

113 FERC ¶ 61,024
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Alliant Energy Corporate Services, Inc.

Docket No. EL05-143-000

ORDER DISMISSING PETITION FOR DECLARATORY ORDER

(Issued October 11, 2005)

1. On August 12, 2005, Alliant Energy Corporate Services, Inc. (Alliant), on behalf of Interstate Power and Light Company (IPL) and Wisconsin Power and Light Company (WPL), (collectively, Applicants) filed a petition for declaratory order requesting that IPL and WPL not be required to enter into a new contract or obligation to purchase electric energy from a qualifying facility (QF), pursuant to section 210(m) of the Public Utility Regulatory Policies Act of 1978 (PURPA).¹ As discussed below, this order dismisses, without prejudice to refiling, Applicants' petition for declaratory order.

Background

Statutory Background

2. EAct 2005, enacted on August 8, 2005, amended section 210 of PURPA² by providing for termination of the so-called mandatory purchase obligation upon a Commission finding that a QF has nondiscriminatory access to wholesale markets, as more fully defined in EAct 2005.

3. More specifically, section 210(m)(1) of PURPA provides that no electric utility shall be required to purchase electric energy from a QF if the Commission finds that the QF has nondiscriminatory access to:

¹ 16 U.S.C. § 824a-3(m). Section 210(m) was added to PURPA by section 1253(a) of the Energy Policy Act of 2005 (EAct 2005), Pub. L. No. 109-58, § 1253 (a), 119 Stat. 594 (2005).

² 16 U.S.C. § 824a-3 (2000).

(A)(i) independently administered, auction-based day ahead and real time wholesale markets for the sale of electric energy; and (ii) wholesale markets for long-term sales of capacity and electric energy; or

(B)(i) transmission and interconnection services that are provided by a Commission-approved regional transmission entity and administered pursuant to an open access transmission tariff that affords nondiscriminatory treatment to all customers; and (ii) competitive wholesale markets that provide a meaningful opportunity to sell capacity, including long-term and short-term sales, and electric energy, including long-term, short-term and real-time sales, to buyers other than the utility to which the qualifying facility is interconnected. In determining whether a meaningful opportunity to sell exists, the Commission shall consider, among other factors, evidence of transactions within the relevant market; or

(C) wholesale markets for the sale of capacity and electric energy that are, at a minimum, of comparable competitive quality as markets described in subparagraphs (A) and (B).

Factual Background

4. Alliant represents that it is a services company subsidiary of Alliant Energy Corporation, the parent corporation of both IPL and WPL. IPL's service territory covers most of eastern and central Iowa, and small sections of southern Minnesota and western Illinois; IPL is a transmission-owning member of Midwest Independent System Operator, Inc. (Midwest ISO). WPL's service territory encompasses eastern and central Wisconsin. WPL transferred its transmission system to American Transmission Company LLC, which is also a transmission-owning member of Midwest ISO.
5. Alliant explains that both IPL and WPL have power purchase contracts with several existing QFs. Through competitive bid solicitations, both utilities have also voluntarily entered into power purchase agreements with developers of generating facilities that will presumably be QFs once constructed and placed into service. IPL and WPL have also received demands from Midwest Renewable Energy Project, LLC (Midwest Renewable), a developer of small power production facilities, to purchase the output of its future projects when constructed and placed into service.³
6. Alliant states that by virtue of IPL and WPL being within the Midwest ISO, there are day-ahead and real-time wholesale markets available to QFs within this region.

³ Applicants state that Midwest Renewable has commenced regulatory proceedings before the Iowa Utilities Board and the Public Service Commission of Wisconsin seeking determinations of IPL's and WPL's avoided costs in order to establish QF purchase prices (state avoided cost proceedings).

Alliant also contends that QFs within the territory have access to generator interconnection service, as well as open access transmission service offered by Midwest ISO, and other transmission providers, under open access transmission tariffs. Alliant argues that the Midwest ISO market satisfies the competitive markets prerequisite for a Commission finding that IPL and WPL qualify for exemption from the mandatory purchase obligation.

7. Alliant also requests that the Commission find that the exemption applies to any project that is currently not built and not in operation. This determination would affect any arrangements between IPL and WPL and Midwest Renewable, the developer of QFs that has sought state regulatory determinations of IPL's and WPL's avoided costs for its planned QF projects.

Notices, Interventions and Protests

8. Notice of Applicants' petition for declaratory order was published in the *Federal Register*, 70 Fed. Reg. 50,305 (2005), with protests, and interventions due on or before September 12, 2005.

9. Edison Electric Institute filed to intervene and comment in support of Alliant's petition. Other parties filed timely interventions and protests opposing Alliant's petition: Electric Power Supply Association; American Forest and Paper Association; Superior Renewable Energy, LLC; Gregory Swecker, Beverly Swecker, and Welch Motels, Inc.; the Cogeneration Association of California; the American Wind Energy Association; American Chemistry Council; Occidental Chemical Corporation; Granite State Hydropower Association; Midwest Renewable; jointly, American Forest and Paper Association, the American Iron and Steel Institute, the American Wind Energy Association, the Council of Industrial Boiler Operators, the Electricity Consumers Resource Council, the Electric Power Supply Association, the Environmental Law and Policy Center, the Fertilizer Institute, G. McNeilus Wind Energy Company, the National Petrochemical and Refiners Association, the Minnesota Project, the Ohio Consumers' Council, and Project for Sustainable FERC Energy Policy; California Cogeneration Council; Industrial Energy Users-Ohio; and jointly, Electricity Consumers Resource Council, the American Iron and Steel Institute, the American Chemistry Council, the Association of Businesses Advocating Tariff Equity, and the Wisconsin Industrial Energy Group.

10. The Iowa Renewable Energy Association, the Coalition of Midwest Transmission Customers, Calpine and jointly Iowa Renewable Energy Association and the Iowa Farmers Union filed untimely protests.

11. Several parties filed timely motions to intervene: ConocoPhillips Company, American Electric Power Company, Montana-Dakota Utilities Co., Environmental Law

& Policy Center, Calpine, Madison Gas and Electric Company, and The Detroit Edison Company. The Public Service Commission of Wisconsin filed a notice of intervention. Exelon Corporation filed an untimely motion to intervene. The Coalition of Midwest Transmission Customers, the Office of the Ohio Consumers' Council and Dr. Blair Henry filed untimely motions to intervene and protests.

12. Midwest Renewable argues that section 210(m)(6) of PURPA expressly preserves the existing rights and remedies of any entity that has QF-related requests pending before state regulatory authorities on the date of enactment of EPAct 2005.⁴ On that date, Midwest Renewable had avoided cost proceedings pending before the Iowa Utilities Board and the Public Service Commission of Wisconsin. Midwest Renewable argues that section 210(m)(6) applies to its projects, even though they are not built or not in operation at the date of enactment.

13. The other parties that oppose Alliant's petition believe that Alliant fails to address the criteria of section 210(m)(1) of PURPA, including the statutory requirements that QFs have access to long-term energy and capacity markets. Opposing parties assert that Alliant has not met its statutory burden by providing specific evidence that IPL and WPL operate in a competitive market where QFs have nondiscriminatory access and a meaningful opportunity to sell their output on a long-term basis.

14. Alliant filed an answer to the various motions to intervene, protests and comments.

Discussion

Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Further, we will grant the untimely motions to intervene given their interests, the early stage of this proceeding, and the absence of undue prejudice or delay.

⁴ Section 210(m)(6) states:

Nothing in this subsection affects the rights or remedies of any party under any contract or obligation, in effect or pending approval before the appropriate State regulatory authority or non-regulated electric utility on the date of enactment of this sub-section, to purchase electric energy or capacity from or to sell electric energy or capacity to a qualifying cogeneration facility or qualifying small power production facility under this Act (including the right to recover costs of purchasing electric energy or capacity).

Commission Determination

16. Applicants' petition for declaratory order is the first application received by the Commission since the enactment of EAct 2005 seeking termination of the mandatory purchase obligation.

17. Section 210(m)(3) of PURPA requires, among other things, that "sufficient notice" be given to "potentially affected" QFs and establishes a time frame for Commission action.

18. As a preliminary matter, section 210(m)(3) states:

any electric utility may file an application with the Commission for relief from the mandatory purchase obligation . . . on a service territory-wide basis. Such application shall set forth the factual basis upon which relief is requested After notice, including sufficient notice to potentially affected qualifying cogeneration facilities and qualifying small power production facilities, and an opportunity for comment, the Commission shall make a final determination within 90 days of such application

19. In order to meet the express statutory requirement of "notice", including "sufficient notice to potentially affected production facilities", the Commission will require that applicants identify all potentially affected QFs.

20. In the instant case, while notice of Alliant's application was published in the *Federal Register*, it does not appear from the filing that the statutorily-required "sufficient notice" was provided to the QFs that are potentially affected by Alliant's application. Before the Commission will consider this (or any similar) application, Alliant or any similar applicants will be required to identify to the Commission potentially affected QFs (including their names and current addresses) – including: (1) those QFs that have existing power purchase contracts with IPL and WPL; (2) other QFs that sell their output to IPL and WPL or that have pending requests for IPL and WPL to purchase their output; (3) any developer of generating facilities with whom IPL and WPL have agreed to enter into power purchase contracts or are in discussion with regard to power purchase contracts; (4) the developers of facilities that have pending state avoided cost proceedings; and (5) any other QFs that Alliant reasonably believes to be affected by its petition. Because the statute requires notice of an application for termination of the mandatory purchase obligation to be provided to all potentially affected QFs, and we are not able to do so here until the applicants provide the foregoing information, we will dismiss, without prejudice, Applicants' instant petition for declaratory order.

The Commission orders:

Alliant's petition is hereby dismissed without prejudice.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.