



# Overview of New PURPA Section 210(m) Regulations

For ELCON Members Only

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### § 292.303 Electric Utility Obligations

Establishes the obligation of electric utilities to purchase from QFs unless otherwise exempted by § 292.309 and § 292.310. Any energy and capacity made available by a QF shall be purchased directly by the electric utility or wheeled to another electric utility if the QF agrees. Also establishes the obligation to interconnect the QF with the electric utility.

### § 292.309 Termination of Obligation to Purchase from QFs

**Three Market Conditions for Granting Exemptions:** Codifies the three categories of markets defined in the statute and grants exemption from the obligation to enter into a new contract or obligation to purchase from a QF if FERC finds that the QF has nondiscriminatory access to one of the three markets. Any renewal of a contract that expires by its own terms is treated as a "new contract or obligation to purchase."

Establishes a rebuttable presumption that a QF has nondiscriminatory access to the market if it is eligible for service under a FERC-approved OATT or reciprocity tariff, and FERC-approved interconnection rules. A QF may seek to rebut the presumption of access to the market by demonstrating that it does not have access to the market because of operational characteristics or transmission constraints.

**Small QF Exemption:** Establishes a rebuttable presumption that a QF with a capacity at or below 20 MWs does not have nondiscriminatory access to the market. Waives the so-called "one-mile standard" in existing PURPA regulations that requires the energy resource to be within one mile of the facility.

**Midwest ISO, PJM, ISO-NE and NYISO** qualify as markets described in § 292.309(a)(1), and there is a rebuttable presumption that QFs with a capacity greater than 20 MWs have nondiscriminatory access to those markets through FERC-approved OATTs and interconnection rules, and that electric utilities are members of such RTOs or ISOs should be relieved of the obligation to purchase electric energy from the QFs. A QF may seek to rebut this presumption by demonstrating, among other things, that the QF has certain operational characteristics that effectively prevent the QF's participation in a market, or the QF lacks access to markets because of transmission constraints.

**ERCOT** qualifies as a market described in § 292.309(a)(3) and there is a rebuttable presumption that QFs with a capacity greater than 20 MWs have nondiscriminatory access to those markets through Public Utility Commission of Texas (PUCT) approved open access protocols, and that electric utilities that operate within ERCOT should be relieved of the

Section	Qualifying Market Conditions	Qualifying ISO/RTO by Market Conditions
§ 292.309(a)(1) "Day Two"	Independently administered, auction-based day ahead and real time wholesale markets for the sale of electric energy, and wholesale markets for long-term sales of capacity and electric energy.	Midwest ISO, PJM, ISO-NE, NYISO
§ 292.309(a)(2) "Day One"	(i) Transmission and interconnection services that are provided by a Commission-approved regional transmission entity and administered pursuant to an open access transmission tariff that affords nondiscriminatory treatment to all customers; and  (ii) Competitive wholesale markets that provide a meaningful opportunity to sell capacity, including long-term and short-term sales, and electric energy, including long-term, short-term and real-time sales, to buyers other than the utility to which the qualifying facility is interconnected. In determining whether a meaningful opportunity to sell exists, the Commission shall consider, among other factors, evidence of transactions within the relevant market.	CAISO, SPP
§ 292.309(a)(3) "Bilateral"	Wholesale markets for the sale of capacity and electric energy that are, at a minimum, of comparable competitive quality as markets described in paragraphs (a)(1) and (a)(2) of this section.	ERCOT

obligation to purchase electric energy from the QFs. A QF may seek to rebut this presumption by demonstrating, among other things, that the QF has certain operational characteristics that effectively prevent the QF's participation in a market, or the QF lacks access to markets because of transmission constraints (see box on page 3).

**CAISO** and **SPP** qualify as markets described in § 292.309(a)(2)(i).

**Qualifying Cogenerators Must Meet New Criteria for Thermal Output:** Establishes that no electric utility shall be required to enter into a new contract or obligation to purchase from or sell electric energy to a facility that is not an existing qualifying cogeneration facility unless the facility meets the criteria for new qualifying cogeneration facilities established by the Commission in § 292.205 ("Criteria for Qualifying Cogeneration Facilities") pursuant to section 1250 of the Energy Policy Act of 2005.

### **§ 292.310 Procedures for Utilities Requesting Termination of Obligation to Purchase from Qualifying Facilities**

**Ninety-Day Application to Decision Review Period:** An electric utility may file an application with FERC for relief from the mandatory purchase requirement on a service territory-wide basis. Such application shall set forth the factual basis upon which relief is requested and describe why one of the three market conditions has been met. After notice, including sufficient notice to potentially affected QFs, and an opportunity for comment, FERC will make a final determination within 90 days of such application.

**Sufficient notice** shall mean that an applicant must identify with names and addresses all potentially affected QFs in the application, including (1) all QFs with existing power purchase contracts, (2) other QFs that sell their output to the applicant or have pending self-certification or FERC certification with FERC for QF status whereby the applicant will be the purchaser of the QF's output, (3) any QF developer with whom the applicant has agreed to

enter into power purchase contracts as of the date of the application, (4) any QF developer that have pending state avoided costs proceedings as of the date of the application, and (5) any other QF that applicant reasonably believes to be affected by its application.

**Mandatory Filing Information:** The following information must be included with the application.

1. **Qualifying Market Conditions:** Identify whether applicant seeks a finding under which of the three market conditions (i.e., § 292.309(a)(1), § 292.309(a)(2) or § 292.309(a)(3)).
2. **Narrative:** A narrative setting forth the factual basis upon which relief is requested and describing why one of the three market conditions has been met. The applicant should also state in its application whether it is relying on the findings or any rebuttable presumption. If the applicant seeks relief from the purchase obligation with respect to small QFs (at or less than 20 MWs capacity), the applicant must set forth and submit evidence of the factual basis supporting its contention that the QF has nondiscriminatory access to the wholesale markets.

<b>Factors That May Be Sufficient to Rebut the Presumption of Nondiscriminatory Access</b>
The QF has certain operational characteristics that effectively prevent the QF's participation in a market. Such operational characteristics might include, but are not limited to: (a) highly variable thermal and electrical demand (from the QF host) on a daily basis, such that the QF cannot participate in a market; or (b) highly variable and unpredictable wholesale sales on a daily basis.
The QF has no access to a mechanism to schedule transmission service or make sales in advance on a consistent basis, either because of the variability of the QF's electric energy production or because of market rules that prevent the QF from scheduling transmission service or participating in organized markets. Such operational characteristics might include, but are not limited to, dispatchability or some other characteristic.
A QF lacks access to markets due to transmission constraints. A QF may show that it is located in an area where persistent transmission constraints in effect cause the QF not to have access to markets outside a persistently congested area to sell the QF output or capacity. In evaluating transmission constraints, the Commission will consider, on a case-by-case basis, among other things, the opportunity for QFs, on a nondiscriminatory basis, to obtain transmission upgrades to relieve constraints and whether the structure of the relevant market provides for the opportunity for the QF to sell notwithstanding the constraint.

3. **Transmission Congestion Studies:** Studies, including the applicant's long-term transmission plan, conducted by applicant, or the RTO, ISO or other relevant entity that show: (a) transmission constraints by path, element or other level of comparable detail and any proposed mitigation including construction plans; (b) levels of congestion, if available; (c) relevant system impact studies for generation interconnections; (d) other information pertinent to showing whether transfer capability is available; and (e) the appropriate link to applicant's OASIS from which a QF may obtain applicant's ATC information.
4. **Wheeling to Third-Party Purchasers:** Describe the process, procedures and practices that QFs interconnected to the applicant's system must follow to arrange for transmission service to wheel power to other purchasers. This information must

include the process, procedures and practices of all distribution, transmission and regional transmission facilities necessary for QF access to the market.

5. **New Interconnection or Contract Negotiation Requirements:** If a QF will be required to execute new interconnection agreements, or renegotiate existing agreements so that they can effectuate wholesale sales to third-party purchasers, explain the requirements, charges and the process to be followed. Also, explain any differences in these requirements as they apply to qualifying facilities compared to other generators, or to applicant-owned generation.
6. **Evidence of Competitive Wholesale Markets in Regions with Day-One or Bilateral Wholesale Markets:** Applicants seeking a FERC finding pursuant to § 292.309(a)(2) or (3), except those applicants located in ERCOT, also must provide evidence of competitive wholesale markets that provide a meaningful opportunity to sell capacity, including long-term and short-term sales, and electric energy, including long-term, short-term and real-time sales, to buyers other than the utility to which the qualifying facility is interconnected. In demonstrating that a meaningful opportunity to sell exists, provide evidence of transactions within the relevant market. Applicants must include a list of known or potential purchasers, e.g., jurisdictional and non-jurisdictional utilities as well as retail energy service providers.

#### **§ 292.311 Reinstatement of Obligation to Purchase**

At any time after FERC makes a finding relieving an electric utility of its obligation to purchase electric energy, a QF, a State agency, or any other affected person may apply to the Commission for an order reinstating the electric utility's obligation to purchase electric energy under this section. Such application shall set forth the factual basis upon which the application is based and describe why one of the three qualifying market conditions are no longer met. After notice, including sufficient notice to potentially affected electric utilities, and opportunity for comment, the Commission shall issue an order within 90 days of such application reinstating the electric utility's obligation to purchase electric energy under this section if the Commission finds that the conditions which relieved the obligation to purchase, are no longer met.

#### **§ 292.312 Termination of Obligation to Sell to Qualifying Facilities**

Any electric utility may file an application with FERC for relief from the mandatory obligation to sell on a service territory-wide basis or a single qualifying facility basis. Such application shall set forth the factual basis upon which relief is requested and describe why the conditions set forth below have been met. After notice, including sufficient notice to potentially affected qualifying facilities, and an opportunity for comment, the Commission shall make a final determination within 90 days of such application regarding whether the following conditions have been met:

1. Competing retail electric suppliers are willing and able to sell and deliver electric energy to the qualifying cogeneration facility or qualifying small power production facility; and
2. The electric utility is not required by State law to sell electric energy in its service territory.

#### **§ 292.313 Reinstatement of Obligation to Sell**

At any time after FERC makes a finding relieving an electric utility of its obligation to sell electric energy, a QF, a State agency, or any other affected person may apply to the

Commission for an order reinstating the electric utility's obligation to purchase electric energy. Such application shall set forth the factual basis upon which the application is based and describe why the conditions establishing the waiver no longer are met. After notice, including sufficient notice to potentially affected utilities, and opportunity for comment, FERC shall issue an order within 90 days of such application reinstating the electric utility's obligation to sell electric energy if the Commission finds that the conditions necessary for a waiver are no longer met.

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