

123 FERC ¶ 61,155  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Alliant Energy Corporate Services, Inc.

Docket Nos. QM08-3-000  
QM08-3-001

ORDER GRANTING APPLICATION TO TERMINATE PURCHASE OBLIGATION

(Issued May 14, 2008)

1. On January 25, 2008, as revised on February 14, 2008, Alliant Energy Corporate Services, Inc. (Alliant), on behalf of Wisconsin Power and Light Company and Interstate Power and Light Company (collectively, Alliant Utilities), filed an application pursuant to section 210(m) of the Public Utility Regulatory Policies Act of 1978 (PURPA)<sup>1</sup> and section 292.310 of the Commission's regulations<sup>2</sup> seeking termination on a service territory-wide basis of the obligation of these franchised utility affiliates to enter into new power purchase obligations or contracts to purchase electric energy from qualifying cogeneration and small power production facilities (QFs) with net capacity in excess of 20 MW. In this order, we grant Alliant's application.

**Background**

2. On October 20, 2006, the Commission issued Order No. 688,<sup>3</sup> revising its regulations governing utilities' obligations to purchase electric energy produced by QFs. Order No. 688 implements PURPA section 210(m),<sup>4</sup> which, generally speaking, provides for termination of the requirement that an electric utility enter into new power purchase

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<sup>1</sup> 16 U.S.C.A. § 824a-3(m) (West Supp. 2006).

<sup>2</sup> 18 C.F.R. § 291.310 (2007).

<sup>3</sup> *New PURPA Section 210(m) Regulations Applicable to Small Power Production and Cogeneration Facilities*, Order No. 688, 71 Fed. Reg., 64,342 (2006), FERC Stats. & Regs. ¶ 31,233 (2006); *order on reh'g*, Order No. 688-A, FERC Stats. & Regs. ¶ 31,250 (2007).

<sup>4</sup> Section 210(m) was added to PURPA by section 1253 of the Energy Policy Act of 2005. *See* Pub. L. No. 109-58, § 1253, 119 Stat. 594, 967-69 (2005) (EPAAct 2005).

obligations or contracts to purchase electric energy from QFs if the Commission finds that the QFs have nondiscriminatory access to markets.

3. As relevant here, the Commission found in Order No. 688 that the markets administered by Midwest Independent Transmission System Operator, Inc. (MISO) satisfy the criteria of PURPA section 210(m)(1)(A).<sup>5</sup> Accordingly, section 292.309(e) of the Commission's regulations established a rebuttable presumption that MISO provides large QFs (over 20 MW net capacity) interconnected with member electric utilities with nondiscriminatory access to markets described in section 210(m)(1)(A).<sup>6</sup>

### **Alliant's Filing**

4. In its application, Alliant states that it meets the requirements for relief under section 292.309(a)(1) of the Commission's regulations.<sup>7</sup> Alliant states that, as a member of MISO, it is relying on the rebuttable presumptions contained in section 292.309(e) and therefore should be relieved of the obligation to purchase electric energy from QFs larger than 20 MW net capacity. Accordingly, Alliant asks for relief, on a service territory-wide basis for the Alliant system, of the requirement to enter into new power purchase obligations or contracts with QFs over 20 MW net capacity.

### **Notice and Responsive Pleadings**

5. Notice of Alliant's filing was mailed by the Commission on January 30, 2008 to each of the eleven potentially-affected QFs identified in Alliant's application.<sup>8</sup> Notice of Alliant's filing and amended filing were published in the *Federal Register*, 73 Fed. Reg. 6717 and 73 Fed. Reg. 11,898 (2008), with interventions and protests due on or before March 18, 2008. Iberdrola filed a timely motion to intervene and comments. Alliant filed an answer in opposition to Iberdrola's motion to intervene; Iberdrola filed a response.

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<sup>5</sup> 16 U.S.C.A. § 842a-3(m)(1)(A) (West Supp. 2006); *see* 18 C.F.R. § 292.309(a)(1) (2007).

<sup>6</sup> 18 C.F.R. § 292.309(e) (2007).

<sup>7</sup> 18 C.F.R. § 292.309(a)(1) (2007).

<sup>8</sup> Alliant identifies eleven potentially-affected QFs in its application: AES Wind Generation; Clipper Windpower, Inc.; Edison Mission Energy; Eurus Energy America Corp.; FPL Energy; Horizon Wind Energy; Iberdrola Renewable Energies USA (Iberdrola); Invenergy LLC; Midwest Renewable Energy Corp.; National Wind, LLC; and PPM Energy.

6. Iberdrola comments that in its February 14, 2008 filing, Alliant refers to the Iberdrola QFs as projects that “are merely in the planning and development stages,” and that it may include these QFs within the scope of its requested relief when the operational data for these QFs becomes available.<sup>9</sup> Iberdrola argues that the Commission has issued a declaratory order finding that PURPA section 210(m)(6) preserves the rights and remedies of Iberdrola’s QFs with respect to the mandatory purchase obligations of the Alliant Utilities.<sup>10</sup> It contends that in the Declaratory Order, the Commission found that the state proceedings to determine the specific rates to be paid for power by the Alliant Utilities to Iberdrola QFs were initiated between January 12, 2005 and July 26, 2005, prior to the enactment of EPAct 2005 amendments to PURPA. Iberdrola further contends that, since the Commission made the above finding, Iberdrola’s QFs are protected by the “savings clause” of PURPA section 210(m)(6), which states that EPAct 2005’s PURPA amendments do not “affect the rights or remedies of any party under any contract of obligation, in effect or pending approval before the appropriate state regulatory authority.”<sup>11</sup>

7. In its answer, Alliant argues that no right to participate in this proceeding has been expressly conferred on Iberdrola by Commission rule, order or other action. Alliant further argues that Iberdrola has not demonstrated that it may be directly affected by the outcome of this proceeding or that its participation is in the public interest.

8. Iberdrola responds that Alliant had identified it in its filing as a potentially affected QF, and therefore has a right to participate in the proceeding.

## **Discussion**

### **Procedural Matters**

9. Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), states in part that a movant must demonstrate that it has an interest that may be directly affected by a proceeding. We find that Iberdrola has such an interest. Alliant listed Iberdrola as one of the potentially affected QFs in its filing seeking termination of the purchase obligation. We view Alliant’s argument that Iberdrola has no

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<sup>9</sup> Iberdrola March 13, 2008 Comments at 6 (citing Alliant March 13, 2008 Clarification at 1).

<sup>10</sup> Iberdrola March 13, 2008 Comments at 5 (citing *Midwest Renewable Energy Projects, LLC*, 116 FERC ¶ 61,017, at P 17 (2006) (Declaratory Order)). The Declaratory Order discusses QFs being developed by Midwest Renewable; Midwest Renewable was later acquired by Iberdrola.

<sup>11</sup> Section 210(m)(6) of PURPA, 16 U.S.C. § 824a-3(m)(6).

interest in the proceeding's outcome as inconsistent with it previously listing Iberdrola as a potentially affected QF. Moreover, it is clear that Iberdrola has an interest that may be directly affected by this proceeding; Alliant is seeking relief, on a service territory-wide basis, of the requirements that Alliant purchase energy and capacity made available by QFs (including those being developed by Iberdrola). Accordingly, we grant Iberdrola's motion to intervene.

### **Commission Determination**

10. Alliant, as a member of MISO, relies upon the rebuttable presumptions set forth in section 292.309(a) of our regulations, i.e., that MISO provides QFs larger than 20 MW net capacity nondiscriminatory access to independently administered, auction-based day ahead and real time wholesale markets for the sale of electric energy and to wholesale markets for long-term sales of capacity and electric energy.<sup>12</sup> The potentially-affected QFs identified by Alliant were provided notice of Alliant's application.<sup>13</sup> Accordingly, we find that Alliant provides QFs larger than 20 MW nondiscriminatory access to independently administered, auction-based day-ahead and real-time wholesale markets for the sale of electric energy and to wholesale markets for long-term sales of capacity and electric energy. We, therefore, will grant Alliant's request to terminate its obligation under section 292.303(a) of our regulations to enter into new power purchase obligations or contracts with QFs that have a capacity in excess of 20 MW net capacity and that are in Alliant's service territory in MISO.<sup>14</sup>

11. In response to statements made by Alliant in its application that certain Iberdrola QFs may be included in Alliant's request for relief at a later date, Iberdrola contends that the Declaratory Order preserves Alliant's purchase obligations under PURPA section 210(m)(6) with respect to Iberdrola's QFs. We agree.<sup>15</sup> As we observed in the Declaratory Order, section 210(m) of PURPA, which was enacted on August 8, 2005 as part of EPAct 2005, states that an electric utility's obligation to purchase electric energy

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<sup>12</sup> 18 C.F.R. §§ 292.309(a)(1), .309(e) (2007).

<sup>13</sup> To the extent that a potentially-affected QF is 20 MW or smaller, this order does not terminate the purchase obligation as to such QF.

<sup>14</sup> 18 C.F.R. § 292.309(a) (2007). If at any time a QF believes that it does not have nondiscriminatory access to markets that satisfy the criteria for relieving an electric utility of its purchase obligation, the QF may file an application pursuant to section 292.311 of our regulations, 18 C.F.R. § 292.311 (2007), for an order reinstating the electric utility's purchase obligation.

<sup>15</sup> We note that Alliant does not challenge the substance of Iberdrola's comments, and instead only addressed their right to intervene.

from a QF, as mandated by PURPA § 210(a) and the Commission's regulations, shall be terminated if the Commission determines that the QF has nondiscriminatory access to a market described in section 210(m)(1)(A), (B) or (C) of PURPA. However, section 210(m)(6) is a savings clause, which provides that nothing in section 210(m) of PURPA shall affect the rights and remedies of any party under any contract or obligation "in effect or pending approval" by the appropriate State regulatory authority prior to the date of EPAct 2005's enactment.<sup>16</sup> In the Declaratory Order, the Commission found that the state proceedings (in Wisconsin and Iowa) to determine the specific rates to be paid for power by the Alliant Utilities to the Iberdrola QFs were initiated prior to the enactment of EPAct 2005, and are proceedings that result in legally enforceable obligations.<sup>17</sup> Any contract or legally enforceable obligation that results from those proceedings thus is within the scope of section 210(m)(6) of PURPA and is not affected by our ruling in this order.<sup>18</sup> Therefore, despite the implications to the contrary in Alliant's application, the Iberdrola QFs discussed in the Declaratory Order fall within the scope of the savings clause and any Iberdrola QF contract or legally enforceable obligation that was existing or pending approval is not affected by Alliant's application.

The Commission orders:

The application of Alliant Energy Corporate Services, Inc. for termination on a service territory-wide basis of the obligation to enter into new power purchase obligations or contracts with QFs that have a net capacity in excess of 20 MW is hereby granted.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>16</sup> Section 210(m)(6) of PURPA, 16 U.S.C. § 824a-3(m)(6).

<sup>17</sup> Declaratory Order, 116 FERC ¶ 61,017 at P 13-17.

<sup>18</sup> The extent of the contract or legally enforceable obligation is determined by the applicable state regulatory authority.