

SAMPLE INDICIA OF FUNCTIONING POWER MARKET (Energy and Capacity)

What is a “functioning power market?” To borrow from former Justice Potter Stewart’s 1964 effort to define obscenity -- *“I shall not today attempt further to define the kinds of material I understand to be embraced ... [b]ut I know it when I see it...”*¹ The exercise to define in advance or in the abstract a “functioning power market” bears similarly difficult qualifications. Nevertheless there are at least some indicia of a functional power market that can be identified and should serve as the criteria that a utility must demonstrate to the Commission.

The statute articulates a very broad, and consequentially imprecise, market standard -- a market that provides nondiscriminatory access to competitive day-ahead and real-time wholesale markets for electric energy and wholesale markets for the long-term sales of capacity and energy. The issue for the Commission is how to precisely define and identify the qualities of a market that provide a meaningful substitute for the goals, policies and duties under PURPA. What are the features of a functional power market that serve as a reasonable substitute for the PURPA obligations? The following list of indicia provides a framework for the answer.

A functional power market must be characterized by:

1. Buyers and sellers reach reasonable price and delivery terms under varying operational, supply and demand conditions. This means the market must be tested and evaluated over time, times of day, seasons, and varying operating conditions, including during periods of shortage, to insure that prices, terms and conditions are the result of market forces.
2. Reasonable price and delivery terms for peak, intermediate and base load supply resources are accessible so that supply facilities remain financially viable and available to the grid. Correspondingly, price levels or delivery conditions must not impair economic development and load growth. At the very least the market must produce prices that over time will allow the recovery of variable and fixed cost as well as a return on investment.
3. Transactions demonstrating that a diverse portfolio of resources to sell and deliver power in the short, intermediate and long term is retained. Transactions must reflect the retention of existing and development of new renewable and cogeneration operations, at a minimum akin to current generation supply portfolio conditions. Transaction term should vary and include a material quantity of long-term transactions (10 years and longer), indicating that the market is not materially dependent on volatile short term spot purchases.

¹ Jacobellis v. Ohio, 378 U.S. 184, 197 (1964)

4. Conditions that recognize and value the reliable long term delivery of power to the grid by nondispatchable cogeneration QF operations. The market must provide a real and workable substitute for existing PURPA must-take and full avoided cost pricing obligations. The test of any such market is the maintenance of comparable procurement and market share for existing and new cogeneration facilities.
5. Accurate and timely information on short, intermediate and long term market trades, volumes, conditions, terms, and most importantly, pricing must be transparent and available to all sellers and buyers.
6. Effective market administration for and nondiscriminatory access to necessary interconnection and transmission facilities and services.
7. An absence of market power in location or time in a utility footprint from any participant, especially the utility itself.
8. Sufficient liquidity to support an efficient allocation of rights; e.g., any allocation of rights, such as transmission rights, does not consume so much available inventory to effectively eliminate competitive trading.
9. Robust numbers of suppliers and purchasers exist in each segment of the market; e.g., for long term (up to 20 or 30 years), monthly, balance of the month, weekly, balance of the week, day-ahead, hour ahead and real time markets each segment must not be dominated by a single seller or buyer.²

² As an example of a market segment liquidity problem in California, Pacific Gas & Electric Company has acknowledged in a proceeding before the California Public Utilities Commission that its day-ahead transactions in the NP 15 market segment are approximately 50% of that market. See, Vol. 24 Tr. 3598-3599 (Coffee, PG&E) January 25, 2006 -- Consolidated Avoided Cost Proceeding R.04-04-025 and Long-Term Policy for Expiring QF Contracts-R.04-04-003. The fact that a single buyer represents 50% of a market segment demonstrates that segment of the market is not sufficiently liquid and robust.