

160 FERC ¶ 61,078
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, and Robert F. Powelson.

Basin Electric Power Cooperative

Docket No. EL17-46-000

ORDER GRANTING PETITION FOR PARTIAL WAIVER

(Issued September 20, 2017)

1. On February 3, 2017, Basin Electric Power Cooperative (Basin Electric), on behalf of itself and 72 rural electric cooperative member-owners (collectively, the Participating Members),¹ filed a petition for partial waiver of certain Commission regulations implementing section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA),² pursuant to section 292.402 of the Commission's regulations.³ As discussed below, we will grant Basin Electric's petition.

I. Background

2. Basin Electric states that it is a consumer-owned rural electric cooperative corporation headquartered in Bismarck, North Dakota. It states that its electric transmission facilities include approximately 2,334 miles of electric transmission lines, and that it owns and maintains equipment in 85 switchyards. Basin Electric explains that it operates approximately 5,205 megawatts of electric generating capacity and has approximately 6,555 megawatts of capacity within its generation portfolio. As a

¹ See the Appendix for a list of Participating Members. On August 9, 2017 Basin Electric notified that Commission that one of the originally-listed Participating Members, Powder River Energy Corporation, is withdrawing from the Petition as a Participating Member. As a result, there are now 71 Participating Members.

² 16 U.S.C. § 824a-3 (2012).

³ 18 C.F.R. § 292.402 (2017).

wholesale power supplier, Basin Electric does not generally sell electricity at retail,⁴ and has not been assigned a retail service territory. Basin Electric states that it has members in Colorado, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, South Dakota and Wyoming, and that the members' systems serve approximately 3 million customers. Basin Electric states that its Participating Members are retail utilities,⁵ but that Basin Electric is not a "public utility" as that term is defined in Section 201(e) of the Federal Power Act.⁶

II. Petition

3. Basin Electric seeks waiver of its obligation under section 292.303(b) of the Commission's regulations⁷ to make retail sales to qualifying facilities (QF) and the Participating Members seek a waiver of their obligation under section 292.303(a) of the Commission's regulations⁸ to make purchases from QFs with a nameplate capacity of 150 kW or more. Basin Electric states that, in lieu of Basin Electric's retail sales to QFs, the Participating Members will make such sales, and, similarly, in lieu of the Participating Members' purchases from QFs of 150 kW or more, Basin Electric will make such purchases, at Basin Electric's avoided costs. Basin Electric states that the Participating Members will continue to purchase energy and capacity offered by QFs with a capacity less than 150 kW. Basin Electric adds that QFs interconnecting with itself or the Participating Members will continue to have a market for the capacity and energy they make available for sale, and also will continue to be assured of a source of retail power for their operations through Basin Electric's Joint PURPA Implementation Plan (Plan).⁹

4. Basin Electric explains that the Plan provides that: (1) any QF may interconnect with Basin Electric's Participating Members if they meet the interconnection requirements of the local and high voltage transmission provider; (2) Basin Electric will purchase capacity and energy from QFs with a nameplate capacity of 150 kW or more

⁴ Basin Electric states that it provides retail service to one for-profit subsidiary of Basin Electric, but provides no other retail service. Petition at 12 n.15.

⁵ Petition at 13.

⁶ 16 U.S.C. § 824(e) (2012).

⁷ 18 C.F.R. § 292.303(b) (2017).

⁸ 18 C.F.R. § 292.303(a) (2017).

⁹ Petition at 6.

at a rate equal to Basin Electric's avoided costs, and the Participating Members will purchase capacity and energy from QFs with a capacity less than 150 kW at a rate equal to Basin Electric's avoided costs; (3) the Participating Members will sell supplementary, back-up and maintenance power to QFs, upon request, at rates that are nondiscriminatory, just and reasonable, and in the public interest; and (4) no QF will be subject to duplicative charges for interconnection or wheeling as a result of selling to Basin Electric and buying from a Participating Member.¹⁰

5. Basin Electric argues that the Commission should waive the Participating Members' purchase obligation because the Participating Members' purchases are not necessary to encourage cogeneration or small power production. It argues that the Plan provides encouragement to QFs by ensuring that they receive a rate for their power that is equal to Basin Electric's full avoided costs, which it asserts is equal to the avoided costs of the Participating Members. Basin Electric states that the Plan also provides that QFs will: (1) be offered back-up, supplementary, and maintenance power, upon request, on either a firm or interruptible basis, at cost-justified rates (rates that are nondiscriminatory, just and reasonable, and in the public interest); and (2) be protected from duplicative interconnection charges or wheeling charges as a result of dealing with an individual Participating Member for retail service and Basin Electric for QF sales of capacity and energy.¹¹

6. Basin Electric adds that a QF of 150 kW or more will not be subject to duplicative charges for interconnection or wheeling as a result of selling to Basin Electric rather than an individual Participating Member. It will buy the power supplied by such QFs at the point of interconnection. Basin Electric states that, to the extent additional metering equipment or other interconnection costs are incurred as a result of Basin Electric, rather than a Participating Member, being the purchaser, these costs will be borne by Basin Electric. Thus, a QF of 150 kW or more interconnecting with a Participating Member and selling to Basin Electric will be subject to the same interconnection charges that it would face if it were interconnecting with and selling to a Participating Member.¹²

7. Basin Electric also argues that the Commission should waive Basin Electric's sale obligation because retail sales by Basin Electric are not necessary to encourage cogeneration and small power production, as such service: (1) would be requested by few, if any, QFs; (2) would cause Basin Electric to incur significant administrative costs which would then be recoverable solely from QFs, and (3) would duplicate service

¹⁰ Petition at 7.

¹¹ *Id.* at 16.

¹² *Id.* at 10.

already available from the Participating Members at rates that are nondiscriminatory, just and reasonable, and in the public interest.

III. Notice and Pleadings

8. Notice of Basin Electric's petition was published in the *Federal Register*, 82 Fed. Reg. 10,567 (2017), with interventions and protests due on or before February 27, 2017. A timely protest was filed jointly by Appalachian Voices, Community Power, Cooperative Energy Futures, Institute for Local Self-Reliance, and We Own It; CURE separately filed the same protest. Basin Electric filed an answer to the protests.

9. Protestors argue that the Commission should reject Basin Electric's petition until Basin Electric and its member cooperatives provide sufficient public notice and otherwise demonstrate that the plan will not deter development of QFs in their service area. Protestors argue that, although Basin Electric provided public notice of the petition in 250 newspapers, the public notice of the petition was difficult for anyone without technical knowledge of PURPA to understand, and the two-week comment period provided over Thanksgiving was not sufficient. The protestors also claim the public notice was deficient because Basin Electric did not post notice in any of the Participating Members' newsletters. They further note, without providing any explanation, that "pre-empt[ing] the use of locally relevant avoided cost pricing can undermine market access for power providers that otherwise could compete."¹³

10. In its answer, Basin Electric argues that the protests do not provide any basis upon which the Commission should deny the petition for waiver. Basin Electric asserts that it provided ample public notice, and that the notice fully comported with the Commission's requirements. Basin Electric further notes that the only comments it received in response to all of the published notices were from the protestors here, raising essentially the same issues.¹⁴

IV. Discussion

A. Procedural Matters

11. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2017), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Basin Electric's answer because it has provided information that assisted us in our decision-making process.

¹³ Protests at 1.

¹⁴ Basin Electric Answer at 4.

B. Partial Waiver

12. Section 292.402(b) of the Commission's regulations provides that, upon application by a State regulatory authority or non-regulated electric utility, the Commission may grant waiver from the application of any of the requirements of section 292, Subpart C (other than section 292.302), if the applicant demonstrates that compliance is not necessary to encourage cogeneration and small power production. Here, Basin Electric and its members are non-regulated electric utilities.

13. The Commission has granted requests for waiver submitted by a generation and transmission cooperative (G&T) seeking waiver of the G&T's sale obligations and waiver of the member distribution cooperatives' purchase obligations on numerous occasions where the member distribution cooperatives have assumed the G&T's sale obligation while the G&T has assumed the member distribution cooperatives' purchase obligation.¹⁵

14. Basin Electric's request for waiver is nearly identical to those the Commission has granted in the past. Basin Electric will assume the Participating Members' purchase obligation from QFs of 150 kW or more while the Participating Members will assume Basin Electric's sale obligation. Under these circumstances we find that the petitioners have made the showing required by section 292.402 of our regulations to justify a waiver.¹⁶ Accordingly, we grant both waivers.

15. We find that the protests are without merit. The protestors' concerns go to the adequacy of notice provided in newspapers in the fall of 2016, and much time has elapsed between then and the filing of the petition, during which interested persons could have educated themselves. The protestors did not seek additional time in which to protest the petition, or claim that the Commission's notice period for the petition was inadequate. Moreover, the fact that the application of PURPA and the Commission's PURPA regulations is complex is not itself a basis for denial of the petition. Section 292.402 of the Commission's regulations requires only that a non-regulated electric utility provide

¹⁵ See, e.g., *Western Farmers Elec. Coop.*, 115 FERC ¶ 61,323 (2006); *accord Seminole Electric Cooperative, Inc.*, 39 FERC ¶ 61,354 (1987); *Oglethorpe Power Corp.*, 32 FERC ¶ 61,103 (1985), *reh'g granted in part and denied in part*, 35 FERC ¶ 61,069 (1986), *aff'd sub nom. Greensboro Lumber Co. v. FERC*, 825 F.2d 518 (D.C. Cir. 1987); *cf. Hoosier Energy Rural Elec. Coop., Inc.*, 154 FERC ¶ 62,205 (2016) (delegated letter order); *North Carolina Elec. Membership Corp.*, 137 FERC ¶ 62,009 (2011) (delegated letter order).

¹⁶ Our decision to grant Basin Electric's petition for partial waiver does not constitute approval of any of the provisions in Basin Electric's Plan.

“public notice in the area served by the electric utility.”¹⁷ Basin Electric’s notice in 250 newspapers meets this requirement.

16. As to the protestors’ arguments regarding avoided costs pricing, Commission precedent specifies that the avoided costs rate for a full requirements distribution cooperative (such as the Member Cooperatives) is the same as the avoided costs rate for its generation and transmission cooperative (such as Basin Electric).¹⁸ In support of its waiver request, Basin Electric explains that its avoided costs will be the relevant avoided costs for any purchases it will now be making in the place of the Member Cooperatives, and that Basin Electric’s avoided cost, in turn, is equal to the avoided costs of the Participating Members.¹⁹

¹⁷ 18 C.F.R. § 292.402 (2017).

¹⁸ The Commission first made this determination in Order No. 69, which implemented section 210 of PURPA. *Small Power Production and Cogeneration Facilities; Regulations Implementing Section 210 of the Public Utility Regulatory Policies Act of 1978*, Order No. 69, FERC Stats. & Regs. ¶ 30,128, at 30,871, *order on reh’g*, Order No. 69-A, FERC Stats. & Regs. ¶30,160 (1980), *aff’d in part and vacated in part*, *American Electric Power Service Corp. v. FERC*, 675 F.2d 1226 (D.C. Cir. 1982), *rev’d in part*, *American Paper Institute, Inc. v. American Electric Power Service Corp.*, 461 U.S. 402 (1983).

The Commission has consistently followed this determination in subsequent case law. *See, e.g., Western Farmers Elec. Coop.*, 115 FERC ¶ 61,323, at P 27 (2006); *Carolina Power & Light Co.*, 48 FERC ¶ 61,101, at 61,390 (1989) (citing *City of Longmont*, 39 FERC ¶ 61,301 (1987)) (in the case of a QF selling to a full requirements customer instead of selling to that customer’s supplying utility, the Commission will measure “the avoided cost of the full requirements customer as the avoided cost of the full requirements supplier since it is the supplier that avoids generation when the full requirements customer purchases from a QF”); *cf. Hoosier Energy Rural Elec. Coop., Inc.*, 154 FERC ¶ 62,205 (2016) (delegated letter order).

¹⁹ Petition at 6, 8.

The Commission orders:

Basin Electric's petition for partial waiver is hereby granted.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix

Basin Electric Power Cooperative
Participating Members for which Waivers are Granted

Agralite Electric Cooperative
Big Flat Electric Co-op, Inc.
Black Hills Electric Cooperative, Inc.
Bon Homme Yankton Electric Association, Inc.
Burke-Divide Electric Cooperative, Inc.
Butte Electric Cooperative, Inc.
Cam Wal Electric Cooperative, Inc.
Capital Electric Cooperative, Inc.
Central Electric Cooperative, Inc.
Central Montana Electric Power Cooperative, Inc.
Central Power Electric Cooperative, Inc.
Charles Mix Electric Association, Inc.
Cherry-Todd Electric Cooperative, Inc.
City of Elk Point
Clay-Union Electric Corporation
Codington-Clark Electric Cooperative, Inc.
Crow Wing Cooperative Power and Light Company
Dakota Valley Electric Cooperative, Inc.
Douglas Electric Cooperative, Inc.
East River Electric Power Cooperative, Inc.
FEM Electric Association, Inc.
Fergus Electric Cooperative, Inc.
Goldenwest Electric Coop., Inc.
Grand Electric Cooperative, Inc.
H-D Electric Cooperative, Inc.
Hill County Electric Cooperative, Inc.
KEM Electric Cooperative, Inc.
Kingsbury Electric Cooperative, Inc.
L & O Power Cooperative
Lacreek Electric Association, Inc.
Lake Region Electric Association, Inc.
Lower Yellowstone Rural Electric Cooperative
Lyon Rural Electric Cooperative
Lyon-Lincoln Electric Cooperative, Inc.
Marias River Electric Cooperative, Inc.
McCone Electric Co-op., Inc.
McKenzie Electric Cooperative, Inc.
McLean Electric Cooperative, Inc.

Mid-Yellowstone Electric Cooperative
Minnesota Valley Cooperative Light & Power Association
Mor-Gran-Sou Electric Cooperative, Inc.
Moreau-Grand Electric Cooperative, Inc.
Mountrail-Williams Electric Cooperative
North Central Electric Cooperative, Inc.
Northern Electric Cooperative, Inc.
Northern Plains Electric Cooperative, Inc.
NorVal Electric Cooperative, Inc.
Oahe Electric Cooperative, Inc.
Osceola Electric Cooperative, Inc.
Park Electric Cooperative, Inc.
Redwood Electric Cooperative
Renville-Sibley Co-op Power Association
Rosebud Electric Cooperative, Inc.
Roughrider Electric Cooperative, Inc.
Rushmore Electric Power Cooperative, Inc.
Sheridan Electric Co-op., Inc.
Sioux Valley- Southwestern Electric Cooperative, Inc.
Slope Electric Cooperative, Inc.
South Central Electric Association
Southeast Electric Cooperative, Inc.
Southeastern Electric Cooperative, Inc.
Sun River Electric Cooperative, Inc.
Tongue River Electric Cooperative, Inc.
Traverse Electric Cooperative, Inc.
Union County Electric Cooperative, Inc.
Upper Missouri G & T Electric Cooperative, Inc.
Verendrye Electric Cooperative
West Central Electric Cooperative, Inc.
West River Electric Association, Inc.
Whetstone Valley Electric Cooperative, Inc.
Yellowstone Valley Electric Cooperative, Inc.