

135 FERC ¶ 61,127  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

May 12, 2011

In Reply Refer To:  
Public Service Electric and Gas  
Company  
Docket No. QM11-1-000

Public Service Electric and Gas Company  
80 Park Plaza, T5G  
Newark, NJ 07102

Attention: Jodi L. Moskowitz, Esq.  
General Regulatory Counsel - Operations and Compliance

Dear Ms. Moskowitz:

1. On February 11, 2011, as supplemented on February 16, 2011, Public Service Electric and Gas Company (PSE&G) 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> PSE&G proposes to terminate the obligation to enter into new power purchase obligations or contracts to purchase electric energy and capacity from qualifying cogeneration and small power production facilities (QF) with net capacity in excess of 20 MW on a service territory-wide basis for its interconnected system under the control of PJM Interconnection, L.L.C. (PJM).

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

<sup>2</sup> 18 C.F.R. § 292.310 (2010).

2. On October 20, 2006, the Commission issued Order No. 688,<sup>3</sup> in which the Commission revised its regulations governing utilities' obligations to purchase electric energy produced by QFs. Order No. 688 implements PURPA section 210(m),<sup>4</sup> which, as relevant here, provides for termination of the requirement that an electric utility enter into new obligations or contracts to purchase electric energy from QFs if the Commission finds that the QFs have nondiscriminatory access to markets.

3. The Commission found in Order No. 688 that the markets administered by PJM 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 PJM provides large QFs (over 20 MW net capacity) interconnected with member electric utilities with nondiscriminatory access to markets described in PURPA section 210(m)(1)(A).<sup>6</sup> The Commission also established a second rebuttable presumption contained in section 292.309(d)(1) of the regulations, which provides that a QF with a net capacity at or below 20 MW does not have nondiscriminatory access to markets.<sup>7</sup>

4. In its application, PSE&G states that it meets the requirements under section 292.309(a)(1) of the Commission's regulations,<sup>8</sup> i.e., that PJM 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 and that members of PJM should be relieved of the obligation to purchase electric energy from QFs to terminate the PURPA mandatory purchase obligation. PSE&G further states that, as a transmission-owning member of PJM, it is relying on the rebuttable presumption contained in section 292.309(e) of the regulations, and therefore should be relieved of the obligation to purchase electric energy from QFs larger than 20 MW net capacity.

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<sup>3</sup> *New PURPA Section 210(m) Regulations Applicable to Small Power Production and Cogeneration Facilities*, Order No. 688, 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).

<sup>5</sup> 16 U.S.C. § 842a-3(m)(1)(A) (2006); *see* 18 C.F.R. § 292.309(a)(1) (2010).

<sup>6</sup> 18 C.F.R. § 292.309(e) (2010).

<sup>7</sup> 18 C.F.R. § 292.309(d)(1) (2010).

<sup>8</sup> 18 C.F.R. § 292.309(a)(1) (2010).

5. The Commission served notice of the application on the potentially-affected QFs identified by PSE&G by letters dated February 15, 2011 and February 17, 2011. Notice of PSE&G's application was also published in the *Federal Register*, 76 Fed. Reg. 10,344 (2011) and 76 Fed. Reg. 10,345 (2011), with interventions or protests due on or before March 16, 2011.

6. On March 17, 2011, EF Kenilworth LLC (EF Kenilworth) filed a motion to intervene out-of-time and request for clarification that the relief requested by PSE&G will not affect the obligation created by the existing agreement between PSE&G and EF Kenilworth; and that PSE&G's obligation to continue to purchase power from EF Kenilworth's 27 MW net capacity natural gas-fired facility should continue until terminated by mutual agreement.

7. On March 22, 2011, PSE&G filed an answer to EF Kenilworth confirming that it is not requesting to terminate its existing QF contracts or obtain relief from any obligation to purchase electric energy or capacity from any QF in the PSE&G service territory with which PSE&G has an existing contract, including PSE&G's existing agreement with EF Kenilworth.

8. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2010), we will grant EF Kenilworth's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answer filed by PSE&G because it was useful in the Commission's decision-making process.

10. PSE&G, as a transmission-owning member of PJM, relies upon the rebuttable presumptions set forth in section 292.309(e) of our regulations, namely that PJM 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. Moreover, the potentially-affected QFs identified by PSE&G were provided notice of PSE&G's application; none of the potentially-affected QFs identified by PSE&G protested. However, EF Kenilworth requested clarification that its existing contract with PSE&G would not be affected. PSE&G answered EF Kenilworth's concerns by stating that PSE&G was not seeking to terminate its contract with EF Kenilworth. Accordingly, we find, based on the unrebutted statements in PSE&G's application, as supplemented, and PSE&G's response to EF Kenilworth, that PSE&G 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.

11. We therefore grant PSE&G's request to terminate its mandatory purchase obligation to enter into new power purchase obligations or contracts with QFs over 20 MW net capacity, on a service territory-wide basis, pursuant to section 210(m) of PURPA and section 292.310 of the Commission's regulations, effective February 11, 2011.<sup>9</sup>

By direction of the Commission.

Kimberly D. Bose,  
Secretary.

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<sup>9</sup> To the extent that a potentially-affected QF's net capacity is 20 MW or smaller this order does not terminate the mandatory purchase obligation for that QF.