

FERC Waiver

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

PowerSouth Energy Coop., *et al.*
Docket No. EL08-53-000
June 25, 2008

Hogan & Hartson LLP
Columbia Square
555 Thirteenth St. N.W.
Washington, D.C. 20004

Attention: John T. Stough, Jr., Esq.
Geo. F. Hobday, Jr., Esq.

Reference: PowerSouth Energy Coop. Request for Partial Waiver of Regulations
for Qualifying Cogeneration Facilities

Dear Messrs. Stough and Hobday:

On April 4, 2008, PowerSouth Electric Coop. (PowerSouth) filed, on behalf of itself and its members,¹ a petition for partial waiver of certain of the Commission's 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 the applicants' petition.

Background

PowerSouth is a generation and transmission cooperative headquartered in Andalusia, Alabama, and the Members joining this petition are its member distribution cooperatives and member municipal systems who purchase their

¹ PowerSouth's 20 member-owners (Members) joining the petition are Baldwin EMC; Central Alabama EC; CHELCO; Clarke-Washington EMC; Coosa Valley EC; Covington EC; Dixie EC; Escambia River EC; Gulf Coast EC; Pea River EC; Pioneer EC; South Alabama EC; Southern Pine EC; Tallapoosa River EC; West Florida EC; Wiregrass EC; The Utilities Board of the City of Andalusia, Ala.; Water Works & Electric Board of the City of Elba, Ala.; and the Utilities Board of the City of Opp, Ala.

² 16 U.S.C. § 824a-3 (2006).

³ 18 C.F.R. § 292.402 (2008).

power requirements from PowerSouth pursuant to long-term all-requirements contracts. PowerSouth makes no sales at retail. The Members make no sales at wholesale and do not maintain separate power supply portfolios.

PowerSouth is a borrower from the United States Rural Utilities Service (RUS). Currently, PowerSouth purchases energy from two QFs which are interconnected with its transmission system. The first of these QFs, Elba Hydro, receives retail electric service from Covington EC. The second of these QFs, Waste Management, Inc., is located in the territory of, and receives electric service from, West Florida EC. PowerSouth and West Florida EC have served Waste Management, Inc. since 2006 under a negotiated contract under which PowerSouth purchases the QF's output at its avoided cost, and West Florida EC makes applicable sales to Waste Management.

The Members are comprised of 16 electric distribution cooperatives located in Alabama and northwest Florida, and four Alabama municipal electric systems. None of the Members own generation of their own, and each is obligated to purchase all of its power and energy requirements from PowerSouth pursuant to long-term all-requirements wholesale power contracts which extend until 2050. These wholesale power all-requirements contracts serve as security for RUS loans and loan guarantees made to PowerSouth. Entering into these long-term contracts was a necessary pre-condition for PowerSouth to receive financing from RUS, the proceeds from which enabled PowerSouth to acquire the generation and other assets used to serve PowerSouth's Members' power supply. A number of the individual Members also have received financing from RUS, and some of those Members have paid off that financing.

Petition for Waiver

The Members seek waiver of their obligation under section 292.303(a) of the Commission's regulations to purchase capacity and energy directly from QFs in order to permit all such purchases to be made by PowerSouth at PowerSouth's avoided costs. PowerSouth and its Members argue that administrative efficiency will be enhanced by this proposed structure, since PowerSouth already has the obligation to integrate its resources to provide on an ongoing basis sufficient capacity and energy to meet its Members' full requirements.

Applicants argue that having PowerSouth make purchases in lieu of the Members will not discourage QFs by imposing duplicative charges for interconnection or wheeling. PowerSouth commits to purchase power from QFs at the point of interconnection between that QF and the individual Member, with no additional interconnection costs to be imposed on the QF other than those required to interconnect to that Member. Similarly, PowerSouth and the Members commit

not to require a separate wheeling charge in connection with this purchase. Applicants state that if PowerSouth requires additional metering equipment from the QF, or if other interconnection costs are incurred as a result of PowerSouth, rather than the Member, acting as the purchaser from the QF, then the incremental costs over those that would have arisen from an interconnection with the Member will be borne by PowerSouth.

PowerSouth seeks waiver of its obligation under section 292.303(b) of the Commission's regulations to allow individual Members to meet the QFs' needs for supplementary, back-up, interruptible, and maintenance power. Applicants argue that permitting Members to serve these retail services will further administrative efficiency and avoid requiring PowerSouth to serve as an unneeded supplier for these retail services. Applicants state that, as a generation and transmission cooperative, PowerSouth has no retail Members and does not have in place the organizational structure, infrastructure, or personnel necessary to make retail sales. It is PowerSouth's Members who provide end-use distribution services such as accounting, meter reading, Member billing and maintenance. Applicants argue that it would be unduly burdensome for PowerSouth to be required to develop these capabilities to serve only a small group of potential QF Members, if any. Moreover, applicants argue, the incremental costs of serving new QF Members are minor for the PowerSouth Members.

Applicants further argue that the requested waivers are consistent with precedent.⁴

⁴ *Citing Oglethorpe Power Corp.*, 32 FERC ¶ 61,103 (1985), *reh 'ggranted inpart and denied inpart*, 35 FERC ¶ 61,069 (1986), *aff'd sub nom. Greensboro Lumber Co. v. FERC*, 825 F.2d 518 (D.C. Cir. 1987); *Seminole Elec. Coop., Inc.*, 39 FERC ¶ 61,354 (1987); *Soy/and Power Coop., Inc.*, 50 FERC ¶ 62,072 (1990); *Nw. Iowa Power Coop.*, 57 FERC ¶ 62,079 (1991); *S. Ill. Power Coop.*, 66 FERC ¶ 62,010 (1994); *Corn Belt Coop.*, 68 FERC ¶ 62,249 (1994); *Mo. Basin Mun. Power Agency*, 69 FERC ¶ 62,250 (1994); *W Farmers Elec. Coop.*, 115 FERC ¶ 61,323 (2006). Applicants point out that the Commission has recognized that where one electric utility is an all-requirements contract Member of another electric utility, the all-requirements Member's avoided costs are deemed to be those of its all-requirements supplier. *Citing Small Power Production and Cogeneration Facilities; Regulation Implementing Section 210 of the Public Utility Regulatory Policies Act of 1978*, Order No. 69, FERC Stats. & Regs. ¶ 30,160 (1980), *ef'd inpart and vacated inpart*, *Am. Elec. Power Serv. Corp. v. FERC*, 675 F.2d 1226 (D.C. Cir. 1982), *rev'd inpart*, *Am. Paper Inst., Inc. v. Am. Elec. Power Serv. Corp.*, 461 U.S. 402 (1983). *Also citing Carolina Power & Light Co.*, 48 FERC ¶ 61,101 (1989); *City of Longmont*, 39 FERC ¶ 61,301 (1987); and 18 C.F.R. § 292.302(c)(1)(ii) (2008).

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Notices and Pleadings

This filing was noticed in the *Federal Register*, 73 Fed. Reg. 20622 (2008), with protests or motions to intervene due on or before May 5, 2008. None was filed.

Discussion

Taking into account all relevant factors, including the commitments made by the applicants as described above, the requested partial waivers of the Members' purchase obligations and PowerSouth's sales obligation are granted.

This action is taken pursuant to authority delegated to the Director, Division of Tariffs and Market Development - West under 18 C.F.R. § 375.307(a)(6)(iii) (2008). This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713 (2008).

If you have any questions concerning this order, please contact Tom Dautel at (202) 502-6196.

Sincerely,

Steve P. Rodgers, Director
Division of Tariffs and Market
Development - West

cc: Arthur Brunson
Manager of Legal Affairs
PowerSouth Energy Cooperative
P.O. Box 550
Andalusia, AL 36420

Document Content(s)

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