

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Montana-Dakota Utilities Co.

Docket No. EL05-152-000

ORDER DISMISSING APPLICATION

(Issued October 17, 2005)

1. On September 22, 2005, Montana-Dakota Utilities Co., a division of MDU Resources Group, Inc., (Montana-Dakota), filed an application for relief from the obligation to purchase power from qualifying cogeneration facilities and qualifying small power production facilities, pursuant to section 210(m) of the Public Utility Regulatory Policies Act of 1978 (PURPA).¹ In this order the Commission dismisses, without prejudice to refiling, applicant's application for relief.

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 qualifying facility (QF) has nondiscriminatory access to wholesale markets, as more fully defined in EAct 2005.

3. Montana-Dakota states that it is located within the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), and that the Midwest ISO operates independently-administered, auction-based day-ahead and real-time wholesale markets, offers QFs wholesale markets for long-term sales of capacity and electric energy, and has the necessary transmission service for QFs to compete for sales within this region.

¹ 16 U.S.C. § 824a-3(m). Section 210(m) was added to PURPA by section 1253 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).

Montana-Dakota concludes that QFs within its service territory have access to wholesale markets that meet the requirements for relief from the PURPA purchase obligation contained in the new section 210(m) of PURPA.³

Discussion

4. The Commission addressed section 210(m) of PURPA for the first time in a recent order.⁴ The Commission explained that, in order to meet the express statutory requirement of “notice”, including “sufficient notice to potentially affected . . . production facilities”, contained in section 210(m)(3) of PURPA, it would require that applicants identify all potentially affected QFs in an application for relief filed pursuant to section 210(m)(3).⁵

5. Before the Commission will consider Montana-Dakota’s application, Montana-Dakota must identify to the Commission all potentially affected QFs (with their names and current addresses) – including: (1) those QFs that have existing power purchase contracts with the applicant; (2) other QFs that sell their output to the applicant or that have pending requests for the applicant to purchase their output; (3) any developer of generating facilities with whom the applicant has 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 Montana-Dakota 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, Montana-Dakota’s instant petition for relief.

³ At the present time, a wind-powered generation developer, Superior Renewable Energy, LLC (Superior), has filed an application with the South Dakota Utilities Commission for an order determining Montana-Dakota’s avoided costs for electricity purchased from Superior’s wind project.

⁴ *Alliant Energy Corporate Service, Inc.*, 113 FERC ¶ 61,024 (2005) (*Alliant*).

⁵ The cover letter accompanying Montana-Dakota’s filing states that a copy of the filing was sent to Superior. Montana-Dakota’s filing does not provide all the information that the Commission requires in order for the Commission to provide “sufficient notice” pursuant to section 210(m)(3) of PURPA.

The Commission orders:

Montana-Dakota's application is hereby dismissed without prejudice.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.