

120 FERC ¶ 61,217
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeem G. Kelly, Marc Spitzer,
and Jon Wellinghof.

Alliant Energy Corporation Services, Inc.

Docket No. EL05-143-001

ORDER DENYING REHEARING

(Issued September 6, 2007)

1. In this order, the Commission denies the request filed by Alliant Energy Corporation Services, Inc. (Alliant) for rehearing of the Commission's October 11, 2005 order denying its petition for declaratory relief.¹ Since Alliant filed this rehearing request, the Commission issued Order No. 688.² Because the Commission's intervening rulemaking resolves the issue raised by Alliant on rehearing, the Commission denies Alliant's request for rehearing.

Background

2. The Energy Policy Act of 2005 (EPAAct 2005) amended the Public Utility Regulatory Policies Act of 1978 (PURPA) by adding section 210(m),³ which provides, among other things, for the termination of the PURPA requirement that an electric utility enter into a new contract or obligation to purchase electric energy from a qualifying cogeneration facility or a qualifying small power production facility (QF) if the

¹ *Alliant Energy Corporation Services, Inc.*, 113 FERC ¶ 61,024 (2005) (*Alliant*).

² *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).

³ Section 210(m) was added to PURPA by section 1253 of EPAAct 2005. *See* Pub. L. No. 109-58, § 1253, 119 Stat. 594, 967 (2005).

Commission finds that the QF has nondiscriminatory access to one of three categories of markets defined by section 210(m)(1). On August 12, 2005, Alliant filed a petition for declaratory relief seeking a determination by the Commission that QFs situated within the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) have nondiscriminatory access to markets defined by section 210(m)(1)(A). Alliant asked the Commission to relieve its subsidiaries, Interstate Power and Light Company (IPL) and Wisconsin Power and Light Company (WPL), (collectively Applicants) from PURPA's mandatory purchase obligation.⁴

3. The Commission dismissed Alliant's petition for a declaratory order on the basis that Alliant had not met the express statutory requirement of "notice," including "sufficient notice to potentially affected . . . [QFs]."⁵ The Commission acknowledged that "while notice of Alliant's application was published in the *Federal Register*, it [did] not appear from the filing that the statutorily-required 'sufficient notice' was provided to the QFs that are potentially affected by Alliant's application."⁶ To fulfill the section 210(m)(3) notice requirement, the Commission identified five categories of potentially affected QFs whom Alliant or any similar applicant would be required to identify (and to provide names and addresses) to the Commission.⁷

4. On rehearing, Alliant contends that the Commission erred by dismissing its petition on the basis that Alliant had failed to provide sufficient notice. Alliant argues that this requirement exceeds the notice requirement of section 210(m)(3), the Administrative Procedures Act⁸ or the Commission's regulations. Instead, Alliant

⁴ Alliant also sought a determination from the Commission that the section 210(m) exemption from the mandatory purchase obligation may apply to projects currently not built and not in operation. Alliant explained that such a determination would affect any arrangements between IPL and WPL and Midwest Renewable Energy Project, LLC (Midwest Renewable), the developer of QFs that had sought state regulatory determinations of IPL's and WPL's avoided costs for its planned QF projects. The Commission subsequently addressed these issues concerning Midwest Renewable in *Midwest Renewable Energy Projects, LLC*, 116 FERC ¶ 61,017 (2006).

⁵ *Alliant*, 113 FERC ¶ 61,024 at P 19.

⁶ *Id.* at P 20.

⁷ *Id.*

⁸ 5 U.S.C. § 551 *et seq.* (2000).

contends that the notice requirement of section 210(m)(3) was satisfied by publication of Alliant's petition in the *Federal Register*. Alliant also argues on rehearing that the Commission erred by imposing on Applicants the additional condition of providing the names and addresses of potentially affected QFs. Alliant contends that this condition is not imposed or authorized by section 210(m)(3). Alliant adds that it is willing to have the Commission hold its rehearing request in abeyance pending the Commission's anticipated rulemaking addressing section 210(m).

Discussion

5. We will deny Alliant's request for rehearing. Since Alliant filed its request in this proceeding, the Commission has promulgated regulations to implement the provisions of PURPA section 210(m).⁹ On October 20, 2006, the Commission issued Order No. 688 and adopted a new section 292.310 of the Commission's regulations. Section 292.310(b) and (c) of the Commission's regulations specify the notice required for electric utilities making application to terminate the mandatory purchase requirement,¹⁰ adopting the same notice requirement applied in *Alliant*.¹¹

6. In Order No. 688, the Commission considered what notice procedures were necessary to fulfill the section 210(m) requirements. In comments to the rulemaking, Southern California Edison Company had argued, as Alliant argues on rehearing, that the notice requirement of section 210(m)(3) is satisfied by publication of notice in the *Federal Register*.¹² In Order No. 688, the Commission concluded that notice in the *Federal Register* would not be adequate to meet the section 210(m) requirement and that additional process would be necessary to provide "sufficient notice" to all potentially affected entities, stating:

[w]hile the statutory language does not explicitly state that the "notice, including sufficient notice" shall be actual notice, the Commission nonetheless believes its statutory requirement is

⁹ The new regulations, in 18 C.F.R. § 292.310 (2007), provide procedures for electric utilities to seek termination of the requirement to enter into a new contract or obligation to purchase electric energy if specific requirements are satisfied.

¹⁰ 18 C.F.R. §§ 292.310(b), (c) (2007).

¹¹ Order No. 688, FERC Stats & Regs. ¶ 31,233 at P 187.

¹² *Id.* at P 186. While Alliant filed comments to the rulemaking, it did not comment on this matter. *Id.* at P 185-86.

best met by providing all potentially affected QFs, many of which are small entities that do not regularly read the *Federal Register*, with actual notice.¹³

We note that rehearing of this determination was not sought by any entity.

7. Therefore, electric utilities applying for exemption from the mandatory purchase obligation are required to follow the notice requirements contained in 18 C.F.R. §§ 292.310(b), (c) (2007). In the event that Alliant, on behalf of IPL or WPL, wishes to terminate its obligation to enter into new contracts or obligations to procure electric energy from QFs, it may file an application that complies with the procedures contained in 18 C.F.R. § 292.310 (2007).

The Commission orders:

Alliant's request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission. Commissioner Moeller not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Acting Deputy Secretary.

¹³ *Id.* at P 188.