

135 FERC ¶ 61,005  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
John R. Norris, and Cheryl A. LaFleur.

Commonwealth Edison Company

Docket No. QM10-6-000

ORDER GRANTING APPLICATION TO TERMINATE  
MANDATORY PURCHASE OBLIGATION

(Issued April 6, 2011)

1. On September 13, 2010, Commonwealth Edison Company (ComEd) filed an application<sup>1</sup> pursuant to section 210(m) of the Public Utility Regulatory Policies Act of 1978 (PURPA)<sup>2</sup> and section 292.310 of the Commission's regulations.<sup>3</sup> ComEd proposes to terminate 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 (QF) with net capacity in excess of 20 MW on a service territory-wide basis for its interconnected system under the control of PJM Interconnection, L.L.C. (PJM).
2. In this order, we grant ComEd's request to terminate its mandatory purchase obligation pursuant to section 210(m) of PURPA and section 292.310 of the Commission's regulations on a service territory-wide basis for QFs over 20 MW net capacity effective on September 13, 2010.

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<sup>1</sup> The application was amended on January 6, 2011 and January 13, 2011.

<sup>2</sup> 16 U.S.C. § 824a-3(m) (2006).

<sup>3</sup> 18 C.F.R. § 292.310 (2010).

## I. Background

3. 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. Order No. 688 implements PURPA section 210(m),<sup>5</sup> which 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. Order No. 688-A finds that the markets administered by PJM are one of the markets that 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 PJM 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> The Commission also established a second rebuttable presumption contained in section 292.309(d)(1) of the regulations, which provides that a QF with a net capacity at or below 20 MW does not have nondiscriminatory access to markets.<sup>8</sup>

## II. ComEd's Application

4. On September 13, 2010, ComEd filed an application stating that it meets the requirements under section 292.309(a)(1) of the Commission's regulations<sup>9</sup> to terminate the PURPA mandatory purchase obligation. ComEd further states that, as a transmission-owning member of PJM, it is relying on the rebuttable presumption contained in section 292.309(e) of the regulations, and therefore should be relieved of the obligation to purchase electric energy from QFs larger than 20 MW net capacity.

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

<sup>5</sup> Section 210(m) was added to PURPA by section 1253 of the Energy Policy Act of 2005 (EPAAct 2005). *See* Pub. L. No. 109-58, § 1253, 119 Stat. 594, 967-69 (2005).

<sup>6</sup> 16 U.S.C. § 824a-3(m)(1)(A) (2006); *see* 18 C.F.R. § 292.309(a)(1) (2010).

<sup>7</sup> 18 C.F.R. § 292.309(e) (2010).

<sup>8</sup> 18 C.F.R. § 292.309(d)(1) (2010).

<sup>9</sup> 18 C.F.R. § 292.309(a)(1) (2010).

5. On January 6, 2011, ComEd amended its application to comply with the directives in the December 7, 2010 letter order<sup>10</sup> to provide the names and addresses of all QFs, even those 20 MW or smaller connected to the ComEd system, and including Minonk Stewardship Wind LLC (Minonk Stewardship),<sup>11</sup> identified and described in greater detail below, plus additional information related to Minonk Stewardship's pending interconnection request.

6. ComEd explains Minonk Stewardship proposes to interconnect with ComEd's 34 kV distribution system near the Minonk substation in Woodford County, Illinois. ComEd avers the facilities at the point of interconnection are distribution level facilities that are not used for interstate transmission and are not under the control of PJM, and therefore, the interconnection is subject to the jurisdiction of the Illinois Commerce Commission.

7. The interconnection point, adds ComEd, is located in an area of ComEd retail load that is mostly surrounded by the service area of Ameren Corporation (Ameren) and the Minonk substation is interconnected solely to Ameren transmission facilities. Through grandfathered agreements with Ameren, ComEd states it has served a small group of distribution customers in that area for decades; the retail load served from the Minonk substation is approximately 20 MW. ComEd states that it does not have generation located in the area served by the Minonk substation, and under the grandfathered agreements with Ameren has wheeled power from other sources across Ameren's transmission facilities to serve those customers. The power has always flowed in one direction – into the isolated area where the interconnection is to be located. ComEd states that, with Minonk Stewardship, for the first time the power will flow in the opposite direction – out of the area – which is creating operational issues, including the need to analyze the flows on the Ameren system, and is causing delays in processing the interconnection request.

8. On January 13, 2011, ComEd revised Appendix 1 of its January 6, 2011 filing to include the city, state and zip code for each generator.

9. Lastly, on January 25, 2011, ComEd submitted a letter about its application, which it states is intended to clarify that it only seeks to waive the purchase obligation with

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<sup>10</sup> *Commonwealth Edison Company*, Docket No. QM10-6-000 (Dec. 7, 2010) (unpublished delegated letter order) (December 7, 2010 Letter Order).

<sup>11</sup> ComEd states that not all of the generators it lists in Appendix 1 are certified as QFs, including Minonk Stewardship. To err on the side of inclusion, ComEd also lists all customers participating in its parallel operations tariff rider. The list omits generating facilities having a capacity of 1 MW or less which participate in ComEd's net metering program, and which are not required to file with the Commission for QF certification.

respect to QFs with a net capacity of 20 MW or greater. ComEd also indicates that its clarification does not modify ComEd's filing in any way, and is only intended to avoid a potential misconstruction of the notice that was issued in response to ComEd's earlier filing.

### **III. Notice and Responsive Pleadings**

10. Notice of ComEd's application was mailed by the Commission to each of the potentially affected QFs identified by ComEd on January 18, 2011. Notice of the application was published in the *Federal Register*, 76 Fed. Reg. 4342 (2011) with interventions and protests due on or before February 10, 2011.

11. On September 22, 2010, a motion to intervene was filed by the Illinois Commerce Commission. Also, on October 12, 2010, a motion to intervene and protest was filed by Minonk Stewardship, and a protest was filed by Resource Technology Corporation (RTC).

12. ComEd filed an answer to the protests of Minonk Stewardship and RTC on October 22, 2010. Minonk Stewardship filed an answer responding to ComEd's answer on November 11, 2010. ComEd then filed an answer to Minonk Stewardship's answer on November 23, 2010. Minonk Stewardship subsequently filed an answer to ComEd's answer on November 26, 2010.

13. Finally, on December 1, 2010, ComEd filed a motion to strike the protest and comments of Minonk Stewardship, in response to Minonk Stewardship's November 26, 2010 answer.

#### **A. Minonk Stewardship's Protest**

14. In its October 12, 2010 protest, Minonk Stewardship states that it is the owner and developer of a 40 MW wind generation facility located in Marshall County, Illinois, within the PJM balancing area. Minonk Stewardship claims that ComEd fails to identify Minonk Stewardship as a potentially affected QF, and that as an interconnection customer, it qualifies to be treated as a potentially affected QF. Minonk Stewardship states that ComEd should have reasonably believed that Minonk Stewardship would be affected by its application.<sup>12</sup> Minonk Stewardship also states that the regulations further

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<sup>12</sup> Citing 18 C.F.R. §§ 292.310(b), (c)(5) (2010) (requiring an electric utility filing an application for relief from the mandatory requirement to purchase from QFs containing names and addresses of "all potentially affected" QFs, including any "that the applicant reasonably believes to be affected by its application.").

provide that the Commission will not make a final determination of such application until after notice to such QFs is given.<sup>13</sup>

15. Minonk Stewardship also states that it is waiting for the results of a Combined Interconnection Feasibility, Impact, and Facilities Study (Combined Study) which was expected by the middle of July 2010. The Combined Study is the final step prior to the anticipated execution of an interconnection agreement with ComEd. Minonk Stewardship alleges that ComEd informed it on September 20, 2010, seven days after filing the application, that ComEd does not intend to proceed with the interconnection process for Minonk Stewardship, if the application is granted.

### **B. RTC's Protest**

16. RTC's October 12, 2010 protest argues that it should not have been listed as a potentially affected QF and requests that the Commission deny ComEd's application as it relates to RTC's Pontiac QF. RTC states that the Livingston landfill net facility electric power output is less than 20 MW, as 14 MW of nameplate generation, i.e., a Solar Titan turbine, was sold in 2006 to DTE Biomass Energy, Inc. (DTE Biomass) and subsequently removed off site.

17. RTC explains that the United States Bankruptcy Court, Northern Illinois District, approved the sale. RTC states that ComEd was on the service list for that order.

18. RTC asserts that the current net power generation capacity from the site is from three Solar Taurus 60 turbines with nameplate capacity of 5.3 MW each or 15.9 MW in aggregate, and net power capacity of 4.5 MW each or 13.5 MW in aggregate.

### **C. ComEd's Answer**

19. In its October 22, 2010 answer, ComEd argues that its application demonstrates that all QFs greater than 20 MW have nondiscriminatory access to the PJM markets, and that Minonk Stewardship fails to provide evidence to rebut the presumption. Further, ComEd claims that Minonk Stewardship has not been improperly denied interconnection, and, in that regard, Minonk Stewardship has not submitted a complaint to the Commission or pursued remedies with PJM or state regulators. ComEd maintains that interconnection to local distribution facilities is subject to the authority of state regulators

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<sup>13</sup> 18 C.F.R. § 292.310(a) (2010) provides: "After notice, including sufficient notice to potentially affected qualifying...small power production facilities, and an opportunity for comment, the Commission shall make a final determination within 90 days of such application regarding whether the conditions set forth in § 292.309(a)(1), (2) or (3) have been met."

rather than the Commission. ComEd states that, while the Commission has recognized that discriminatory denial of access to distribution facilities for the purpose of selling power into the wholesale market may be relevant to assessing the mandatory purchase obligation, Minonk Stewardship has not demonstrated that it has been denied access. In addition, ComEd points out that Minonk Stewardship does not allege that it operates any facilities that actually exist, does not discuss the status of the facilities, and does not describe its interconnection options, including options to interconnect to Commission-jurisdictional facilities in the vicinity.

20. ComEd maintains that it provided sufficient notice to all potentially affected QFs, and that the purpose of the notice requirement is to assure that all potentially affected QFs receive actual notice, since many QFs are small entities that do not read the *Federal Register*. Moreover, ComEd states the Commission has indicated that it will take remedial steps in the unlikely event a potentially affected QF is intentionally or unintentionally omitted by the electric utility and not served notice of the application, but argues no remedy is necessary here because Minonk Stewardship received actual notice of the application, and subsequently filed a timely protest to the application.

21. ComEd argues that, since Minonk Stewardship has not constructed any QF facilities or filed for QF status, Minonk Stewardship does not fall within the definition of a potentially affected QF in section 292.310 of the Commission regulations.<sup>14</sup> ComEd further argues that, even if Minonk Stewardship did fall under the definition of a potentially affected QF, it nevertheless did receive actual notice after the application was filed, and the filing of a timely protest is evidence that Minonk Stewardship received sufficient notice.

22. With respect to RTC, ComEd states that it listed RTC as a potentially affected QF because it believes the self-certified net capacity of the facility is 35 MW.<sup>15</sup> ComEd argues that, in Order No. 688-A, the Commission clarified that the 20 MW threshold would be measured by the net capacity of the facility.<sup>16</sup> Thus, according to ComEd, the Pontiac QF does not qualify for the small-QF rebuttable presumption. Further, according to ComEd, RTC's protest does not provide evidence that it lacks nondiscriminatory access to PJM due to unique operational characteristics.

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<sup>14</sup> 18 C.F.R. § 292.310 (2010).

<sup>15</sup> ComEd points to Docket No. QF96-121-001 (June 10, 2002) (RTC's re-certification of its small power production QF located at American Disposal Services, Inc.'s landfill in Pontiac, Illinois (Pontiac QF)).

<sup>16</sup> Order No. 688-A, FERC Stats. & Regs. ¶ 31,250 at P 104.

**D. Minonk Stewardship's November 11, 2010 Answer**

23. On November 11, 2010, Minonk Stewardship filed an answer to ComEd's October 22, 2010 answer. Minonk Stewardship answers that, although ComEd may be in violation of its interconnection obligations, the focus of Minonk Stewardship's protest was ComEd's failure to identify Minonk Stewardship's project as a potentially affected QF. Minonk Stewardship reiterates that, because ComEd is taking the position that the application will impact the interconnection process, Minonk Stewardship clearly meets the definition of a potentially affected QF, and ComEd's application should be rejected.

24. Minonk Stewardship further argues that filing a protest cannot be used to demonstrate that sufficient notice of ComEd's application was provided, and, moreover, after-the-fact actual notice is insufficient. In addition, Minonk Stewardship argues that a utility seeking to terminate the mandatory purchase obligation should have to explain in detail how the elimination of the mandatory purchase obligation will affect the QF and provide sufficient time for the QF to comment in the proceeding, which Minonk Stewardship argues that ComEd has failed to do. Minonk Stewardship further argues that ComEd is required to specifically provide information on how ComEd's application will impact its ability to interconnect with ComEd's distribution system.

**E. ComEd's November 23, 2010 Answer**

25. On November 23, 2010, ComEd answered Minonk Stewardship's November 11, 2010 answer. ComEd states that Minonk Stewardship establishes no basis for the Commission to deny the application and that this proceeding is not the appropriate forum to address interconnection issues.

26. ComEd also argues that Minonk Stewardship is not a QF, and, not being a QF, it is not entitled to be listed as a potentially affected QF in ComEd's application. ComEd questions Minonk Stewardship's reliance on section 292.310(c)(3) of the Commission's regulations,<sup>17</sup> as a developer of generating facilities, to fall within the ambit of potentially affected QFs. ComEd asserts that the provision addresses developers that have, or are negotiating for, power purchase agreements, i.e., developers whose projects have advanced to the point that a purchase obligation is imminent. ComEd claims that Minonk Stewardship does not fit in these categories.

27. ComEd notes that, regardless of whether Minonk Stewardship was entitled to notice of ComEd's application, it actually received notice a week after the application was filed. ComEd disputes that it must advise how its application will affect Minonk Stewardship because the rebuttable presumption is intended to foreclose such arguments.

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<sup>17</sup> 18 C.F.R. § 292.310(c)(3) (2010).

Besides, ComEd claims, it submitted sufficient information in the application about transmission constraints, levels of congestion, and interconnections to give potentially affected QFs data that may be relevant to rebutting the presumption that they have access to the market.

28. ComEd affirms that it intends to proceed with the interconnection, assuming Minonk Stewardship pays all costs for the interconnection, including necessary transmission upgrades downstream from the interconnection.<sup>18</sup>

**F. Minonk Stewardship's November 26, 2010 Answer**

29. On November 26, 2010, Minonk Stewardship filed a further answer arguing that ComEd has introduced uncertainty about the ability of the Minonk Stewardship project to access the PJM markets if the application is granted. Minonk Stewardship again states that the Commission should reject ComEd's application because it fails to list Minonk Stewardship as a potentially affected QF.<sup>19</sup> Minonk Stewardship also asserts that, because ComEd has not confirmed that the application will not impact the Minonk Stewardship interconnection process, it requests that the Commission find that ComEd is not eligible for the rebuttable presumption.

30. In the alternative, if the Commission grants the application, Minonk Stewardship requests the Commission treat Minonk Stewardship as a potentially affected QF, maintain the mandatory purchase obligation for Minonk Stewardship (at least until such time that Minonk Stewardship might enter into a Interconnection Service Agreement or Wholesale Market Participation Agreement with PJM), and direct ComEd to continue the interconnection process.

31. Minonk Stewardship argues that the Commission's regulations require ComEd to list all parties that it reasonably believes will be affected by its application. Minonk Stewardship states that it had been told by ComEd that its application could possibly affect the pending interconnection request by Minonk Stewardship and this proves ComEd believed it to be a potentially affected QF.

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<sup>18</sup> ComEd November 23, 2010 Answer, Declaration of Thomas Kay at ¶ 3.

<sup>19</sup> ComEd subsequently listed Minonk Stewardship in its January 6, 2011 filing, but continues to argue it is not a potentially affected QF.

#### IV. Discussion

##### A. Procedural Matters

32. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. RTC, we note, did not file a motion to intervene in the proceeding, but rather only filed a protest.<sup>20</sup>

33. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to a protest or an answer to an answer unless otherwise ordered by the decisional authority. We will accept the answers of ComEd and Minonk Stewardship as they aid our decision making process.

##### B. Commission Determination

###### 1. Commission Notice

34. ComEd maintains that, although Minonk Stewardship did not receive notice at the time ComEd filed its application, it provided notice to Minonk Stewardship a week after the application was filed. Regardless of whether Minonk Stewardship is entitled to notice, ComEd claims that actual notice constitutes sufficient notice, especially given that Minonk Stewardship filed a protest to the application. The Commission does not agree that ComEd's after-the-fact discussion rectifies the oversight (intentional or unintentional) of providing notice to Minonk Stewardship, because subscribing to such an approach would eviscerate the Commission's own notice requirements under section 210(m) of PURPA.

35. When the Commission implemented section 210(m) of PURPA through Order No. 688, the Commission found that the Commission should itself give actual notice to all potentially affected QFs of an application to terminate the mandatory purchase obligation.<sup>21</sup> To meet this obligation, the Commission requires all filing utilities to identify, *regardless of size*, all QFs with existing power purchase contracts with the applicant, all other QFs that sell their output to the applicant, all QFs with pending self-certifications or Commission certification where the applicant will be the purchaser, and a range of other QFs so the Commission may have the opportunity to provide notice to

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<sup>20</sup> Intervening and protesting are separate and distinct actions, and one is not a substitute for the other. 18 C.F.R. § 385.211(a)(2) (2010). *Compare* 18 C.F.R. § 385.211 (2010) *with* 18 C.F.R. § 385.214 (2010).

<sup>21</sup> Order No. 688, FERC Stats. & Regs. ¶ 31,233 at P 188.

these QFs by sending a letter to each QF informing the QF that an application seeking termination of the purchase obligation has been filed.<sup>22</sup> It is the Commission's duty to ensure that sufficient notice is provided and the Commission relies upon applying utilities to provide the information necessary for the Commission to perform its duties.

36. ComEd's discussion with Minonk Stewardship after the application was filed, with ComEd providing what it characterizes as actual notice, is not a substitute for the Commission's providing notice to satisfy its obligation, and does not constitute sufficient notice, irrespective of whether or not Minonk Stewardship filed a timely protest in the proceeding.

37. Finally, and in any event, the Commission notes that ComEd remedied its failure to list Minonk Stewardship with the filing of ComEd's amended list of potentially affected QFs.

## 2. "Potentially Affected" QFs

38. ComEd did not originally list Minonk Stewardship in its application. ComEd's subsequent January 6, 2011 filing in response to the December 7, 2010 Letter Order provides the names and addresses of all QFs connected to the ComEd system, including Minonk Stewardship. However, ComEd continues to claim Minonk Stewardship is not a potentially affected QF as defined in section 292.310(c)(3) of the Commission's regulations.

39. Specifically, ComEd argues that Minonk Stewardship has not self-certified its project and has not been negotiating power purchase arrangements, and, as such, is not a potentially affected QF. ComEd's January 25, 2011 filing additionally argues that QFs with a net capacity of 20 MW or less are not potentially affected QFs.

40. Section 292.310 states that:

(c) ... All potentially affected qualifying facilities shall include:

(3) Any developer of generating facilities with whom the applicant has agreed to enter into power purchase contracts, as of the date of the application filed pursuant to this section, or are in discussion, as of the date of the application filed pursuant to this section, with regard to power purchase contacts.

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<sup>22</sup> 18 C.F.R. § 292.310(c) (2010); *see* Order No. 688-A, FERC Stats. & Regs. ¶ 31,250 at P 111-112.

41. ComEd would have the Commission read section 292.310(c)(3) of the regulations as a basis to disavow inclusion of Minonk Stewardship as a potentially affected QF. We disagree with such a reading. Minonk Stewardship's 40 MW wind project is, in fact, the type of project that should be informed of the possibility that the mandatory purchase obligation might be terminated; a 40 MW wind facility would, in all likelihood, be a QF upon filing a notice of self-certification of QF status, or upon the grant of an application for Commission certification of QF status. Notice to a facility like Minonk Stewardship's facility is the kind of notice contemplated by the notice requirements of PURPA section 210; the fact that Minonk Stewardship is not yet self-certified as a QF thus does not render Minonk Stewardship ineligible to be treated as a potentially affected QF. Moreover, because ComEd had a pending request from Minonk Stewardship to interconnect its facility, ComEd should have reasonably expected that Minonk Stewardship could be potentially affected by the application. ComEd thus should reasonably have known that Minonk Stewardship was or could be affected by the termination of the mandatory purchase obligation, and ComEd should have reasonably considered Minonk Stewardship to be a potentially affected QF.

42. ComEd also argues that QFs 20 MW or less are not potentially affected QFs when a utility is seeking termination of the mandatory purchase obligation for QFs larger than 20 MW, but not for the QFs 20 MW and smaller. We disagree. As noted above, the regulations regarding notice draw no size-based distinction as to which QFs should be considered potentially affected QFs and which should not. Moreover, when the Commission is making findings that a particular utility provides access to markets which meet the statutory and regulatory standards for relief from the mandatory purchase obligation, even when a utility seeks to terminate the obligation only with respect to QFs larger than 20 MW, that utility may later seek to be relieved, on a QF-by-QF basis, of the mandatory purchase obligation for the smaller QFs;<sup>23</sup> that is, where the Commission makes a finding with respect to the markets that a utility provides access to, those findings may form the basis of a later application to be relieved of the obligation to purchase from smaller utilities. In addition, small QFs may expand capacity at a later date so that their facilities may be larger than 20 MW net capacity, and thus could become directly affected by the termination of the mandatory purchase obligation. Hence, it is important that all QFs, including those QFs 20 MW and smaller, be provided sufficient notice – not just the larger QFs.

43. The Commission therefore finds that all QFs, whether they are larger than 20 MW, or 20 MW and smaller, are potentially affected by a section 210(m) application. Utilities thus should provide the information required by our regulations in section 292.310(c) for

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<sup>23</sup> See *Public Service Company of New Hampshire*, 131 FERC ¶ 61,027, at P 21-22 (2010), *reh'g denied*, 134 FERC ¶ 61,041 (2011).

all potentially affected QFs, whether they be larger than 20 MW, or 20 MW and smaller (and whether they are already self-certified or Commission-certified as QFs, or not). We note that the Commission has indicated that “[i]n the unlikely event a potentially affected QF is intentionally or unintentionally omitted by the electric utility and is not served notice of an application, the Commission will take remedial steps as appropriate.”<sup>24</sup> One such appropriate remedial step that may be considered is any potentially affected QF that a utility fails to identify in its application will not be subject to any termination ordered by the Commission in a section 210(m) proceeding. Thus, it is in the applicant’s own interest to be more inclusive rather than less. Applying utilities should err on the side of broader identification and inclusion in, rather than exclusion from, the list of potentially affected QFs.

44. ComEd also states that it omitted generators that are 1 MW or less from its list of potentially affected QFs because they are subject to its net metering program, and also because QFs 1 MW or less are no longer required to file self-certifications with the Commission.<sup>25</sup> The Commission finds this approach to be reasonable. ComEd also reasonably lists all customers participating in its parallel operations tariff rider. These examples illustrate the ability of applying utilities to make reasoned judgments about who is a potentially affected QF.

### **3. Termination of Mandatory Purchase Obligation**

45. ComEd, as a transmission-owning member of PJM, relies upon the rebuttable presumption set forth in section 292.309(e) of the Commission’s regulations, namely, that PJM provides QFs larger than 20 MW net capacity with 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 and that members of PJM should be relieved of the obligation to purchase electric energy from QFs.<sup>26</sup> We find that ComEd provides QFs larger than 20 MW non-discriminatory 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. We grant the request to

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<sup>24</sup> Order No. 688-A, FERC Stats. & Regs. ¶ 31,250 n.49.

<sup>25</sup> 18 C.F.R. § 292.203(d)(1) (2010); see *Revisions to Form, Procedures, and Criteria for Certification of Qualifying Facility Status for a Small Power Production or Cogeneration Facility*, Order No. 732, FERC Stats. & Regs. ¶ 31,306, at P 15, 35-40 (2010).

<sup>26</sup> 18 C.F.R. §§ 292.309(a)(1), 292.309(e) (2010).

terminate the mandatory purchase obligation pursuant to section 210(m) of PURPA with respect to all QFs larger than 20 MW net capacity that are located in ComEd's service territory.

#### **4. RTC's Pontiac QF**

46. RTC argues in its protest that the net electrical output of its Pontiac QF facility is less than 20 MW, and, therefore, the Commission should retain the mandatory purchase obligation as it relates to RTC. A review of RTC's self re-certification in Docket No. QF96-121-001 indicates the Pontiac QF has a net capacity of 28 MW.<sup>27</sup> If any of the circumstances involving RTC's Pontiac QF have significantly changed since it last re-certified its facility in 2002, including the net capacity of the facility, it is incumbent on RTC to re-certify its QF. The Commission relies on the representations made in the QF Commission-certification applications and self-certification filings made to date, and here those filings show a net capacity of 28 MW.

47. Additionally, RTC does not provide any specifics or details about its contracts and other obligations with ComEd. The termination of the mandatory purchase obligation only applies to ComEd entering into new power purchase obligations or contracts to purchase electric energy and capacity from QFs with net capacity in excess of 20 MW. Stated differently, the mandatory purchase obligation remains unaffected with respect to ComEd's existing obligations and contracts with QFs greater than 20 MW, and this would apply to RTC to the extent it has an existing contract obligating ComEd to purchase the output of its facility. RTC has not provided sufficient grounds to deny ComEd's application as it relates to RTC's Pontiac QF.

#### **5. Minonk Stewardship**

48. We reject Minonk Stewardship's argument that ComEd must explain to Minonk Stewardship why it believes that the termination of the mandatory purchase obligation will potentially affect Minonk Stewardship. ComEd provided sufficient information on how potentially affected QFs would be affected by its application, including all information required under section 292.310 of the Commission's regulations. ComEd is not required to instruct each potentially affected QF, on a QF-by-QF basis, how it believes the QF will be affected by its application. When an applying utility provides the information required in support of the rebuttable presumption; nothing more is required.

49. Minonk Stewardship's main substantive concern appears to be that ComEd will discontinue the interconnection process with Minonk Stewardship if the mandatory

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<sup>27</sup> A 35 MW gross capacity less 20 percent (or 7 MW) of parasitic load losses equates to a 28 MW net capacity.

purchase obligation is terminated; indeed Minonk Stewardship's protest states that ComEd has indicated that it will discontinue the interconnection process. Minonk Stewardship's argument is that it will lack access to the PJM markets if the interconnection process is discontinued. ComEd, however, states that intends to continue with Minonk Stewardship's interconnection process.<sup>28</sup> There is no indication that ComEd will not in fact follow through with the interconnection of Minonk Stewardship's facility. We accordingly will find that Minonk Stewardship has nondiscriminatory access to the PJM markets. However, if it subsequently turns out that Minonk Stewardship believes that it lacks access to the PJM markets, it may seek to have ComEd's purchase obligation reinstated pursuant to the provisions of section 292.311 of our regulations.<sup>29</sup>

The Commission orders:

ComEd's request to terminate its mandatory purchase obligation, pursuant to section 210(m) of PURPA and section 292.310 of the Commission's regulations, on a service territory-wide basis applicable to QFs over 20 MW net capacity is hereby granted, effective September 13, 2010, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>28</sup> ComEd November 23, 2010 Answer, Declaration of Thomas Kay at ¶ 3.

<sup>29</sup> 18 C.F.R. § 292.311 (2010).