169 FERC ¶ 61,073
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

October 28, 2019

In Reply Refer To:
Prairie Power, Inc.
Docket No. QM19-3-000

William D. DeGrandis, Esq.
Paul Hastings LLP
875 15th Street, NW
Washington, DC 20005

Reference: Termination of Mandatory Purchase Obligation

Dear Mr. DeGrandis:

1. On July 11, 2019, Prairie Power, Inc. (Prairie Power) filed an application pursuant to section 210(m) of the Public Utility Regulatory Policies Act of 1978 (PURPA)[1] and section 292.310 of the Commission's regulations (Application).[2] Prairie Power seeks to terminate, on a service territory-wide basis, its obligation under section 292.303(a) of the Commission's regulations[3] to enter into new power purchase obligations or contracts to purchase electric energy and capacity from qualifying cogeneration or small power production facilities (QFs) with a net capacity in excess of 20 megawatts (MW) that are located within the Midcontinent Independent System Operator, Inc. (MISO) footprint.

2. Prairie Power states that it is a member-owned, not-for-profit generation and transmission cooperative that owns and operates 328 MW of generating capacity and approximately 604 miles of transmission lines.[4] Prairie Power notes that it is a transmission-owning member and transmission customer of MISO. According to Prairie Power, it currently provides all-requirements wholesale electric service to its 10 members, which are rural electric distribution cooperatives located in Illinois

[1] 16 U.S.C. § 824a-3(m) (2018).

[2] 18 C.F.R. § 292.310 (2019).

[3] 18 C.F.R. § 292.303(a).

[4] Application at 2.

(collectively, Members).[5] Prairie Power states that its Members serve retail member-consumers in their service territories with little to no generation resources of their own and are obligated, pursuant to long-term wholesale power supply contracts, to purchase all of their power and energy requirements from Prairie Power. Prairie Power notes that it and each of its Members sell less than four million MWh of electricity per year and, therefore, are not "public utilities," as defined in section 201(e) of the Federal Power Act.[6]

3. Prairie Power states that it and its Members have certain Commission-approved waivers under PURPA.[7] Prairie Power explains that, under these waivers, Prairie Power assumes the mandatory purchase obligation for its Members, and its Members agree to sell supplementary, backup, and maintenance power to QFs, upon request, on either a firm or interruptible basis under separately adopted, non-discriminatory retail tariffs. Prairie Power states that, thus, it is not necessary to include its individual Members as applicants for relief from the mandatory purchase obligation because the Members have already ceded responsibility to make purchases from QFs to Prairie Power.[8]

4. Prairie Power relies upon section 292.309(a)(1) of the Commission's regulations, which provides that those QFs with a net capacity greater than 20 MW that are located in MISO have nondiscriminatory access to a market that satisfies the requirements of section 210(m) of PURPA as a market that warrants termination of an electric utility's mandatory purchase obligation.[9] Prairie Power also notes that section 292.309(e) provides that "electric utilities that are members of [MISO] should be relieved of the obligation to purchase electric energy" from QFs.[10] Prairie Power argues that, consistent with the Commission's regulations, QFs greater than 20 MW net capacity in Prairie Power's service territory within the MISO footprint have nondiscriminatory access to the

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[5] *Id.* at 3, n.11. The Members are Coles-Moultrie Electric Cooperative; Eastern Illini Electric Cooperative; McDonough Power Cooperative; Shelby Electric Cooperative; Adams Electric Cooperative; Illinois Electric Cooperative; Menard Electric Cooperative; Spoon River Electric Cooperative; Jo-Carroll Energy, Inc. (NFP); and Western Illinois Electrical Coop. *Id.*

[6] 16 U.S.C. § 824(e).

[7] Application at 3 (citing *Soyland Power Coop.*, 50 FERC ¶ 62,072 (1990)).

[8] *Id.* at 3-4 (citing 18 C.F.R. § 292.303(a)).

[9] *Id.* at 7.

[10] *Id.* (quoting 18 C.F.R. § 292.309(e)).

MISO market, and thus the conditions set forth in section 292.309(a)(1) for terminating the mandatory purchase obligation are met.[11] Prairie Power requests an effective date of July 11, 2019, the date of its Application.[12]

5. Notice of the Application was published in the *Federal Register*, 84 Fed. Reg. 34,883 (2019), with interventions and protests due on or before August 8, 2019. The Commission served notices of the Application on potentially-affected QFs identified by Prairie Power by letters dated July 15, 2019. On July 30, 2019, Prairie Power amended its Application to update the addresses of 13 potentially-affected QFs that did not originally receive a copy of the Application (Supplement). Notice of the Supplement was published in the *Federal Register*, 84 Fed. Reg. 39,293 (2019), with interventions and protests due on or before August 27, 2019. The Commission served notices of the Supplement to the 13 potentially-affected QFs identified by Prairie Power by letters dated August 6, 2019. Mr. Warren Swaar and Mr. Gary Westermeyer, individually, filed protests. Prairie Power filed an answer to the protests.

6. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept Prairie Power's answer and will, therefore, reject it.

7. Mr. Swaar explains that he has a solar array with a net-metering agreement with Menard Electric Company, which purchases the excess electricity that Mr. Swaar's solar panels generate.[13] Mr. Swaar is concerned that Prairie Power's termination of the mandatory purchase obligation under PURPA will be the first in a series of entities terminating their obligation, which will lead to a reduction in private solar development. Mr. Westermeyer argues that granting the Application will undermine Illinois' aim to obtain 20 to 30 percent of its energy from renewable sources.[14] Mr. Westermeyer adds that it would be unfair for any renewable sources to put extra power on the grid without compensation. Mr. Westermeyer contends that, in effect, Prairie Power would benefit from the power, but would not pay for the power.

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[11] *Id.* at 8.

[12] *Id.* at 13.

[13] Swaar Protest at 1.

[14] Westermeyer Protest at 1.

8. We find that the issues raised by the protests are beyond the scope of this proceeding. The issue in this proceeding is limited to whether QFs in MISO have nondiscriminatory access to a market that satisfies the requirements of section 210(m) of PURPA as a market that warrants termination of an electric utility's mandatory purchase obligation for QFs in excess of 20 MW net capacity. In Order No. 688, the Commission explained that there can be factors unique to individual QFs, including operational characteristics and transmission limitations, which prevent such QFs from having nondiscriminatory access to the markets described in section 210(m) of PURPA.[15] However, the protests do not discuss those factors or otherwise attempt to rebut the arguments made by Prairie Power in its Application.

9. Accordingly, the Application, submitted pursuant to section 210(m) of PURPA, to terminate Prairie Power's mandatory obligation to enter into new contracts or obligations to purchase electric energy or capacity from QFs with a net capacity in excess of 20 MW that are located within the MISO footprint is hereby granted, effective July 11, 2019.[16]

By direction of the Commission.

Kimberly D. Bose,
Secretary.

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[15] *See New PURPA Section 210(m) Regulations Applicable to Small Power Production and Cogeneration Facilities*, Order No. 688, FERC Stats. & Regs. ¶ 31,233, at P 82 (2006), *order on reh'g*, Order No. 688-A, 119 FERC ¶ 61,305 (2007), *aff'd sub nom. Am. Forest & Paper Ass'n v. FERC*, 550 F.3d 1179 (D.C. Cir. 2008). The Commission provided as an example that a QF's operational characteristics could "effectively prevent the QFs participation in a market." *Id*. The Commission noted that such operational characteristics might include "highly variable thermal and electrical demand (from the QF host) on a daily basis, such that the QF cannot participate in a market" or "highly variable and unpredictable wholesales sales on a daily basis." *Id*.

[16] To the extent that a potentially-affected QFs net capacity is 20 MW or smaller, this order does not terminate the mandatory purchase obligation for that QF.