers; and Assurance of Adequate Fuel Supplies	Time-based Metering and Communications	Smart Grid Information
Interruptible Rates		Interconnection	
Load Management Techniques			

Do Co-ops Have to Worry About Old Standards?

NO!

- Compliance under PURPA 111(d) is a snapshot in time that differs with each standard

What's Included in the IIJA?

- The 2021 Infrastructure Investment and Jobs Act (IIJA) requires non-regulated cooperatives, municipal utilities, and state regulators (for regulated utilities) to *consider* adopting standards on **promoting greater transportation electrification (Sec. 40431)** and **utility demand response (Sec. 40104)**.

New PURPA 111(d) Standards Under IIJA

Demand-Response Practices

- (A) In General – Each 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.
- (B) Rate Recovery
 - (i) In General – Each State regulatory authority shall consider establishing rate mechanisms allowing an electric utility with respect to which the State regulatory authority has ratemaking authority to timely recover the costs of promoting demand-response and demand flexibility practices in accordance with subparagraph (A).
 - (ii) Nonregulated Electric Utilities – A nonregulated electric utility may establish rate mechanisms for the timely recovery of the costs of promoting demand-response and demand flexibility practices in accordance with subparagraph (A).

New PURPA 111(d) Standards Under IIJA

Electric vehicle charging programs

Each State shall consider measures to promote greater electrification of the transportation sector, including the establishment of rates that—

- (A) promote affordable and equitable electric vehicle charging options for residential, commercial, and public electric vehicle charging infrastructure;
- (B) improve the customer experience associated with electric vehicle charging, including by reducing charging times for light-, medium-, and heavy-duty vehicles;
- (C) accelerate third-party investment in electric vehicle charging for light-, medium-, and heavy-duty vehicles; and
- (D) appropriately recover the marginal costs of delivering electricity to electric vehicles and electric vehicle charging infrastructure.

Does My Co-op or State Regulator Need to Take Action?

Who's covered by PURPA 111(d) requirements?

Electric utilities with annual retail sales greater than 500 million kWh

- As of two years prior to the year in which the standard is to be considered
- About 268 co-ops in 2020 based on EIA data
- *Could apply to more* considering several co-ops saw sales decline in 2020 due to COVID pandemic

BUT:

- Nothing prevents states that regulate co-ops from adopting the federal standards for all regulated utilities regardless of size—generic vs. utility-by-utility basis

AND:

- Nonregulated electric utilities could be subject to significant political pressure to comply regardless of size
- May be a good opportunity in any event to educate consumers and tell the co-op's story

What if My Co-op or State Regulator has Already Acted?

States/self-regulated co-ops do not need to take any further action under PURPA 111(d) if, *before the date of enactment*,

- The state has implemented for the electric utility the standard (or a comparable standard);
- The state regulatory authority for the state or the nonregulated electric utility has conducted a proceeding to consider implementation of the standards (or a comparable standard) for the electric utility; or
- The state legislature has voted on the implementation of the standard (or a comparable standard) for the electric utility.*

*For EVs only (Sec. 40431), the state legislature must have voted within the 3-year period ending on the date of enactment (November 15, 2021)

Timelines

	November 15, 2021	November 15, 2022	November 15, 2023
Enactment of IIJA	X		
Section 40431 Standards (EVs)			
Begin Consideration/Set Hearing Date		X	
Make Determination			X
Failure to Comply – consideration and determination begin in first rate proceeding			X →
Section 40104 Standards (DR)			
Begin Consideration/ Set Hearing Date		X	
Make Determination			X
Failure to Comply – consideration and determination begin in first rate proceeding			X →

What Happens if Co-op Status Changes?

Electric utilities with annual retail sales greater than 500 million kWh

As of two years prior to the year in which the standard is to be considered, so 2020

BUT:

What happens if you trigger 500 million kWh in:

- 2021? Still have to consider both standards by the 2023 deadline
- 2022? Home free-no obligation to consider anything
 - (unless a state court disagrees)

My Co-op Needs to Consider These Standards. What Now?

PURPA 111(d) lays out procedural requirements...

- Consideration to occur after public notice and hearing
- Determination shall be
 - In writing;
 - Based upon findings included in such determination and upon the evidence presented at the hearing, and
 - Available to the public.

The “Hearing” Process Under PURPA

- PURPA requires “hearing” process to consider the standard
 - Silent on the “type” of hearing
 - Silent on level of formality
 - Hints of substantial formality (intervention and expert witness)
 - Legislative history suggests separate consideration of each standard
- In the past, some state Commissions have utilized “paper hearing” proceedings for PURPA compliance
 - Commission will propose an approach
 - Parties will respond
 - Commission will decide
 - More often in rulemaking procedure
- **If regulated, determine type of hearing to promote for Commission consideration**
- **If non-regulated, determine type of hearing before the Board – check your co-op’s hearing procedures and compare them with state administrative procedures**

What Does “Consider” Mean?

If your co-op is covered, whether in a Commission or Board proceeding, evidence should include:

- Current implementation of pre-IIJA PURPA standards (EVs and DR)
- How those standards relate to the new standards
- Range of options under consideration for each standard and how standards interrelate
- Elements of each standard considered – those under the co-op’s control and those outside their control
 - For those outside the co-op’s control, how are they provided for through its G&T contract or PPAs (as applicable)
- Recommendation relative to adopting the standard

Making the “Determination”

- If rate regulated, the decision is up to the state Commission
- If non-rate regulated and covered, the co-op must determine whether the standard is consistent with purposes of PURPA (conservation of supply, efficiency of facilities and resources, equitable rates)
 - Even if consistent, the co-op can still reject the federal standard “pursuant to its authority under otherwise applicable state law”
 - Determination must be based upon the evidence presented at the hearing
- Recommendation relative to adopting the standard

What If My Co-op Fails to Comply?

- Some discretion relative to timing for a state Commission or a non-regulated utility to adjust schedule to accommodate other schedules
- If not accomplished in the designated cycle, must do so in the first rate proceeding for the utility after the compliance window
- No penalties designated, but an aggrieved party could go to Federal or state court and seek relief (DOE may intervene in any consideration process)

What is the Role of the G&T and the Statewide Association?

- G&Ts have no affirmative obligation
- However, where their members do, to fulfill their obligations they will need to rely on G&T support and evidence
 - Is the G&T a key participant?
 - G&Ts provide evidence of standards issues through Board policies and in their Integrated Resource Plans/Least cost Plans (they need not do so through PURPA-type “hearing” procedures)
- Does the statewide association intervene, particularly in Commission proceedings to support the membership?
- Statewide associations and G&Ts may want to develop education materials relative to PURPA standards and implementation for the members.

How Can My Co-op Assess Whether Implementing These Standards is Right for Us?

- Survey consumer-members for their wants and needs
- Determine the value to the G&T (as applicable)
- Study the system cost characteristics
- Understand the costs and benefits
- Determine best practices from other initiatives
- Determine the value to the distribution co-op

Some Final Thoughts

Talk to in-house or outside counsel about approach

- Look at how to implement public notice and hearing procedures consistent with PURPA
- How did your co-op tackle this following 2005 or 2007 (if applicable)?

Think about a proactive communications strategy

- Begin communicating about how your co-op will consider these standards sooner rather than later

Questions?

Contact us with any questions you may have...

- Stephanie Crawford, stephanie.crawford@nreca.coop or 571-623-4049
- Mary Ann Ralls, maryann.ralls@nreca.coop or 703-907-5837



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