

162 FERC ¶ 61,064
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

January 29, 2018

In Reply Refer To:
Missouri River Energy Services
Docket No. QM18-2-000

Van Ness Feldman, LLP
719 Second Avenue
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Seattle, WA 98104

Attn: Malcolm McLellan, Esq.

Dear Mr. McLellan:

1. On October 31, 2017, Missouri Basin Municipal Power Agency doing business as Missouri River Energy Services (Missouri River) on behalf of itself and 33 of its members (Filing Members),¹ filed an application (Application) pursuant to section 210(m) of the Public Utility Regulatory Policies Act of 1978 (PURPA)² and section 292.310 of the Commission's regulations.³ Missouri River seeks to terminate, on a service territory-wide basis, its obligation under section 292.303(a) of the Commission's regulations,⁴ to enter into new power purchase obligations or contracts to purchase electric energy and capacity from qualifying cogeneration or small power production facilities (QFs) with a net capacity in excess of 20 MW that are located within the Southwest Power Pool, Inc. (SPP) footprint.

2. Missouri River states that it is a municipal joint-action agency existing under the intergovernmental cooperation laws of Iowa, Minnesota, North Dakota, and South Dakota, and that it is also a SPP member. Missouri River also states that it is comprised

¹ See Appendix for full list of members.

² 16 U.S.C. § 824a-3(m) (2012).

³ 18 C.F.R. § 292.310 (2017).

⁴ 18 C.F.R. § 292.303(a) (2017).

of 60 member municipal electric distribution utilities, each of which operates its own electric system.⁵ Missouri River states that it is filing this Application on behalf of the Filing Members, all of which have service territories within the SPP footprint.⁶

3. Missouri River states that it relies upon section 292.309(a)(2) of the Commission's regulations,⁷ i.e., that those QFs with a net capacity in excess of 20 MW that are located in SPP have nondiscriminatory access to a market that satisfies the requirements of section 210(m) of PURPA as a market that warrants termination of an electric utility's mandatory purchase obligation.⁸

4. Notice of Missouri River's Application was published in the *Federal Register*, 82 Fed. Reg. 51,618 (2017). Interventions and protests were due on or before November 28, 2017. The Commission served notices of the Application on the potentially-affected QFs identified by Missouri River by letters dated November 1, 2017.

5. While no interventions were filed, Thomas Mattson and David VanderLeest submitted a protest. Mattson and VanderLeest state that electric utilities and cooperatives do not follow the laws created to protect small generation and do not need any more advantages. Mattson and VanderLeest claim that utilities and cooperatives systematically delay providing developers with accurate long term avoided cost rates, purposefully violating PURPA. Mattson and VanderLeest also request that the Commission: (1) better define long term avoided cost factors; (2) implement a time table for utilities to provide information required by PURPA; (3) impose financial penalties on utilities and assess damages to developers for failure to comply with PURPA; (4) remove National Environmental Policy Act regulations⁹ from QFs less than 20 MW; (5) determine the

⁵ Application at 2-3.

⁶ Missouri River states that it has already assumed the Filing Members' purchase obligation and is filing on their behalf out of an abundance of caution (citing *Missouri River Energy Servs.*, Docket No. EL13-80-000 (Oct. 9, 2013) (delegated letter order); *Missouri Basin Mun. Power Agency, et al.*, Docket No. EL09-13-000 (Feb. 6, 2009) (delegated letter order); *Missouri Basin Mun. Power Agency, et al.*, 69 FERC ¶ 62,250 (1994)). *Id.* at 1-2.

⁷ 18 C.F.R. § 292.309(a)(2) (2017).

⁸ Application at 5-6.

⁹ See *Regulations Implementing the National Environmental Policy Act of 1969*, Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987).

kWh avoidable cost value for avoided future utility investment; and (6) confirm that non-regulated utilities and cooperatives comply with their state's implementation of PURPA.¹⁰ Mattson and VanderLeest also claim that their company, Prelude, has been unlawfully discriminated against by Basin Electric Cooperative, Inc.¹¹

6. The issues raised in Mattson's and VanderLeest's protest – which go to the Commission's implementation of PURPA more generally – go beyond the scope of this proceeding. The issue in this proceeding is whether those QFs with a net capacity in excess of 20 MW that are located in SPP have nondiscriminatory access to a market that satisfies the requirements of section 210(m) of PURPA, i.e., whether SPP meets the requirements of section 292.309(a)(2) of the Commission's regulations¹² such that those QFs with a net capacity in excess of 20 MW that are located in SPP have nondiscriminatory access to a market that satisfies the requirements of section 210(m) of PURPA and thus termination of an electric utility's mandatory purchase obligation is warranted. In Order No. 688 the Commission explained that an application to terminate the mandatory purchase obligation could be rebutted by showing factors unique to individual QFs, including operational characteristics and transmission limitations that prevent such QFs from having nondiscriminatory access to the markets described in section 210(m) of PURPA.¹³ However, Mattson and VanderLeest in their protest do not address such factors or otherwise attempt to rebut Missouri River's Application.

7. Accordingly, Missouri River's request, pursuant to section 210(m) of PURPA, to terminate the mandatory obligation to enter into new contracts or obligations to purchase

¹⁰ Mattson and VanderLeest Affidavit at 1-3.

¹¹ *Id.* at 4-7.

¹² 18 C.F.R. § 292.309(a)(2) (2017).

¹³ See *New PURPA Section 210(m) Regulations Applicable to Small Power Production and Cogeneration Facilities*, Order No. 688, FERC Stats. & Regs. ¶ 31,233, at P 82 (2006). In Order No. 688 the Commission noted that a QF's operational characteristics could "effectively prevent the QFs participation in a market." *Id.* The Commission stated that such operational characteristics might include "highly variable thermal and electrical demand (from the QF host) on a daily basis, such that the QF cannot participate in a market" or "highly variable and unpredictable wholesales sales on a daily basis." *Id.*

electric energy or capacity from QFs with a net capacity in excess of 20 MW that are located within the SPP footprint is hereby granted, effective October 31, 2017.¹⁴

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁴ To the extent that a potentially-affected QF's net capacity is 20 MW or smaller, this order does not terminate the mandatory purchase obligation for that QF.

Appendix

**Missouri River Energy Services
Filing Members by State**

Iowa

Alton
Denison
Hartley
Hawarden
Kimballton
Lake Park
Manilla
Orange City
Paullina
Primghar
Remsen
Rock Rapids
Sanborn
Shelby
Sioux Center
Woodbine

Minnesota

Luverne
Madison
Moorhead

North Dakota

Lakota
Riverdale
Valley City

South Dakota

Beresford
Brookings
Burke
Faith
Flandreau
Fort Pierre
Pickstown
Pierre
Vermillion
Watertown
Winner