



BUDGET CATEGORY:	SAFETY / SECURITY/ RISK MNGMNT.	<input type="checkbox"/>
	RELIABILITY PERFORMANCE	<input type="checkbox"/>
	SYSTEM CAPACITY EXPANSION	<input type="checkbox"/>
	PREVENTIVE / CORRECTV. MAINT.	<input type="checkbox"/>
	DEVELOPMENT / RELOCATION	<input type="checkbox"/>
	IT / SHARED SRVCS. / EMPLOYEES PERF.	<input type="checkbox"/>
	VALUE-ADDED SERVICES	<input checked="" type="checkbox"/>

ADD-ON **AGENDA ITEM** 5-a

CONSENT ITEM **FOR MEETING OF:** October 24, 2022

NEW BUSINESS **FROM:** NSBU General Counsel

OLD BUSINESS **SIGNATURE:** Thomas Cloud, Esq.

_____ **EXHIBITS:** NSBU Resolution Nos. 1-09 and 2-08

SUBJECT: New PURPA Standards (2) Requiring Consideration - Scheduling of Public Hearings

SUMMARY: PROJECT TYPE: GOVERNANCE ITEM

In July, 2008 and January, 2009, NSBU formally declared their direction regarding the Public Utility Regulatory Policies Act of 1978 (PURPA) Standards through Resolution Nos. 2-08 and 1-09, and exercised its option of exclusion from the PURPA Standards, and when appropriate, would enact voluntary measures that provide benefit for our customers and system. NSBU is not listed by FERC as a PURPA entity, not exceeding the PURPA threshold for 2020 calendar year sales - annual retail sales equal or exceeding 500 million kWh's during any calendar year during or before 2020. Measures voluntarily adopted previously include energy conservation and efficiency measures along with the adoption of NSBU's Interim Net Metering Rider.

Subsequently, two additional PURPA Standards have been adopted for state commissions and non-regulated utilities meeting the minimum size threshold must now consider. NSBU is not required to adopt or implement the standards, but is required to consider adoption and issue a written determination of the result of that consideration, including the reasons for rejection, if applicable. The new PURPA Standards adopted under the Infrastructure Investment and Jobs Act (IIJA) include: (1) Demand Response and Demand Flexibility, and (2) Electric Vehicle Charging Programs. Utilities must begin to consider or schedule hearing date(s) for consideration of the PURPA Standards by November 15, 2022. Summary paragraphs of these new Standards will be provided at the scheduled public hearings.

FUNDING SOURCE(S) N/A

RECOMMENDED ACTION:

A motion approving the scheduling of two public hearings, for January 23, 2023 and February 27, 2023, preliminary and final respectively, for consideration by NSBU of the new PURPA Standards (two), as stated in the summary above.

GM/CEO Joseph Bunch

NOTE: AGENDA ITEMS SHOULD BE SUBMITTED TO GM-CEO OFFICE BY THE WEDNESDAY ONE WEEK PRIOR TO THE NEXT WEDNESDAY AGENDA PACKAGE RELEASE DATE.

RESOLUTION NO. 1-09

A RESOLUTION BY THE UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA (U.C.), FURTHER DECLARING THE U.C.'S DIRECTION WITH REGARD TO THE REQUIREMENTS OF THE PUBLIC UTILITIES REGULATORY POLICIES ACT (PURPA); SUPPLEMENTING U.C. RESOLUTION NO. 2-08; RESCINDING ALL RESOLUTIONS, OR PORTIONS THEREOF, IN CONFLICT HERewith AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Utilities Commission, City of New Smyrna Beach, Florida (U.C.), was duly created and validly existing under and by virtue of Chapters 67-1754 and 85-503, Laws of Florida, as the governing body of the utility system of the City of New Smyrna Beach, Florida; and

WHEREAS, the Public Utilities Regulatory Policies Act (PURPA) became law in 1978 and municipal utilities were considered non-regulated utilities and therefore must independently consider adoption of the PURPA standards; and

WHEREAS, the Energy Policy Act of 2005 amended PURPA by adding five new standards, and the Energy Independence and Security Act of 2007 added four additional standards, (additional information regarding these standards contained in U.C. Resolution No. 2-08, Exhibit A); and

WHEREAS, the U.C. previously considered and adopted U.C. Resolution No. 2-08 on July 21, 2008, formally declaring the U.C.'s direction at that time with regard to the above nine standards; and

WHEREAS, the U.C. is still not required to comply with the provisions under PURPA however, the U.C. believes it prudent to publicly consider and subsequently declare our organization's direction regarding the PURPA standards at this time; and

WHEREAS, a fifth non-PURPA standard, "SEC. 374. ADDITIONAL INCENTIVES FOR RECOVERY, USE, AND PREVENTION OF INDUSTRIAL WASTE ENERGY", has been adopted which does not specify a minimum threshold for application, therefore the U.C. must consider this standard in a similar procedural manner; and

WHEREAS, two public hearings have been duly noticed and held on December 15, 2008, and January 26, 2009 for the public consideration of said standards.

NOW, THEREFORE, BE IT RESOLVED BY THE UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA, AS FOLLOWS:

SECTION 1: The U.C. hereby continues to exercise its option of exclusion from the respective PURPA standards.

SECTION 2: The U.C., when appropriate, will enact voluntary measures that will provide benefit for all our customers and our system, i.e. energy conservation and efficiency measures placed into effect by the UC during the last two years. Another measure voluntarily adopted was the Interim Net Metering Rider. (Additional statements in Exhibit A attached to this resolution.)

SECTION 3: If any section, subsection, sentence, clause, phrase, or portion of this Resolution is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION 4: This resolution is supplemental to U.C. Resolution No. 2-08.

SECTION 5: All Resolutions, or portions thereof, in conflict herewith are hereby rescinded and superseded.

SECTION 6: This resolution was approved by the Utilities Commission during a Regular U.C. Meeting held January 26, 2009, and took effect immediately upon passage.

THE ABOVE AND FOREGOING RESOLUTION was introduced at a regular meeting of the Utilities Commission, City of New Smyrna Beach, Florida, held on January 26, 2009, by Commissioner Hall, who moved its adoption, which motion was seconded by Commissioner Reynolds, and upon roll call vote of the Commission was as follows:

CHAIRMAN	<u>Katherine Allen III</u>	<u>yes</u>
VICE CHAIRMAN	<u>William E. Hall</u>	<u>yes</u>
SECY.-TREAS.	<u>Frederick Reynolds</u>	<u>yes</u>
ASST. SECY.-TREAS.	<u>Oscar Zeller</u>	<u>ABSENT</u>
COMMISSIONER	<u>Francis A. Wilson</u>	<u>yes</u>

APPROVED:
Katherine Allen III
CHAIRMAN

ATTEST:
Frederick Reynolds
SECRETARY-TREASURER

S E A L

APPROVED AS TO FORM AND CORRECTNESS:

William E. Hall
Utilities Commission Attorney

EXHIBIT A – UC Resolution No. 1-09

The Utilities Commission, City of New Smyrna Beach, Florida, previously detailed and considered in July 2008 nine standards which amended the Public Utility Regulatory Policies Act of 1978 (PURPA).

The relevant standards were five new standards under The Energy Policy Act of 2005 and the four new standards under the Energy Independence and Security Act of 2007 (detailed in U.C. Resolution No. 2-08, Exhibit A).

The Energy Independence and Security Act of 2007 additionally contained a standard for states and non-regulated utilities to consider that is not an amendment to PURPA. While some of the provisions for consideration are similar to the PURPA standards, this standard has distinctive requirements written as part of the standard's statutory language and does not specify a minimum threshold for application. This fifth non-PURPA standard has been adopted as: "SEC. 374. ADDITIONAL INCENTIVES FOR RECOVERY, USE, AND PREVENTION OF INDUSTRIAL WASTE ENERGY". The focus of this standard is to encourage "waste energy recovery" projects that generate "net excess power." There are very few businesses classified as industrial in the U.C.'s service territory. There are no known entities which produce waste heat byproducts from their processes or any that have continuous waste heat which is able to be processed into a beneficial use.

PURPA requires each jurisdictional utility to "consider" the standards and make a "determination" on whether it is appropriate to implement each standard within certain time deadlines and taking into consideration PURPA's purposes, which include: (1) conservation of energy supplied by electric utilities; (2) optimal efficiency of electric utility facilities and resources; and (3) equitable rates for electric consumers. The utility's consideration "shall be made after public notice and hearing," and the "determination" must be in writing and made available to the public. Adoption of each standard is entirely discretionary.

Non-regulated utility requirements contained in PURPA apply only to utilities with total annual retail sales greater than 500 million kWh. Based on the Utilities Commission total retail sales, we are not required to comply with the stated provisions under PURPA.

Based on our assessment of PURPA rules, supported by advice from FMPA/FMEA legal counsel, the Utilities Commission is not required to consider these rules for implementation. Also, based on our relative size, potential impacts to our electric system, and requirements under Resolution 28-78 and the UC's Charter, implementation of these standards are not feasible at this time.

However, as previously discussed during Regular U.C. Meetings in June 2007, and in March and April, 2008, with a formal resolution being adopted by the U.C. in July 2008, regarding PURPA applicability requirements, it is still believed that our customers would likely subsidize those few benefiting from some measures while other expenditures would not likely provide a priority benefit for our system at this time.

Consequently, staff recommends that the U.C. exercise its option of exclusion from the respective PURPA standards and also recommends that voluntary measures, when appropriate, be taken to provide benefit for all our customers and our system. Such has been the case with energy conservation and efficiency measures placed into effect by the UC during the last two years and with the adoption of an Interim Net Metering Rider.

Staff also recommends non-implementation of the fifth non-PURPA standard (“SEC. 374. ADDITIONAL INCENTIVES FOR RECOVERY, USE, AND PREVENTION OF INDUSTRIAL WASTE ENERGY”), unless these measures could be accomplished through our proposed and anticipated generation projects which would then provide benefit for all our customers and our system.

RESOLUTION NO. 2-08

A RESOLUTION BY THE UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA (U.C.), DECLARING THE U.C.'S DIRECTION WITH REGARD TO THE REQUIREMENTS OF THE PUBLIC UTILITIES REGULATORY POLICIES ACT (PURPA); RESCINDING ALL RESOLUTIONS, OR PORTIONS THEREOF, IN CONFLICT HERewith AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Utilities Commission, City of New Smyrna Beach, Florida (U.C.), was duly created and validly existing under and by virtue of Chapters 67-1754 and 85-503, Laws of Florida, as the governing body of the utility system of the City of New Smyrna Beach, Florida; and

WHEREAS, the Public Utilities Regulatory Policies Act (PURPA) became law in 1978 and municipal utilities were considered non-regulated utilities and therefore must independently consider adoption of the PURPA standards; and

WHEREAS, the Energy Policy Act of 2005 amended PURPA by adding five new standards, and the Energy Independence and Security Act of 2007 added four additional standards, (see attached information – Exhibit A); and

WHEREAS, in addition, the Florida Public Service Commission recently adopted a net metering standard with limited applicability to municipal electric utilities, and the Florida legislature recently enacted legislation requiring municipal electric utilities to adopt net metering policies and standard interconnection agreements for customer-owned renewable generation; and

WHEREAS, at the present time the U.C. is not required to comply with the provisions under PURPA however, the U.C. believes it prudent to formally declare our organization's direction regarding the PURPA standards.

NOW, THEREFORE, BE IT RESOLVED BY THE UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA, AS FOLLOWS:

SECTION 1: The U.C. hereby exercises its option of exclusion from the respective PURPA standards.

SECTION 2: The U.C., when appropriate, will enact voluntary measures that will provide benefit for all our customers and our system. (Additional statements in Exhibit A.)

SECTION 3: If any section, subsection, sentence, clause, phrase, or portion of this Resolution is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION 4: All Resolutions, or portions thereof, in conflict herewith are hereby rescinded and superseded.

SECTION 5: This resolution was approved by the Utilities Commission during a Regular U.C. Meeting held July 21, 2008, and took effect immediately upon passage.

THE ABOVE AND FOREGOING RESOLUTION was introduced at a regular meeting of the Utilities Commission, City of New Smyrna Beach, Florida, held on July 21, 2008, by Commissioner Reynolds, who moved its adoption, which motion was seconded by Commissioner Diesen, and upon roll call vote of the Commission was as follows:

CHAIRMAN	<u>Nate Allen</u>	<u>yes</u>
VICE CHAIRMAN	<u>William Hall</u>	<u>ABSENT</u>
SECY.-TREAS.	<u>Janet K. Wilson</u>	<u>yes</u>
COMMISSIONER	<u>Paul Zell</u>	<u>yes</u>
COMMISSIONER	<u>Wm. Reynolds</u>	<u>21 April 2008</u> <u>yes</u>

APPROVED:

Nate Allen
CHAIRMAN

ATTEST:

Janet K. Wilson
SECRETARY-TREASURER



APPROVED AS TO FORM AND CORRECTNESS:

William Hall
Utilities Commission Attorney

EXHIBIT A – UC Resolution No. 2-08

The Public Utility Regulatory Policies Act (PURPA) was originally passed in 1978 to encourage conservation, energy efficiency and equitable rate structures by electric utilities largely in response to concerns related to the 1974 OPEC oil embargo. Non-regulated utility requirements contained in PURPA apply only to utilities with total annual retail sales greater than 500 million kWh. Based on the Utilities Commission last calendar year total retail sales were 383.5 million kWh, we are not required to comply with the following stated provisions under PURPA.

The Energy Policy Act of 2005, which was signed into law on August 8, 2005, amended the Public Utility Regulatory Policies Act of 1978 (PURPA) and included five new standards under PURPA and was further amended under the Energy Independence and Security Act of 2007. The relevant standards are summarized below:

Section 1251 (Net Metering, Fuel Diversity, and Fossil Fuel Generation efficiency); Section 1252 (Time-Based Metering and Communications); and Section 1254 (Interconnection Standards for Distributed Resources)

Section 1251 of the Act amends PURPA to require that states conduct an investigation and issue a decision whether to adopt three new standards:

1. A net metering standard that would require electric utilities to make net metering available to customers upon request;
2. A fuel sources standard that would require each utility to develop a plan to minimize dependence on one fuel source and insure use of a diverse range of fuels and technologies, including renewables; and
3. A fossil fuel efficiency standard that would require each utility to develop a 10-year plan to increase the efficiency of its fossil fuel generation.

Proceedings under section 1251 are to be started within two years and completed within three years after enactment of the Act.

Section 1252 of the Act amends PURPA to require that states conduct an investigation and issue a decision whether to require utilities to install time-based meters that would enable, but not require, each customer to participate in time-of-use rates and demand response programs. Proceedings are to be started within one year and completed within two years after enactment.

Section 1254 of the Act amends PURPA to require that states consider adopting new standards for grid interconnection based on IEEE Standard 1547 for Interconnecting Distributed Resources with Electric Power Systems.

Proceedings are to be started within one year and completed within two years after enactment.

(11) Net Metering

“Each electric utility shall make available upon request net metering service to any electric consumer that the electric utility serves. For purposes of this paragraph, the term "net metering service" means service to an electric consumer under which electric energy generated by that electric consumer from an eligible on-site generating facility and delivered to the local distribution facilities may be used to offset electric energy provided by the electric utility to the electric consumer during the applicable billing period.”

(12) Fuel Sources

“Each electric utility shall develop a plan to minimize dependence on one fuel source and to ensure that the electric energy it sells to consumers is generated using a diverse range of fuels and technologies, including renewable technologies.”

(13) Fossil Fuel Generation Efficiency

“Each electric utility shall develop and implement a 10-year plan to increase the efficiency of its fossil fuel generation.”

New PURPA Standards under Energy Independence and Security Act of 2007

<Note: The following is a brief summary of these newly-added PURPA standards.

(16) Integrated Resource Planning

Requirement that electric utilities integrate energy efficiency into their integrated resources plans and establish cost-effective energy efficiency as a “priority” resource.

(17) Rate Design to Promote Energy Efficiency Investments (PURPA Standard #17)

Requirement that electric rates align utility incentives with the delivery of cost-effective energy efficiency and promote energy efficiency investments.

(16) Smart Grid Investments

Note that this appears to apply only to state regulators. Provides that states consider: (A) requiring regulated utilities to consider smart grid investments before permitting investment in non-advanced grid technologies; (B) permitting recovery from ratepayers of the cost of deploying smart grid technologies; and (C) permitting utilities to recover stranded costs from old grid technologies made obsolete and replaced by smart grid technologies.

(17) Smart Grid Information

Requirement (A) that electricity customers should be given direct written or electronic access to information concerning time-based electricity prices at wholesale and retail and their usage on at least a daily basis, and (B) that everyone should have access to data concerning the sources of the power provided by the utility, including the greenhouse gas emissions associated with each type of generation.

Based on our assessment of PURPA rules, supported by advice from FMPPA/FMEA legal counsel, the Utilities Commission is not required to consider these rules for implementation. Also, based on our relative size, potential impacts to our electric system, and requirements under Resolution 28-78 and the UC's Charter, implementation of these standards are not feasible at this time.

However, as previously discussed during Regular UC Meetings in June 2007, and in March and April 2008, regarding PURPA applicability requirements, our customers would likely subsidize those few benefiting from some measures while other expenditures would not likely provide a priority benefit for our system at this time.

Consequently, Staff recommends that the UC exercise its option of exclusion from the respective PURPA standards and also recommends that voluntary measures, when appropriate, be taken to provide benefit for all our customers and our system. Such has been the case with energy conservation and efficiency measures placed into effect by the UC during the last two years and is anticipated with the adoption of an Interim Net Metering Rider.