

124 FERC ¶ 61,068  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

July 18, 2008

In Reply Refer To:

Ashland Windfarm, LLC, *et al.*

Docket Nos. EL08-66-000, QF08-475-001,  
QF08-476-001, QF08-478-001, QF08-479-001,  
QF08-480-001, QF08-481-001, QF08-482-001,  
QF08-483-001, QF08-484-001, QF08-485-001,  
QF08-486-001, QF08-487-001, QF08-488-001,  
QF08-489-001, QF08-490-001, QF08-491-001,  
QF08-492-001, QF08-493-001, QF08-494-001,  
QF08-563-001, QF08-495-001, QF08-496-001,  
QF08-497-001, QF08-498-001, QF08-499-001,  
QF08-500-001, QF08-501-001, QF08-502-001,  
QF08-503-001, QF08-504-001, QF08-505-001,  
QF08-506-001, QF08-507-001, QF08-508-001

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Attn: Margaret A. Moore, Esq.

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Dear Ms. Moore:

1. On May 29, 2008, you filed on behalf of 35 wind projects (collectively, the Wind Project Companies) and GM Transmission, LLC (GM Transmission) (together with the Wind Project Companies, Petitioners) a petition for a declaratory order. Petitioners request, for the period from April 15, 2006 until April 11, 2008 (and until May 15, 2008 for GM, LLC, (Unit III)), a waiver of section 292.203(a)(3) of the Commission's regulations,<sup>1</sup> which requires a qualifying facility (QF) to file either a notice of self-certification with the Commission pursuant to section 292.207(a) of the Commission's

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<sup>1</sup> 18 C.F.R. § 292.203(a)(3) (2008).

regulations,<sup>2</sup> or an application for Commission certification pursuant to section 292.207(b)(1) of the Commission's regulations.<sup>3</sup>

2. The Wind Project Companies are separate corporate entities that own and operate small, wind-powered electric generation facilities of no more than 5 MW each in Dodge and Mower Counties, Minnesota. Petitioners state that these facilities were placed into operation between 2002 and 2004 and, with the exception of the QF filing requirement of section 292.203(a)(3), which was first effective April 15, 2006, have satisfied all of the requirements for QF status. On April 11, 2008, the Wind Project Companies filed notices of self-certification of QF status. Petitioners note that, due to an inadvertent omission, one project, GM, LLC (Unit III) failed to file its notice of self-certification of QF status until May 15, 2008.

3. Petitioners explain that the Wind Project Companies are owned by individuals, trusts, or charitable organizations, none of which has had any experience in the power sector except through ownership and operation of the Wind Projects. They further explain that they are unsophisticated in Commission regulatory matters and were thus unaware of the new QF filing requirement until it was brought to their attention during "due diligence" performed in connection with an offer to purchase the Wind Project Companies. Petitioners state that they took action to remedy the noncompliance as soon as they became aware of the QF filing requirement.

4. Petitioners state that a waiver of the QF filing requirement is justified in this case because the Wind Projects have satisfied all of the substantive requirements for QF status since first production of power. The delay in making the filing, Petitioners explain, was the result of inadvertent error by individuals and companies otherwise not engaged in the power business. Petitioners also contend that such a waiver would be consistent with the Commission's policy favoring small renewable energy development.<sup>4</sup>

5. Notice of Petitioners' petition for a declaratory order was published in the *Federal Register*, 73 Fed. Reg. 12,971 (2008), with interventions and protests due on or before June 30, 2008. Dairyland Power Cooperative (Dairyland) filed a motion to intervene in support of the relief requested by Petitioners. Pursuant to Rule 214 of the Commission's

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<sup>2</sup> *Id.* § 292.207(a).

<sup>3</sup> *Id.* § 292.207(b)(1).

<sup>4</sup> *Citing JDJ Energy Company*, 41 FERC ¶ 61,354, at ¶ 61,961 (1987) (stating that the Commission is "committed to the national policy of developing renewable energy resources" in reference to a hydroelectric project).

Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motions to intervene serve to make Dairyland a party to each proceeding.

6. The Commission has the discretion to waive a regulatory requirement and, where appropriate, has done so for the benefit of QFs.<sup>5</sup> Given the unique circumstances of the instant request, the Commission will grant Petitioners' request for waiver of the filing requirement found in 18 C.F.R. § 292.203(a)(3) (2008).

By direction of the Commission.

Kimberly D. Bose,  
Secretary.

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<sup>5</sup> See, e.g., *Pedricktown Cogeneration Company, LP*, 117 FERC ¶ 61,246 (2006) (waiving the Commission's efficiency standard applicable to qualifying cogeneration facilities); *Calpine Newark, LLC*, 105 FERC ¶ 61,104 (2003) (granting a limited waiver of the Commission's operating and efficiency standards applicable to qualifying cogeneration facilities); *Lake Cogen, Ltd.*, 101 FERC ¶ 61,138 (2002) (granting a limited waiver of the Commission's operating and efficiency standards applicable to qualifying cogeneration facilities).