

122 FERC ¶ 61,022  
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.

PECO Energy Company

Docket No. QM08-2-000

ORDER GRANTING APPLICATION TO TERMINATE PURCHASE OBLIGATION

(Issued January 17, 2008)

1. On October 19, 2007, PECO Energy Company (PECO) filed an application pursuant to section 210(m) of the Public Utility Regulatory Policies Act of 1978<sup>1</sup> (PURPA) and section 292.310 of the Commission's regulations<sup>2</sup> seeking termination on a service territory-wide basis of the obligation to enter into new power purchase obligations or contracts to purchase energy and capacity from qualifying cogeneration and small power production facilities (QFs) with net capacity in excess of 20 MW. In this order, we grant PECO's application.

**Background**

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,

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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. § 292.310 (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 rehearing*, Order No. 688-A, 72 Fed. Reg. 35,872 (2007), FERC Stats. & Regs. ¶ 31,250, *appeal pending sub nom. American Forest & Paper Assoc. v. FERC*, D.C. Cir. No. 07-1328.

<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).

generally speaking, provides for termination of the requirement that an electric utility enter into new power purchase 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 PJM Interconnection, LLC (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>

### **PECO's Filing**

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

### **Notice and Responsive Pleadings**

5. Notice of PECO's filing was served on each of the three potentially-affected QFs identified in PECO's application. Notice of PECO's filing was also published in the *Federal Register*, 72 Fed. Reg. 60,838 (2007), with interventions or protests due on or before November 16, 2007. On November 16, Kimberly-Clark Corporation (Kimberly-Clark) filed a motion to intervene and comments.

6. Kimberly-Clark, which owns and operates a QF in PECO's service territory in Chester, Pennsylvania (Chester Plant), states in its comments that PECO's application represents that the Chester Plant is interconnected as an "energy resource." However, Kimberly-Clark contends that the operative interconnection agreement provides that its QF is interconnected "to operate in parallel with PECO and to permit the delivery to PECO of electric energy or electric energy and capacity from Scott's cogeneration

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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).

facility.”<sup>8</sup> Kimberly-Clark requests that the Commission state in its order that PECO’s representation about Kimberly-Clark’s interconnection status is not dispositive, and that the language in the existing interconnection agreement should guide any process for confirming Kimberly-Clark’s ability to sell energy and capacity into PJM markets.

## **Discussion**

### **Procedural Matters**

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the timely, unopposed motion to intervene serves to make Kimberly-Clark a party to this proceeding.

### **Commission Determination**

8. PECO, as a member of PJM, relies upon the rebuttable presumptions set forth in section 292.309(e) of our regulations, 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.<sup>9</sup> The potentially-affected QFs identified by PECO were provided notice of PECO’s application and none protested.<sup>10</sup> Accordingly, we find, based on the un rebutted statements by PECO in its application, that PECO 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 PECO’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 PECO’s service territory in PJM.<sup>11</sup>

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<sup>8</sup> PECO Comments at 3.

<sup>9</sup> 18 C.F.R. §§ 292.309(a)(1), .309(e) (2007).

<sup>10</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>11</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.

9. Finally, we note that Kimberly-Clark is correct that any representation in PECO's filing about Kimberly-Clark's QF would not be binding on the Commission in a future proceeding. PECO and Kimberly-Clark are mutually bound by the terms and conditions of the relevant contracts, and not by any representation in PECO's application.

The Commission orders:

The application of PECO Energy Company 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 )

Kimberly D. Bose,  
Secretary.