

123 FERC ¶ 61,269
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.

The United Illuminating Company

Docket No. QM08-5-000

ORDER GRANTING APPLICATION TO TERMINATE PURCHASE OBLIGATION

(Issued June 19, 2008)

1. On April 15, 2008, The United Illuminating Company (United Illuminating) filed an application pursuant to section 210(m) of the Public Utility Regulatory Policies Act of 1978¹ (PURPA) and section 292.310 of the Commission's regulations² 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 United Illuminating's application.

Background

2. On October 20, 2006, the Commission issued Order No. 688,³ 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),⁴ which,

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

² 18 C.F.R. § 292.310 (2007).

³ *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.

⁴ 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 certain markets.

3. As relevant here, the Commission found in Order No. 688 that the markets administered by ISO New England Inc. (ISO-NE) satisfy the criteria of PURPA section 210(m)(1)(A).⁵ Accordingly, section 292.309(e) of the Commission's regulations established a rebuttable presumption that ISO-NE 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).⁶

United Illuminating's Filing

4. In its application, United Illuminating states that it meets the requirements for relief under section 292.309(a)(1) of the Commission's regulations.⁷ United Illuminating states that it is a member of ISO-NE. United Illuminating also states that it is relying on the rebuttable presumptions contained in section 292.309(e) that, as a member of ISO-NE, it should be relieved of the obligation to purchase electric energy from QFs larger than 20 MW net capacity. Accordingly, United Illuminating 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.

Notice and Responsive Pleadings

5. Notice of United Illuminating's filing was served on the potentially-affected QFs identified in its application. Notice of United Illuminating's filing was also published in the *Federal Register*, 7373 Fed. Reg. 21,927 (2008), with interventions or protests due on or before May 13, 2008. None were received.

Discussion

6. United Illuminating, as a member of ISO-NE, relies upon the rebuttable presumptions set forth in section 292.309(e) of our regulations, i.e., that ISO-NE 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

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

⁶ 18 C.F.R. § 292.309(e) (2007).

⁷ 18 C.F.R. § 292.309(a)(1) (2007).

energy.⁸ The potentially-affected QFs identified by United Illuminating were provided notice of United Illuminating's application and did not protest.⁹ Accordingly, we find, based on the un rebutted statements by United Illuminating in its application, that United Illuminating 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, grant United Illuminating'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 United Illuminating's service territory in ISO-NE.¹⁰

The Commission orders:

The application of United Illuminating 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.

⁸ 18 C.F.R. §§ 292.309(a)(1), .309(e) (2007).

⁹ 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.

¹⁰ 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.