

# ***How Would PURPA Repeal Affect Cogenerators?***

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Congress has been considering electricity restructuring legislation for the past several years. Legislative hearings have been conducted in both the House and the Senate, and markup of legislation proceeded in the Senate.

It is clear that such legislation will loom as a major agenda item for Congress in 2001, particularly in light of reliability and pricing problems that appeared in certain markets last summer.

Prominent features of this proposed legislation include provisions which would repeal the Public Utility Regulatory Policies Act of 1978 (PURPA). Current proposals call for PURPA to be repealed prospectively for fossil fueled qualifying cogeneration facilities, while the mandatory purchase/sale provisions of PURPA for alternative fueled small power producers may be maintained.

Congress may also amend certain elements of the Federal Power Act and the Public Utility Holding Company Act (PUHCA) with respect to electricity restructuring, interconnection and transmission. Specifically, many provisions of the proposed legislation focus on repealing PURPA for qualifying cogeneration facilities, including the right to automatically connect to the grid, the PURPA "put" obligation, the exemptions provided in Section 210(e) from the Federal Power Act and PUHCA, the statutory rights to standby and backup power, and finally exemptions from certain state ratemaking and accounting requirements for qualifying facilities.

Other legislative amendments are being considered which might make the prospective repeal of PURPA's mandatory purchase and sale provisions contingent on complete unbundling of utility services at non-discriminatory rates and provide for full cost recovery of purchase con-

tracts by utilities. Moreover repeal of the mandatory requirement to sell backup power to a qualifying cogeneration facility might be made contingent on a state's adoption of retail competition.

We believe that companies currently considering the development of cogeneration facilities should seek PURPA status for those projects now in order to preserve PURPA benefits in the future. We make this recommendation even if the projects are in early stage development. This may become critical if provisions of proposed legislation terminate PURPA rights in the future. The fundamental benefits of PURPA exemptions and the other statutory rights are compelling for cogeneration and can be preserved as an overall development strategy (where cogeneration is a possibility) through a minimal expenditure of time and effort.

**In this instance, you would want to make sure that your current PURPA compliance posture was verified for all existing projects (as well as even pending project opportunities) before PURPA repeal occurs. This would ensure clear protection of all of your company's assets under the benefits that PURPA provides to such facilities.**

## ***DID YOU KNOW?***

Latest research shows that non-traditional revenues of U.S. investor-owned utilities engaged in non-regulated businesses rose to \$178 billion in 1999?

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## ***ABOUT THE AUTHOR***

**Jonathan W. Gottlieb** is a partner in the Washington, DC, office of Baker & McKenzie. Mr. Gottlieb's practice focuses on domestic and international energy project development and competitive market matters, representing utilities, utility subsidiaries, power marketers, industrial, mining, and paper companies, and independent power developers.

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