

145 FERC ¶ 61,053
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PPL Electric Utilities Corporation

Docket Nos. QM13-2-000
QM13-2-001

ORDER DENYING APPLICATION TO TERMINATE
MANDATORY PURCHASE OBLIGATION

(Issued October 17, 2013)

1. On May 17, 2013,¹ PPL Electric Utilities Corporation's (PPL Electric) filed an application pursuant to section 210(m) of the Public Utility Regulatory Policies Act of 1978 (PURPA)² and section 292.309(a) and of the Commission's regulations.³ PPL Electric is requesting to be relieved of its requirement to enter into a new contract or obligation to purchase electric energy from IPS Power Engineering Inc.'s (IPS Power) Souderton LLC cogeneration qualifying facility (Souderton QF), which is expected to have a net capacity of 18.1 MW.⁴ In this order, we deny PPL Electric's request to terminate its mandatory purchase obligation for the Souderton QF, as discussed below.

I. Background

2. In 2009, the Commission terminated PPL Electric's mandatory purchase obligation to purchase capacity and energy from QFs larger than 20 MW in its service territory within PJM Interconnection, LLC (PJM).⁵ The termination of PPL Electric's

¹ The application was supplemented on May 24, 2013, and amended on July 19, 2013.

² 16 U.S.C. § 824a-3(m) (2006).

³ 18 C.F.R. § 292.309(a) (2013).

⁴ The Souderton QF was self-certified as a topping-cycle cogeneration qualifying facility (QF) in Docket No. QF13-325-000 and self-recertified in QF13-325-001, and is slated to begin operations and sales on April 1, 2014.

⁵ *PPL Elec. Utils. Corp.*, Docket Nos. QM09-6-000 and QM09-6-001 (Oct. 14, 2009, *errata* Oct. 15, 2009) (delegated letter orders).

mandatory purchase obligation was based on the finding, reflected in 18 C.F.R. § 292.309(e) (2013), that the PJM markets qualify as markets that warrant termination of the mandatory purchase obligation and on the rebuttable presumption, also reflected in 18 C.F.R. § 292.309(e) (2013), that QFs larger than 20 MW have nondiscriminatory access to the PJM markets.

3. However, the Commission created another rebuttable presumption; QFs with a net capacity of 20 MW or below do not have nondiscriminatory access to markets sufficient to warrant termination of the mandatory purchase obligation.⁶ In creating this rebuttable presumption the Commission found persuasive arguments that some QF's may, in practice, not have nondiscriminatory access to markets in light of their small size; the Commission noted that there was agreement among commenters representing both QFs and utilities that small size could affect a QF's ability to access markets.⁷ The Commission explained that it adopted this rebuttable presumption for small QFs to reflect that smaller QFs are often interconnected at a distribution level and that QFs interconnected at the distribution level may, in practice, lack the same level of access to markets as those connected to transmission lines.⁸ The Commission also explained that smaller QFs were more likely to have to overcome obstacles that larger QFs would not have to overcome, such as jurisdictional differences, pancaked delivery rates, and administrative burdens to obtaining access to distant buyers. The Commission found that such difficulties supported a rebuttable presumption that smaller QFs have "substantially less ability to access wholesale markets than do larger QFs."⁹ The Commission further explained that it set this rebuttable presumption at 20 MW, rather than at a much smaller size of one or two MW, to reflect its understanding of "the general nature of QFs' interconnection practices and the relative capabilities of small entities" to participate in markets.¹⁰

⁶ 18 C.F.R. §292.309(d)(1) (2013); *see also New PURPA Section 210(m) Regulations Applicable to Small Power Production and Cogeneration Facilities*, Order No. 688, FERC Stats. & Regs. ¶ 31,233, at P 72 *et seq.* (2006), *order on reh'g*, Order No. 688-A, FERC Stats. & Regs. ¶ 31,250, at P 94 *et seq.* (2007), *appeal denied sub nom. American Forest and Paper Assoc. v. FERC*, 550 F.3d 1179 (D.C. Cir. 2008).

⁷ *E.g.*, Order No. 688, FERC Stats. & Regs. ¶ 31,233 at PP 72-73; Order No. 688-A, FERC Stats. & Regs. ¶ 31,250 at P 103.

⁸ Order No. 688-A, FERC Stats. & Regs. ¶ 31,250 at PP 94-103.

⁹ *Id.* P 96; *accord id.* P 103.

¹⁰ *Id.* P 101.

4. The Commission has explained that, to overcome this rebuttable presumption that smaller QFs lack nondiscriminatory access to markets, the electric utility must make additional showings to demonstrate, on a QF by QF basis, that each small QF, in fact, has nondiscriminatory access to the relevant wholesale markets.¹¹ Order No. 688 placed the burden of proof on the electric utility to demonstrate that a small QF has nondiscriminatory access to the markets of which the electric utility is a member (i.e., in this case, PJM). The Commission also stated that an application for relief must be fully supported by documentation upon which it can make the required finding.¹² To date, the Commission has not granted any utility relief from the mandatory purchase obligation for a QF that is 20 MW or smaller.

II. PPL Electric's Applications

5. PPL Electric argues that it should be relieved from the obligation to purchase power from the Souderton QF because it believes the Souderton QF will have nondiscriminatory access to PJM, an independently administered, auction-based day ahead and real time wholesale market for energy and long-term sales of capacity. Accordingly, PPL Electric states that it can overcome the rebuttable presumption set forth in section 292.309(d)(1) of the Commission's regulations for the below 20 MW Souderton QF.

6. PPL Electric states that the Souderton QF will have no operational constraints that will prevent the Souderton QF from participating in the PJM energy and capacity markets.¹³ PPL Electric argues that it appears that the Souderton QF will be available to run 24 hours a day, 7 days a week and will be fully dispatchable with 98 percent expected availability.¹⁴ Therefore, PPL Electric argues that the Souderton QF will not have highly variable thermal and electrical demand from the QF host that would make it difficult for the Souderton QF to participate in PJM's market. PPL Electric also argues that it appears that the Souderton QF was designed to sell its full electrical output and capacity into the market. PPL Electric argues that the Souderton QF can meet the Commission's fundamental use test while planning to sell the electrical output to a third party and will provide no electrical output to its host, and these facts demonstrate that the counterbalancing thermal output of the facility will be significant, sustained and non-

¹¹ Order No. 688, FERC Stats. & Regs. ¶ 31,233 at P 9(B)-(C) & n.9.

¹² *Id.* P 28.

¹³ PPL Electric Application at 8.

¹⁴ *Id.* at 9 (referring to a letter from IPS Power and attached to the Application as Exhibit 1).

fluctuating such that it can engage in regular, steady and predictable wholesales sales into the PJM market.¹⁵

7. PPL Electric maintains that, since PJM directs the operations of PPL Electric's transmission facilities and provides service over those same transmission facilities, the Souderton QF should face no barriers to scheduling transmission service. PPL Electric asserts that it is unaware of any transmission constraints that would prevent the Souderton QF from selling its energy or capacity into the PJM market. PPL Electric further asserts that, since PJM markets rely on locational marginal pricing and financial transmission rights, the Souderton QF will be able to sell into the PJM market regardless of transmission constraints.

8. PPL Electric also states that its long-term transmission planning is contained in PJM's Regional Transmission Expansion Plan, which identifies transmission system upgrades and enhancements, includes generation and load response projects to meet its regional needs, and addresses transmission constraints and congestion. PPL Electric further states that PJM currently considers planning and reliability over a fifteen-year period.

9. PPL Electric states that the Souderton QF must follow PJM's procedures for obtaining transmission service over PPL Electric's transmission system and provides a link to PJM's website for a complete description of the procedures.¹⁶ PPL Electric also states that, in order to interconnect to PPL Electric's transmission system, the Souderton QF will need to follow the interconnection procedures contained in the Small Generation Interconnection Procedures of PJM's tariff. PPL Electric states that currently there are over 150 small, under 20 MW generation projects in the PJM queue -- demonstrating that size is not a barrier to interconnecting through PJM.

10. On July 19, 2013, PPL Electric amended its application, arguing that the Souderton QF will be too big to interconnect with PPL Electric directly and must connect via PJM's interconnection procedures instead. PPL Electric also reiterates its contention that the Souderton QF's operational characteristics will allow it to engage in regular, steady and predictable wholesale sales in PJM markets, and that it has the necessary nondiscriminatory access to PJM markets.¹⁷

¹⁵ *Id.* at 8 (referencing Souderton QF's Form 556 self-certification filings).

¹⁶ PPL Electric Application at 14.

¹⁷ PPL Electric Amended Application at 4-5, 7 and 9-10.

III. Notices of Filings and Responsive Pleadings

11. Notice of PPL Electric's application was published in the *Federal Register*, 78 Fed. Reg. 32,244 (2013); notice of PPL Electric's supplement was published in the *Federal Register*, 78 Fed. Reg. 34,364 (2013); and notice of PPL Electric's amended application was published in the *Federal Register*, 78 Fed. Reg. 45,520 (2013), with interventions and protests due on or before August 16, 2013. Notices of PPL Electric's application were mailed by the Commission to each of the potentially-affected QFs identified by PPL Electric in its supplemental filing on May 24, 2013.

12. The Pennsylvania Public Utility Commission (Pennsylvania PUC) filed a notice of intervention. IPS Power filed a timely motion to intervene and a protest styled as an answer with attached comments from JBS USA LLC's (JBS). IPS Power also filed a protest styled as an answer to PPL Electric's amended application.

IPS Power Answer

13. IPS Power argues that PPL Electric has not demonstrated that the Souderton QF will have nondiscriminatory access to PJM's wholesale markets, and has failed to carry its burden of proof.¹⁸

14. IPS Power argues the Souderton QF will not have access to wholesale markets for long-term sales of capacity and electric energy, also referred to as "Day 2" markets as defined in the section 292.309(a) of the Commission's regulations.¹⁹ Additionally, IPS Power argues that, although PJM is attempting to develop a voluntary long-term capacity auction to support future investment, that market does not currently exist. Instead, IPS Power contends that PJM's capacity market construct, the Reliability Pricing Model, has been unsuccessful in attracting appreciable new generation since its inception in 2007.²⁰ IPS Power further argues that Pennsylvania currently also does not have long-term markets for capacity and energy.

15. Finally, IPS Power contends that PPL Electric has not responded to its request for information, has denied interconnection of the Souderton QF to its grid, and has also failed to publish an avoided cost rate as requested.

¹⁸ IPS Power Protest at 2, 4 and 5.

¹⁹ *Id.* at 3, 9 (citing 16 U.S.C. § 824a-3(m) (2006); 18 C.F.R. § 292.309(a) (2013)).

²⁰ *Id.* at 10 (citing *PJM Interconnection LLC*, Docket No. ER12-513-000 Cover Letter at 30-31, for proposed revisions to its Open Access Transmission Tariff under Federal Power Act (FPA) section 205 as a result of triennial review and performance assessment of the Reliability Pricing Model).

16. In response to PPL Electric's amended application, IPS Power disputes PPL Electric's contention that the Souderton QF must interconnect with PJM.²¹ IPS Power also reiterates its contention that the Commission requires the electric utility to bear the "full burden of proof" and "make additional showings" (i.e., beyond what it showed in its request to be relieved of the mandatory purchase obligation for QFs larger than 20 MW) in order to effectively rebut the presumption that 20 MW or smaller QFs do not have nondiscriminatory access to its region's Day 2 markets. IPS Power argues that PPL Electric has failed to do so.

JBS Comments (Attachment A to IPS Power's Answer)

17. JBS is the steam host and states that the Souderton QF will be critical in providing electric energy and steam to support JBS' Souderton beef processing operation. According to JBS, the Souderton QF will allow servicing of all of JBS's Souderton load from onsite generation that also meets most of the thermal needs of JBS's Souderton beef processing operation. JBS emphasizes that energy reliability is critical in animal processing operations and that such businesses typically operate on extraordinarily tight profit margins, as evidenced by a large number of bankruptcy and distressed operations in the United States over the past decade. JBS claims that good management of energy resources is, therefore, extremely important in these operations. JBS further emphasizes that JBS's Souderton beef processing operation has experienced power interruptions especially during hot summer months, a particularly bad time to experience power supply interruptions in the animal processing industry. According to JBS, each power outage results in significant additional costs to feed livestock, lost production opportunity costs, and potential loss of work in process if refrigeration temperatures rise above acceptable USDA cold storage levels.

18. JBS states that the Souderton QF will permanently resolve the energy reliability issues it faces as well as greatly improving efficiency, lowering carbon emissions and significantly improving long-term sustainability from an energy standpoint. However, JBS states its understanding that the Souderton QF will not be feasible without a long-term market power purchase agreement (PPA) of at least 10 years for electric energy and capacity. JBS therefore urges the Commission to deny PPL Electric's application.²²

²¹ IPS Power Protest to PPL Electric's July 19 Amended Application at 5.

²² IPS Power Protest, Attachment A.

IV. Discussion

A. Procedural Matters

19. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the notice of intervention and timely, unopposed motion to intervene serves to make the Pennsylvania PUC and IPS Power parties to this proceeding.

B. Determination

20. The Commission denies PPL Electric's application for termination of its mandatory purchase obligation to purchase from the Souderton QF, for the reasons explained below.

21. PPL Electric relies heavily on the Commission's findings when it previously granted PPL Electric's request for termination of its mandatory purchase obligation for QFs over 20 MW, and has not made the showings necessary to rebut the presumption in section 292.309(d)(1) of the Commission's regulations for those QFs that are 20 MW or smaller. While PPL Electric argues that it is not aware of any problematic operational characteristics, transmission constraints or congestion, it does not appear, based on the record before us, that there have been any QF-specific studies, e.g., an interconnection study, that would demonstrate the absence of any specific transmission constraints that may be facing the Souderton QF. Additionally, while PPL Electric contends that the design of the Souderton QF, as detailed in the Souderton QF's self-certification, should allow for IPS Power to readily sell net capacity into the PJM markets, it is too early to determine whether the QF will, in fact, be built according to its anticipated plan, and it is similarly too early to know whether, in practice, the Souderton QF will be able to sell net capacity into the PJM markets at that time.

22. In *Public Service Company of New Hampshire*, 131 FERC ¶ 61,027 (2010), *reh'g denied*, 134 FERC ¶ 61,041 (2013) (*PSNH*), the Commission addressed a similar attempt to rebut the presumption that QFs with a net capacity of 20 MW or less lack nondiscriminatory access to markets. The Commission there explained that a utility may not simply show that market rules permit small QF participation in the markets, that there are no constraints or other barriers to a QF's output reaching the markets, or that other small QFs have participated in the markets. Rather, the electric utility seeking to rebut the presumption that a small QF lacks nondiscriminatory access must make a QF-specific affirmative showing that the individual QF has access to the markets.²³ While PPL Electric seeks relief from the mandatory purchase obligation with respect to only the Souderton QF, PPL Electric has attempted to make many of the same generalized showings made by Public Service Company of New Hampshire; specifically, PPL

²³ *PSNH*, 131 FERC ¶ 61,027 at PP 21-22.

Electric alleges that the Souderton QF has nondiscriminatory access to PJM's markets because PJM's market rules provide such access, and that the Souderton QF will neither have operational characteristics nor face constraints that would definitionally prevent access to PJM's markets. As explained above, the Commission, in *PSNH*, specifically rejected just such arguments.

23. While the Commission chose not to prejudge what evidence would be sufficient to demonstrate whether a small QF has nondiscriminatory access to the market, Order No. 688 did note that such evidence could include whether the QF has, in fact, been participating in the market or is owned by, or is an affiliate of, an entity that has been participating in the market.²⁴ Here, the Souderton QF is a new QF not yet in operation, and as such has not been participating in PJM's markets, and there is no evidence that the Souderton QF will be owned by, or is an affiliate of, an entity participating in PJM's markets.²⁵

24. In sum, PPL Electric has not demonstrated that the Souderton QF has overcome the greater practical difficulty faced by small QFs in participating in power markets – which is what justified the rebuttable presumption adopted in Order No. 688 in the first place.²⁶ PPL Electric has failed to overcome the Commission's rebuttable presumption that the Souderton QF, as a 20 MW or smaller QF, lacks nondiscriminatory access to the PJM markets. We, therefore, deny PPL Electric's request for relief from its mandatory purchase obligation with respect to the Souderton QF.

²⁴ Order No. 688, FERC Stats. & Regs. ¶ 31,233 at P 78.

²⁵ In saying this, we do not intend to suggest that these two facts alone would necessarily be a basis for granting relief from the mandatory purchase obligation.

²⁶ See Order No. 688-A, FERC Stats. & Regs. ¶ 31,250 at P 103; *cf. id.* PP 96, 98, 99, 101 (referencing a small QF's ability or capability to access markets).

The Commission orders:

PPL Electric's application to terminate its PURPA mandatory purchase obligation to purchase energy or capacity from the Souderton QF is hereby denied, as discussed in the body of this order.

By the Commission. Commissioners Clark and Moeller are concurring with a joint statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

PPL Electric Utilities Corporation

Docket Nos. QM13-2-000
QM13-2-001

(Issued October 17, 2013)

CLARK, Commissioner, and MOELLER, Commissioner, *concurring*:

Insofar as this decision generally comports with Commission precedent we support it, but we would encourage the Commission to consider how it can provide more guidance to applicants such as PPL Electric regarding how they can be relieved of PURPA obligations for 20 MW and below facilities.

The Commission's regulations provide for a rebuttable presumption that a qualifying facility (QF) at or below 20 megawatts does not have nondiscriminatory access to the market.¹ To overcome that presumption, the electric utility must provide QF-specific information demonstrating nondiscriminatory access. Here, PPL Electric uses unit-specific information to support its application, as provided by the developer, IPS Power Engineering, in its self-certification of the Souderton QF.² The question, then, should be whether PPL Electric provided the Commission with enough evidence to determine that the Souderton QF indeed has nondiscriminatory access to the PJM market.

While we concur with the overall finding in this order and agree that PPL's application lacked certain QF-specific information required under the Commission's regulations, such as a system impact study for the interconnection,³ we do not agree that the PJM market rules and planning process are irrelevant for purposes of determining QF-specific market access.⁴ These provisions are

¹ 18 C.F.R. §292.309(d)(1) (2013).

² *IPS Power Engineering*, Form 556, Certification of Qualifying Facility Status for a Small Power Production or Cogeneration Facility, Docket No. QF13-325-000 (filed Mar. 7, 2013).

³ *See* 18 C.F.R. §292.310(d)(3) (2013).

⁴ Section 292.310(d)(2) of the Commission's regulations states, in pertinent part, that "[t]o the extent applicant seeks relief from the purchase obligation with respect to a qualifying facility 20 megawatts or smaller, and thus seeks to rebut the presumption in § 292.309(d), applicant must also set forth, and submit evidence

fundamental to our evaluation of whether the Souderton QF will have nondiscriminatory access to the markets, as they provide the playbook for the interconnection process, transmission system operations, and revenues earned by a resource in the region where the Souderton QF will be located.

It's important that the Commission's standard for rebutting the presumption not be so high as to preclude a utility from successfully making a showing before the QF is fully operational and the utility is obligated to purchase. Such a circular result would not be a reasonable interpretation of the statute or our own regulations. By considering unit-specific information submitted by an applicant, alongside the opportunities available to suppliers through open markets in an RTO, we can prevent this outcome and avoid rendering meaningless the opportunity to rebut the presumption and obtain PURPA relief.

For these reasons, we respectfully concur with this order.

Tony Clark
Commissioner

Philip D. Moeller
Commissioner

of, the factual basis supporting its contention that the qualifying facility has nondiscriminatory access *to the wholesale markets which are the basis for the applicant's filing.*" (emphasis added) 18 C.F.R. §292.310(d)(2) (2013).