Testimony of James Danly
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Mr. Chairman, Ranking Member Rush, members of the Subcommittee, I appreciate the opportunity to come here and testify today. My name is James Danly, I am the General Counsel of the Federal Energy Regulatory Commission. Before I begin with my opening remarks, I want to mention that I'm appearing here today as a staff witness, and my opinions are not those of the Commission or of any individual Commissioner.

I have been asked to testify about a bill that amends the Public Utility Regulatory Policies Act of 1978, PURPA. That bill, H.R. 4476, has three provisions in it and I'll briefly discuss the effect of each one in turn.

The first of the provisions, section 2, has to do with the so-called One-Mile Rule. PURPA defines small power production facilities as any power production facility which, when taken with the other facilities at the same site – that determination is made by FERC – is less than 80 megawatts.

It is worth pausing for a second to mention that the small power production facility is one of the two types of qualifying facilities under PURPA, the other being combined heat and power cogeneration.

The regulations that were promulgated by FERC pursuant to PURPA provide that generation facilities are considered to be at the same site if they are within one mile of each other, if they share the same energy resource, and if they are owned by the same person or an affiliate of that person. The proposed bill would convert the Commission's current, bright-line one-mile rule to a rebuttable presumption that could be overcome by a number of specified statutory factors; for example, were the facilities more than one mile apart, purchased with the same financing, or do they share interconnection points, such factors like that.

The second provision, which is section 3 of H.R. 4476, has to do with nondiscriminatory access. The heart of PURPA is the mandatory purchase obligation. That's the mechanism that really drives PURPA's effect. This provision requires utilities to purchase the electric power of the qualifying facilities that operate within their service territory. This is regardless of whether or not the utility requires that power, and whether or not the QF participated in the procurement process of that utility.

Under PURPA, the power is to be purchased from those QFs on a mandatory basis at the

avoided cost rate that's established by the state or municipality that is responsible for regulating those utilities.

In recognition of the changing landscape of the American power industry, in 2005, Congress passed EPAct 2005, which had a provision that allowed for the termination of this mandatory purchase obligation when the Commission makes a finding that the QF enjoys nondiscriminatory access to an electric market. In implementing that provision of EPAct 2005, FERC promulgated regulations which establish a threshold of 20 megawatts, above which it would be rebuttably presumed that the QF did have nondiscriminatory access to the market, and below which there is a rebuttable presumption that it did not. This was based on the basic premise that the larger the QF's capacity, the more likely it is to be a sophisticated party and the more likely it would have nondiscriminatory access.

The proposed bill leaves the basic mechanics of this threshold in place. It simply lowers the threshold from 20 megawatts down to 2.5.

And then the last provision, section 4 of 4476, has to do with the state and local determinations of need. As I explained a moment ago, the heart of PURPA is that mandatory purchase obligation, and it's fundamental to the way PURPA works, currently. In response to the 1970s energy crisis, PURPA was passed in order to establish a nationwide policy, which is explicitly stated in the statute, to encourage the development of cogeneration and small power production facilities. That policy objective was largely achieved by this mandatory PURPA purchase obligation, and, as drafted, the bill would alter PURPA so as to replace the nationwide policy advancing those interests through the mandatory purchase obligation to a state-by-state regime that would allow state agencies to relieve their utilities of the obligation to mandatorily purchase power from qualifying facilities if the state agency certifies to FERC either that there is no need for their regulated utilities to purchase the power that the QFs produce, or that the utility employs some type of competitive procurement process.

This represents a fundamental change to the mechanism of how PURPA operates and as such, as the agency that is charged with implementing PURPA, the Subcommittee and Congress are in a far better position to determine whether or not that advances the policy goals of PURPA.

With that, I have no more remarks to start with. I'd just like to thank you all for the opportunity to give my thoughts on these bills and I look forward to your questions.