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VIA EMAIL

September 12, 2005

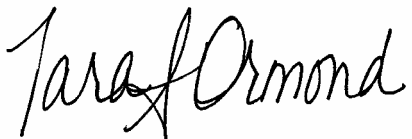
The Honorable Magalie Roman Salas
Secretary
Office of the Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: Docket No. EL05-143-000

Dear Secretary Salas:

Enclosed please find one electronic filing in the above referenced proceeding.

Respectfully submitted,



Tara S. Ormond
Policy/Research Assistant

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Alliant Energy Corporate Services, Inc.)
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)

Docket No. EL05-143-000

JOINT PROTEST OF THE AMERICAN FOREST AND PAPER ASSOCIATION; THE AMERICAN IRON AND STEEL INSTITUTE; THE AMERICAN WIND ENERGY ASSOCIATION; THE COUNCIL OF INDUSTRIAL BOILER OPERATORS; THE ELECTRICITY CONSUMERS RESOURCE COUNCIL; THE ELECTRIC POWER SUPPLY ASSOCIATION; THE ENVIRONMENTAL LAW AND POLICY CENTER; THE FERTILIZER INSTITUTE; G. McNEILUS WIND ENERGY COMPANY; THE NATIONAL PETROCHEMICAL AND REFINERS ASSOCIATION; THE MINNESOTA PROJECT; THE OHIO CONSUMERS' COUNCIL; AND PROJECT FOR SUSTAINABLE FERC ENERGY POLICY.

Pursuant to Rule 211 of the Federal Energy Regulatory Commission's ("Commission" or "FERC") Rules of Practice and Procedure,¹ The American Forest and Paper Association, the American Iron and Steel Institute, the American Wind Energy Association, the Council of Industrial Boiler Operators, the Electricity Consumers Resource Council; the Electric Power Supply Association, the Environmental Law and Policy Center, the Fertilizer Institute, G. McNeilus Wind Energy Company, the National Petrochemical and Refiners Association, the Minnesota Project, the Ohio Consumers' Council and Project for Sustainable FERC Energy Policy ("Joint Parties") protest the Petition for Declaratory Order submitted in the above-captioned proceeding. In its Petition, Alliant Energy Corporate Services, Inc., on behalf of Interstate Power and Light Company ("IPL") and Wisconsin Power and Light Company ("WPL") (collectively, "Alliant"), seeks a declaratory ruling that IPL and WPL shall not be required to enter into a new contract or obligation to purchase electric energy from a qualifying cogeneration facility or qualifying small power production facility (collectively, a "QF"). Alliant argues

¹ 18 C.F.R. §§ 385.211 (2005).

that IPL and WPL meet the requirements set forth in the recently-enacted § 210(m) of the Public Utility Regulatory Policies Act of 1978, as amended (“PURPA”), 16 U.S.C. § 824a-3(m).² Joint Parties argue that Alliant has not made a sufficient showing that its utilities meet the statutory requirements for relief of the PURPA purchase obligation and urge the Commission to deny Alliant’s petition.³

I. Executive Summary

Joint Parties urge the Commission to deny Alliant’s petition because Alliant has failed to demonstrate that it meets the criteria set forth in PURPA § 210(m) for relief from its obligation to purchase the output of QFs where the statutory requirements have otherwise been satisfied. As discussed below, Alliant’s petition is deficient on its face given Alliant’s failure to address all the required criteria, particularly the requirement that the Commission find that the affected QFs have access to long-term energy and capacity markets. The Commission cannot waive IPL’s and WPL’s PURPA obligations until it can confirm that all required statutory conditions are met, and Alliant’s petition does not provide the Commission with determinative showings or evidence that all elements of the statutory requirements are met in its service territory. Also, Joint Parties urge the Commission to use this opportunity to clarify how PURPA § 210(m) will be implemented. First, contrary to Alliant’s assertions, the fact that the Midwest Independent Transmission System Operator, Inc. (“Midwest ISO”) is a FERC-approved RTO is not sufficient to meet the statutory requirements that require specific evidence demonstrating that meaningful opportunities exist for QFs in the IPL and WPL market areas to sell capacity. Second, the Commission should clarify that the statute requires

² PURPA § 210(m) was enacted as part of the Energy Policy Act of 2005.

³ One or more of the Joint Parties may file motions to intervene and/or supplemental protests reflecting their individual perspectives on other aspects of this proceeding.

a determination on a utility-specific service territory basis and, therefore, any determination made with respect to Alliant's petition, whether granted or denied, would not constitute a finding as to whether other utility-specific service territories (such as those that are in the same RTO) would or would not qualify for waiver of the mandatory purchase obligation.

II. Comments

A. Alliant's Petition Is Deficient On Its Face Because It Does Not Address All Of the Statutory Criteria

PURPA § 210(m)(3) requires that applicants seeking a service territory wide exemption from the mandatory purchase obligation "set forth the factual basis upon which relief is requested and describe why the conditions set forth in subparagraphs (A), (B) or (C) have been met." PURPA § 210(m)(1) provides that the Commission may waive the applicant's obligation to purchase from QFs:

If the Commission finds that the [QF] has nondiscriminatory access to - -

A(i) independently administered, auction-based day ahead and real time wholesale markets for the sale of electric energy; and (ii) wholesale markets for long-term sales of capacity and electric energy; or

B(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 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 markets; or

(C) wholesale markets for the sale of capacity and electric energy that are, at a minimum, of comparable competitive qualify as markets described in subparagraphs (A) and (B).

Alliant's petition is deficient on its face because it not only fails to set forth the factual basis upon which relief is requested, but it even fails to address all of the required criteria. Alliant simply asserts that it meets all three sets of criteria because the Midwest ISO operates day-ahead and real-time energy markets and provides interconnection and transmission service under its open access tariff. But even if these assertions are sufficient to meet the requirements of subparagraphs (A)(i) (access to independent, auction-based energy markets) and (B)(i) (transmission and interconnection services provided by regional transmission entity under nondiscriminatory open access tariff), they in no way address subparagraphs (A)(ii) (access to long-term markets) or (B)(ii) (a meaningful opportunity to sell long- and short-term capacity and energy).⁴ Indeed, Alliant effectively would nullify subparagraphs (A)(ii) and (B)(ii) insofar as it argues that satisfaction of the first prong of each set of criteria (namely, subparagraphs (A)(i) and (B)(i)) constitutes satisfaction of the second prong as well (namely, subparagraphs (A)(ii) and (B)(ii)). Because Alliant disregards the second prong of each set of criteria in their entirety, its petition necessarily is deficient on its face and must be rejected.

B. Access To The Midwest ISO's Energy Markets And Open Access Tariff Is Not Dispositive As To The Status Of Long-Term Markets, Particularly Long-Term Capacity Markets

Alliant's position is that the existence of the Midwest ISO's energy markets and open access tariff demonstrates that QFs have meaningful access to capacity markets, including long-term wholesale markets. In fact, because Alliant has made such a minimal showing, based only on the status of the Midwest ISO's operations as

⁴ Alliant also claims to meet PURPA § 210(m)(1)(C), but this section is defined by satisfying the requirements of the subparagraphs (A) and (B); hence, subsection (C) is not separately addressed in these comments.

an RTO, were the Commission to grant Alliant's petition, it would be equivalent to finding that the entire Midwest ISO footprint qualifies for waiver from the mandatory purchase obligation. Joint Parties submit that the FERC-approved RTO status of the Midwest ISO does not provide the Commission with the evidence the statute requires as to the competitive vitality of the long-term capacity markets in Alliant's service territory.⁵ In fact, Alliant has provided the Commission with no factual evidence whatsoever of transactions within the relevant market, which is an explicit requirement imposed on the Commission by subparagraph (B)(ii). Indeed, when earlier faced with this same presumption, the Commission found no nexus between energy markets and long-term capacity markets, and it denied the petition of the Public Utility Commission of Texas for a waiver of the mandatory QF purchase obligation upon the start-up of energy markets in the Electric Reliability Council of Texas.⁶

Here, Alliant's position is even less compelling given that the Midwest ISO is currently developing a permanent resource adequacy program and exploring the development of a formal capacity market mechanism.⁷ Hence, work remains to be done in the Midwest ISO before the Commission can rely on its resource adequacy program or an RTO-administered capacity market mechanism as evidence that Alliant meets the statutory requirements. And in the alternative, Alliant did not submit transactional data to demonstrate that meaningful sales opportunities exist with respect to long-term markets, which are an essential element of the statutory criteria.

⁵ See *Cogen Lyondell, Inc., et al.*, 95 FERC ¶ 61,243 at 61,838 (2001).

⁶ Citation

⁷ See *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,163 at 396-7 (2004) ("We view Module E as a transition mechanism to bridge the gap between market start up and the implementation of a permanent RAR plan. . . . We also expect any permanent resource adequacy plan will provide a consistent platform to support the region's short-term reliability needs and encourage long-term planning and investments in infrastructure.")

Lastly, and perhaps most importantly, the statute requires more than an assessment of whether the market structure might be capable of supporting competitive capacity markets under favorable market conditions. Rather, the Commission must be able to confirm that capacity markets are, in fact, functioning adequately. Specifically, the Commission must confirm that such markets provide a *meaningful* opportunity to sell capacity, including long-term capacity to others. See PURPA § 210(m)(1)(B)(ii). Admittedly, PURPA § 210(m)(1)(A)(ii) does not expressly require a demonstration of meaningful access to others; but it does require a demonstration that wholesale markets for long-term sales of capacity already exist and are workably competitive. Hence, among other things, the Commission must carefully evaluate the short- and long-term capacity obligations of load-serving entities in the relevant markets, their practices for meeting such obligations, and any barriers to entry into or impediments to trade within such markets. Because here the existence of the Midwest ISO as a FERC-approved RTO provides no basis for the Commission to draw the necessary conclusions about the existence or competitiveness of capacity markets, including the long-term markets in IPL's and WPL's service territories, the Commission must reject Alliant's petition.

C. The Petition Provides An Opportunity For The Commission To Provide Guidance On The How PURPA § 210 M Will Be Implemented

While Joint Parties do not believe that disposition of this petition requires the Commission to announce all of the policies that it will adopt in implementing PURPA § 210(m), it does provide the Commission with an opportunity to provide guidance on the factors that may be relevant in assessing the statutory criteria. Joint Parties urge the Commission to clarify the following two aspects of implementation.

First, the Commission should clarify that participation in a Commission-approved RTO is not sufficient to support waiver of the mandatory purchase obligation

as discussed above. Contrary to Alliant's assertions, the fact that the Midwest ISO is a FERC-approved RTO does not meet all elements of the statutory language. Had Congress intended that RTO-participation alone would provide a basis for exemption, the statute would have so provided. Instead, the statute unambiguously requires that petitioners make specific showings, supported by evidence, about the existence of and meaningful access to competitive wholesale markets. Thus, although a RTO ultimately may provide a superior platform for the development of competitive markets, participation in an RTO, in and of itself, does not provide a basis for the Commission to conclude that a petitioner meets each of the specific statutory requirements. The Commission's order in this proceeding should include this clarification.

Second, the Commission should clarify that the statute requires a determination on a utility-specific service territory basis and, therefore, any determination made with respect to Alliant's petition, whether granted or denied, would not constitute a finding as to whether other utility-specific service territories (such as those that are in the same RTO) would or would not qualify for waiver of the mandatory purchase obligation. The service-territory wide waiver option (PURPA § 210(m)(3)) is the only exemption that the statute provides to a QF-specific exemption process (PURPA § 210(m)(1)). The Commission is required to apply the criteria and review evidence specific to the petitioner and its service territory, and the Commission's finding similarly will apply only to the petitioner's own service territory.

III. Conclusion

WHEREFORE, Joint Parties urge the Commission to reject Alliant's petition based on the discussion above, and provide guidance on the criteria to be relied upon by the Commission when making future determinations on applications for relief of the

PURPA purchase obligation as set forth in § 210(m) of the Public Utility Regulatory Policies Act of 1978, as amended (“PURPA”), 16 U.S.C. § 824a-3(m).

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, DC this 12th day of September, 2005.

/s/ Larry F. Eisenstat

Larry F. Eisenstat