

126 FERC ¶ 61,121  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Acting Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
and Philip D. Moeller.

Montana-Dakota Utilities Company

Docket Nos. QM09-2-000  
QM09-2-001

ORDER GRANTING APPLICATION TO TERMINATE PURCHASE OBLIGATION

(Issued February 17, 2009)

1. On October 22, 2008, as revised on November 12, 2008 and November 20, 2008, Montana-Dakota Utilities Company (Montana-Dakota) 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> seeking termination on a service territory-wide basis (for its three-state interconnected system under the control of the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) in the states of North Dakota, South Dakota and Montana<sup>3</sup>) of 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 (QFs) with net capacity in excess of 20 MW. In this order, we grant Montana-Dakota's application.

**Background**

2. On October 20, 2006, the Commission issued Order No. 688,<sup>4</sup> revising its regulations governing utilities' obligations to purchase electric energy produced by QFs.

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

<sup>2</sup> 18 C.F.R. § 292.310 (2008).

<sup>3</sup> Montana-Dakota also has a second, distinct service territory in Wyoming. Montana-Dakota does not ask for relief for this territory.

<sup>4</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).

Order No. 688 implements PURPA section 210(m),<sup>5</sup> which, 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 Midwest ISO satisfy the criteria of PURPA section 210(m)(1)(A).<sup>6</sup> Accordingly, section 292.309(e) of the Commission's regulations established a rebuttable presumption that Midwest ISO provides large QFs (over 20 MW net capacity) interconnected with member electric utilities with nondiscriminatory access to markets described in section 210(m)(1)(A).<sup>7</sup>

### **Montana-Dakota's Filing**

4. In its application, Montana-Dakota states that it meets the requirements for relief under section 292.309(a)(1) of the Commission's regulations.<sup>8</sup> Montana-Dakota states that, as a member of Midwest ISO, it is relying on the rebuttable presumptions contained in section 292.309(e) and therefore should be relieved of the obligation to purchase electric energy from QFs larger than 20 MW net capacity. Accordingly, Montana-Dakota asks for relief, on a service territory-wide basis (for its three-state interconnected system under the control of the Midwest ISO in the states of North Dakota, South Dakota and Montana), of the requirement to enter into new power purchase obligations or contracts with QFs over 20 MW net capacity.

### **Notice and Responsive Pleadings**

5. Notice of Montana-Dakota's filing was mailed by the Commission on October 23, 2008 to each of the 18 potentially-affected QFs identified in Montana-Dakota's application.<sup>9</sup> Montana-Dakota filed an amended Attachment A on November 19, 2008

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<sup>5</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) (EPAAct 2005).

<sup>6</sup> 16 U.S.C. § 842a-3(m)(1)(A) (2006); *see* 18 C.F.R. § 292.309(a)(1) (2008).

<sup>7</sup> 18 C.F.R. § 292.309(e)(2008).

<sup>8</sup> 18 C.F.R. § 292.309(a)(1) (2008).

<sup>9</sup> Montana Dakota identifies 18 potentially-affected QFs in its application: Tatanka Wind Power LLC; Power Partners Midwest; Crownbutte Wind Power LLC; enXco, Inc.; Dakota I Power Plants; Superior Renewable Energy; Clipperwind LLC; FPL Energy, LLC; Greenlight Energy, Inc.; CPV Wind Wilder Bison LLC; Westmoreland Power Inc.; Midland Cogeneration Venture; CPV Ashley Renewable Energy Company; (continued...)

and an errata on November 20, 2008. Notices of Montana-Dakota's filing and amendment were published in the *Federal Register*, 73 Fed. Reg. 64,313 and 72,792 (2008), with interventions and protests due on or before December 22, 2008. None was filed.

### **Discussion**

6. Montana-Dakota, as a member of Midwest ISO, relies upon the rebuttable presumptions set forth in section 292.309(e) of our regulations, i.e., that Midwest ISO 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>10</sup> The potentially-affected QFs identified by Montana-Dakota were provided notice of Montana-Dakota's application.<sup>11</sup> No protest was filed by these QFs or any other person attempting to rebut these presumptions. Accordingly, we find, based on the un rebutted statements in Montana-Dakota's application as amended, that Montana-Dakota 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.

7. We, therefore, will grant Montana-Dakota's request to terminate its obligation under section 292.303(a) of our regulations to enter into new contracts or obligations to purchase electric energy from QFs that have a capacity in excess of 20 MW net capacity and that are in Montana-Dakota's three-state interconnected service territory under the control of the Midwest ISO.<sup>12</sup>

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Green Wing Energy Management Ltd.; Global Winds Harvest, LLC; Midwest Renewable Energy Projects II, LLC; Dakota Wind, LLC; and Buffalo Creek Energy.

<sup>10</sup> 18 C.F.R. §§ 292.309(a)(1), .309(e) (2008).

<sup>11</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>12</sup> 18 C.F.R. § 292.309(a) (2008). 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 (2008), for an order reinstating the electric utility's purchase obligation.

The Commission orders:

The application of Montana-Dakota Company for termination on a service territory-wide basis (for its three-state interconnected system under the control of the Midwest ISO in the states of North Dakota, South Dakota and Montana) of the requirement 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. Commissioner Kelliher is not participating.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.