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September 21, 2017

PARTIES OF RECORD

Re: Case No. 2017-00212

Attached is a copy of an electronic mail correspondence, with an attachment, which is being filed in the record of the above-referenced case. If you have any comments you would like to make regarding the contents of the correspondence, please do so within five days of receipt of this letter.

If you have any questions, please contact Quang Nguyen, Commission Staff Attorney, at 502-782-2586.

Sincerely,

A handwritten signature in blue ink, appearing to read "John S. Lyons".

John S. Lyons
Acting Executive Director

QN/ph

Attachments

Lyons, John (PSC)

From: Patrick Woods <patrick.woods@ekpc.coop>
Sent: Tuesday, September 19, 2017 3:56 PM
To: Lyons, John (PSC)
Subject: EKPC believes RTO Insider article was "off the mark."
Attachments: 2714_001.pdf

John:

I hope this finds you well and recovering from your injury. I've had my fair share of time spent hobbling around on crutches, so I can empathize.

You probably saw where FERC granted EKPC's request for an exemption from having to purchase the output of PURPA projects greater than 20 MWs. You may have also seen the attached RTO Insider article about that decision. While the article got a number of the facts straight, we believe it's off the mark on EKPC being "Still on the hook for 2 QFs". So, we thought you might like to hear EKPC's take on things so you can share our thoughts with others at the Commission.

After EKPC filed at FERC, Blue Bird Solar LLC and Blue Jay Solar LLC intervened and requested FERC to rule they had established a Legally Enforceable Obligation (LEO). FERC declined. Regarding the two QFs' arguments that they had created grandfathered LEOs, FERC concluded that Bluebird (80 MW) and Blue Jay (60 MW) "potentially established LEOs" as of 12/5/16 and 3/8/17, respectively, based on their letters to EKPC requesting to sell their QF output to EKPC. FERC stated that EKPC's petition did not "foreclose" them from having established LEOs, and that "Barring any restrictions under state law, Bluebird and Blue Jay would be grandfathered such that [FERC] approval of [the petition] would not include Bluebird or Blue Jay QFs." FERC's conclusion regarding the two QFs' asserted LEOs appears to directly contradict (a) Order No. 688, which FERC quoted in the order and which provides that the state PSC has the authority to determine whether and when a LEO is created and the procedures for obtaining approval of a LEO, and (b) the FERC regulation that provides that a QF that initiates a PURPA proceeding at the state PSC prior to the filing of the PURPA petition may obtain a LEO that would be grandfathered and therefore not subject to the PURPA termination order. The reason there is an apparent contradiction here is that there are other prior orders in which FERC has stated that a QF that commits in writing (such as in a letter to the utility) to sell its output to the utility creates a LEO for the utility to purchase the QF's output. EKPC argued in the FERC proceedings that more than a letter is required and that the two QFs in this instance were not grandfathered because they had not initiated any PURPA proceedings before the state PSC. It thus appears that, in the order on EKPC's petition, FERC is attempting to reconcile those prior orders with its statements in Order No. 688 and the QF regulations that a state PSC PURPA proceeding must be initiated to create a LEO (when clearly none was initiated here).

I hope this helps in understanding why EKPC believes the RTO Insider article was, as I said, off the mark. If you have any questions after reading the above, please let me know and I'll get you some answers.

Thanks, and take care.

Patrick

Patrick C. Woods

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the Reason I Go Home Tonight



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Tuesday, September 19, 2017

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EKPC Gets PURPA Exemption; Still on Hook for 2 QFs

September 10, 2017

By Rory D. Sweeney

FERC (/ferc/)last week granted

(https://www.ferc.gov/CalendarFiles/20170907131111-QM17-5-000.pdf) East Kentucky Power Cooperative an exemption from being required to purchase power from Public Utility Regulatory Policies Act qualifying facilities larger than 20 MW — but not in time for the cooperative to avoid such purchases from two solar projects within its territory.

The 1978 federal law requires that utilities — including municipals and cooperatives — purchase electricity from QFs at the utility's "avoided cost." QFs were defined as cogenerating plants and small power producers under 80 MW. FERC Order 688, issued in October 2006, granted utilities the ability to disregard the requirement for QFs over 20 MW if they can prove the facilities have nondiscriminatory access to the wholesale markets. As a PJM (/rto-PJM/) member, EKPC argued that QFs in its territory have that access.

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(https://2.wp.com/www.rtoinsider.com/wp-content/uploads/Campbell-Tony-EKPC-CEO-2017-05-10-EKPC-via-Twitter-Ait-F1.jpg)

EKPC CEO Tony Campbell speaks in May at the ground-breaking for a 60-acre solar farm on EKPC's headquarters property in Winchester | EKPC

FERC agreed, but it declined to backdate the approval far enough for EKPC to avoid contracting with two solar projects.

"Until a utility applies for termination of the PURPA mandatory purchase obligation, and the commission grants such application, a QF has the statutory right to pursue a contract or other legally enforceable obligation with that utility," FERC said.

The 80-MW Bluebird Solar and 60-MW Blue Jay Solar projects notified EKPC in December and March, respectively, of their intention to sell their entire output to the cooperative at the avoided cost rate.

EKPC argued that it first requested an exemption from the PURPA rules last November, which would have relieved the cooperative of any responsibility to buy from the solar projects. However, the commission's lack of a quorum earlier this year caused the request to languish and eventually be denied by FERC staff once its 90-day time frame for action had passed.

The cooperative refiled the request on June 9, arguing that the effective date for the exemption should start from the November filing because it was reasonable to believe that FERC would have approved it with a quorum.

The commission rejected EKPC's argument and set the effective date for June 9.



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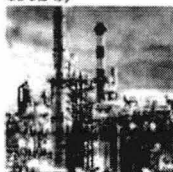


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