

164 FERC ¶ 61,016
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Kevin J. McIntyre, Chairman;
Cheryl A. LaFleur, Neil Chatterjee,
Robert F. Powelson, and Richard Glick.

Cloverland Electric Cooperative

Docket No. QM18-11-000

ORDER DENYING APPLICATION TO TERMINATE
MANDATORY PURCHASE OBLIGATION

(Issued July 9, 2018)

1. On April 10, 2018, Cloverland Electric Cooperative (Cloverland) filed an application (Application) pursuant to section 210(m) of the Public Utilities Regulatory Policies Act of 1978 (PURPA)¹ and section 292.310 of the Commission's regulations,² seeking to terminate, on a service territory-wide basis, Cloverland's obligation under section 292.303(a) of the Commission's regulations³ to enter into new power purchase obligations or contracts to purchase electric energy and capacity from qualifying cogeneration or small power production facilities (QF) with a net capacity in excess of 20 MW. As discussed below, we find that Cloverland has not met the requirements of PURPA section 210(m)(1)(A) and section 292.309(a)(1) of the Commission's regulations for termination, and therefore, we deny Cloverland's Application.

I. Background

2. On October 20, 2006, the Commission issued Order No. 688,⁴ revising its regulations governing utilities' obligations to purchase electric energy produced by QFs. Order No. 688 implements PURPA section 210(m), which provides for termination of the requirement that an electric utility enter into new power purchase obligations or contracts

¹ 16 U.S.C. § 824a-3(m) (2012).

² 18 C.F.R. § 292.310 (2017).

³ 18 C.F.R. § 292.303(a).

⁴ *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), *aff'd sub nom. American Forest and Paper Association v. FERC*, 550 F.3d 1179 (D.C. Cir. 2008).

to purchase electric energy from QFs if the Commission finds that the QFs have nondiscriminatory access to one of three categories of markets described in PURPA section 210(m):

- 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).⁵
3. In adopting these regulations, the Commission made a specific finding that the Midcontinent Independent System Operator, Inc. (MISO), among other regional transmission organizations (RTOs), qualified as a wholesale market as described above.⁶

II. Application

4. Cloverland states that it is a member-owned distribution cooperative serving approximately 42,000 Michigan customers and that its service territory is located wholly within MISO. Cloverland also states that it is a transmission-dependent utility which purchases transmission service from American Transmission Company, LLC (ATC) under MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (MISO Tariff). Cloverland explains that it is a market participant in MISO's energy markets, but it is not itself a member of MISO. Cloverland claims that, except for a 0.61 percent interest in ATC, Cloverland does not own any transmission facilities. Cloverland

⁵ 18 C.F.R. § 292.309.

⁶ 18 C.F.R. § 292.309(e).

adds that it owns and operates an electric distribution system consisting of approximately 4,100 miles of 12.7 kV, 24.9 kV and secondary distribution lines.⁷

5. Cloverland states that, in order to sell power to Cloverland, a QF could in theory either interconnect to ATC's transmission system to have its output delivered to Cloverland or interconnect to Cloverland's distribution system. However, Cloverland states that it does not believe that a QF over 20 MW could safely interconnect to Cloverland's distribution system even with significant network upgrades, so the only practical way for a QF over 20 MW to sell to Cloverland would be to interconnect to ATC's transmission system.⁸

6. Cloverland states that, though it is not a member of MISO, ATC is a member of MISO. Cloverland asserts that QFs in MISO have nondiscriminatory access to a market that satisfies the requirements of section 210(m) of PURPA; MISO qualifies as a market that warrants termination of an electric utility's purchase obligation.⁹ Therefore, Cloverland claims that QFs within Cloverland's service territory that also utilize ATC's transmission system have nondiscriminatory access to such markets.¹⁰

III. Notice

7. Notice of the Application was published in the *Federal Register*, 83 Fed. Reg. 16,850 (2018). Interventions and protests were due on or before May 8, 2018. The Commission served notice of the Application on potentially-affected QFs identified by Cloverland by letters dated April 11, 2018.

IV. Discussion

8. As discussed below, we deny Cloverland's Application. Cloverland filed for relief under PURPA section 210(m)(1)(A) and section 292.309(a)(1) of the Commission's regulations, arguing that, because it is located in MISO's service territory and purchases transmission service from ATC (a MISO member), QFs in Cloverland's service territory have non-discriminatory access to MISO, which the Commission has already found to qualify as a market described in PURPA section 210(m)(1)(A) and section 292.309(a)(1) of the Commission's regulations. In essence, Cloverland, while not itself a MISO

⁷ Affidavit of Daniel M. Dasho at 1.

⁸ Application at 5-6.

⁹ 18 C.F.R. § 292.309(e).

¹⁰ Application at 5-6.

member, is seeking to claim the benefit of ATC's MISO membership in requesting relief from the mandatory purchase obligation under PURPA section 210(m)(1)(A) and section 292.309(a)(1) of the Commission's regulations. We are not persuaded to grant Cloverland's Application.¹¹

9. As Cloverland recognizes, Order No. 688 specifically limited relief under PURPA section 210(m)(1)(A) and section 292.309(a)(1) of the Commission's regulations, in particular, to members of RTOs or Independent System Operators (ISO).¹² Previously, in response to a municipal utility's request that, although not a member, it was a market participant located in MISO's service territory, the Commission stated that

[t]he statute is clear that the obligation to purchase and thus relief of the obligation resides with the electric utility. For purposes of establishing a rebuttable presumption that QFs interconnected with certain utilities have access to "Day 2" markets, we think that a reasonable line to draw is with the member utilities of the "Day 2" RTO/ISOs. These utilities have turned over the operation of their transmission facilities to an independent entity that has no stake in the marketplace and will ensure that all users of the transmission system are treated on a nondiscriminatory basis and are provided access to markets. We recognize that other electric utilities may provide nondiscriminatory access to the "Day 2" markets. But for purposes of applying a rebuttable presumption that QFs have nondiscriminatory access to the "Day 2" markets, we believe that it is reasonable to draw the line with members of [MISO], PJM, ISO-NE, or NYISO. Nevertheless, entities that are not members of the [MISO], PJM, ISO-NE, or NYISO may seek relief from the purchase obligation pursuant to either section 210(m)(1)(B) or (C) pursuant to the procedures contained in § 292.310 of the Commission's regulations. Such applications will be reviewed on an electric utility-by-electric utility basis pursuant to the procedures contained in § 292.310 of the Commission's regulations. A utility making such an application will have the burden of showing that all elements necessary for granting relief exist.¹³

¹¹ Additionally, though Cloverland asserts that it may not be practical, a QF over 20 MW could locate within Cloverland's distribution system and, with sufficient network upgrades, in theory could connect to Cloverland's distribution system.

¹² Application at 5 & n.4.

¹³ Order No. 688, FERC Stats. & Regs. ¶ 31,233 at P 125.

10. We are not persuaded to change our position on the reach of PURPA section 210(m)(1)(A) and section 292.309(a)(1) of the Commission's regulations – membership in an RTO/ISO remains a requirement for claiming an exemption under PURPA section 210(m)(1)(A) and section 292.309(a)(1) of the Commission's regulations.

11. The Commission's regulations require an electric utility, such as Cloverland, to purchase any energy and capacity made available by a QF unless that obligation is lifted pursuant to PURPA section 210(m). If Cloverland wishes to be relieved of its mandatory purchase obligation, it must demonstrate that all the elements necessary for granting such relief are present.¹⁴ Reliance on PURPA section 210(m)(1)(A) and section 292.309(a)(1) of the Commission's regulations and the presence of an RTO/ISO market (such as MISO) when the electric utility seeking relief from the mandatory purchase obligation (such as Cloverland) is not itself a member of that RTO/ISO is not sufficient to warrant the Commission granting relief under such sections.

12. Accordingly, since Cloverland is not itself a member of MISO, it is not entitled to relief under PURPA section 210(m)(1)(A) and section 292.309(a)(1) of the Commission's regulations.

The Commission orders:

Cloverland's Application for relief from the mandatory purchase obligation is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁴ *Id.* Our decision here is without prejudice to Cloverland submitting an application instead pursuant to PURPA section 210(m)(1)(C) and section 292.309(a)(3) of the Commission's regulations, seeking to make such a showing. We do not pre-judge here how we would respond to any such application.