

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

OFFICE OF ENERGY MARKET REGULATION

In Reply Refer To:
Big Rivers Electric Corporation
Docket No. QM21-21-000

Issued: August 13, 2021

John R. Lilyestrom
Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004-1109

Reference: Termination of Mandatory Purchase Obligation

Dear Mr. Lilyestrom:

On May 21, 2021, Big Rivers Electric Corporation (Big Rivers) filed an application pursuant to section 210(m) of the Public Utility Regulatory Policies Act of 1978 (PURPA)¹ and section 292.310(a) of the Commission's regulations² to terminate the requirement under section 292.303(a) of the Commission's regulations³ to enter into new contracts or obligations to purchase electric energy and capacity from any small power production qualifying facility (QF) with a net capacity in excess of five megawatts (MW)⁴ in Midcontinent Independent System Operator, Inc. (MISO) on a service territory-wide basis (Application).⁵

¹ 16 U.S.C. § 824a-3(m).

² 18 C.F.R. § 292.310(a) (2021).

³ *Id.* § 292.303(a).

⁴ Order No. 872 revised 18 C.F.R. § 292.309(d) such that small power production facilities with a net power production capacity over five MW will be presumed to have nondiscriminatory access to markets. *See Qualifying Facility Rates and Requirements*, Order No. 872, 172 FERC ¶ 61,041, at P 625, *order on reh'g and clarification*, Order No. 872-A, 173 FERC ¶ 61,158 (2020).

⁵ Big Rivers requests that the service territories of its three member-owners,

Big Rivers states that in 2017 the Commission granted its application to terminate, on a service-territory wide basis, the requirement to enter into new contracts or obligations to purchase energy and capacity from qualifying small power production facilities and qualifying cogeneration facilities with a net capacity of greater than 20 MW.⁶ Big Rivers also states that it relies on section 292.309(e) of the Commission's regulations,⁷ which provides that MISO qualifies as a market described in sections 292.309(a)(1)(i) and (ii) of the Commission's regulations,⁸ and asserts that QFs in MISO have nondiscriminatory access to those markets through Commission-approved open access transmission tariffs and interconnection rules. Big Rivers states that, consistent with the requirement in section 292.310 of the Commission's regulations, it identified potentially affected QFs in its service territory, listed in Attachment A of the Application.

Notice of Big Rivers' Application was published in the *Federal Register*, 86 Fed. Reg. 28,827 (May 28, 2021), with interventions and protests due on or before June 18, 2021. Notice of Big Rivers' Application was also mailed by the Commission on May 26, 2021 to the potentially-affected QFs identified in the Application. One Energy Enterprises, LLC (One Energy) filed a timely motion to intervene and comments.⁹ Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹⁰ One Energy's timely motion to intervene serves to make it a party to this proceeding.

Big Rivers' Application to terminate the requirement to enter into new contracts or obligations to purchase electric energy and capacity from small power production QFs in

Jackson Purchase Energy Corporation, Kenergy Corporation, and Meade County Rural Electric Cooperative Corporation, be treated as Big Rivers' service territory for purposes of its application.

⁶ Application at 1 (citing *Big Rivers Electric Corp.*, 160 FERC ¶ 62,109 (2017)).

⁷ 18 C.F.R. § 292.309(e).

⁸ *Id.* § 292.309(a)(1)(i)-(ii).

⁹ One Energy states that it does not have any projects located in the Big Rivers service area, but reserves the right to rebut the presumption that any behind the meter generator developed by One Energy should be treated similarly to a cogeneration QF under the standards in section 292.309(c)(2) of the Commission's regulations. Pursuant to section 292.311 of the Commission's regulations, 18 C.F.R. § 292.311, when and as appropriate, One Energy may petition for reinstatement of Big Rivers' mandatory purchase obligation to purchase electric energy and capacity from a One Energy facility. See *Omaha Pub. Power Dist.*, 164 FERC ¶ 61,238 (2018).

¹⁰ 18 C.F.R. § 385.214.

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MISO with a net capacity in excess of five MW, on a service territory-wide basis, is granted, effective May 21, 2021.

This action is taken pursuant to authority delegated to the Director, Division of Electric Power Regulation – Central under 18 C.F.R. § 375.307(a)(5)(i). 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.

Issued by: Penny S. Murrell, Director, Division of Electric Power Regulation – Central

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