UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

PPL Electric Utilities Corporation	:	Docket Nos.	QM13-2-000
	:		QM13-2-001

MOTION FOR CLARIFICATION
OF THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

I. INTRODUCTION

Pursuant to Rule 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (FERC or Commission),[1] the Pennsylvania Public Utility Commission (Pa. PUC) hereby submits the following Motion for Clarification in response to the Commission's Order issued on October 17, 2013 in the above-captioned proceeding.[2] As explained below, the Pa. PUC supports the position of the concurring Commissioners to the Order.

II. BACKGROUND

On May 17, 2013, PPL Electric Utilities Corporation (PPL Electric or Company) filed an Application to Terminate Purchase Obligation (Application) with the FERC. In its Application, PPL requested a determination from the Commission that the Company is not required under Section 292.303(a)[3] of the Commission's regulations to enter into a new contract or obligation to purchase electric energy and capacity from the qualifying cogeneration facility owned by IPS Power Engineering (IPS Power). In support of its request, PPL asserted that

---

[1]18 C.F.R. §§ 385.212.

[2]*PPL Electric Utilities Corporation*, 145 FERC ¶ 61,053 (2013) (Order).

[3]18 C.F.R. §§ 292.303.

although Section 210(a) of the Public Utility Regulatory Policies Act of 1978 (PURPA)[4] requires an electric utility to purchase energy and capacity that is made available from a qualifying facility (QF) that is directly, or indirectly interconnected with the electric utility, PURPA also establishes procedures for electric utilities to be relieved of this mandatory purchase obligation if FERC finds that the QF has nondiscriminatory access to one of three categories of wholesale markets.

In its Application, PPL claimed that IPS Power will, in fact, have nondiscriminatory access to energy and capacity markets and, as a result, PPL's obligation to purchase energy and capacity from IPS Power should be terminated. Specifically, PPL addressed the following factors with respect to IPS Power's expected access: 1) operational characteristics, 2) transmission service scheduling, and 3) transmission constraints.

<u>Operational characteristics</u>: PPL asserted that there are no operational constraints which will prevent the IPS Power project from participating in the PJM energy and capacity markets. In particular, PPL stated that the planned facility is designed to sell its full electrical output and capacity to the market and its operational characteristics will allow it to engage in regular, steady, predictable wholesale sales.

<u>Transmission service scheduling</u>: Since PJM Interconnection, LLC (PJM) directs the operation of PPL Electric's transmission facilities and provides transmission service over the Company's transmission facilities, PPL asserted that the IPS Power facility will face few, if any, barriers in selling energy and capacity to any willing purchaser within the PJM region, subject to the purchaser's willingness to pay any relevant congestion charges. As a result, PPL argued that IPS Power should not face any barriers to scheduling transmission service.

<u>Transmission constraints</u>: PPL stated that it is unaware of any transmission constraints or

[4] 16 U.S.C. § 824a-3(m).

congestion that would prevent IPS Power from selling its energy and capacity into the PJM markets and further states that, if there were such constraints, Locational Marginal Pricing and Financial Transmission Rights relied upon in the PJM markets would allow IPS Power to sell into the markets notwithstanding any such constraints.

Section 292.310 (d)(3) of the Commission's regulations requires applicants such as PPL to also provide transmission studies and related information in support of a request to be relieved of a mandatory purchase obligation. Therefore, in addition to the information above, PPL also provided transmission information as to the following: 1) PJM's long-term transmission plan, 2) transmission constraints, 3) levels of congestion, and 4) relevant system impact studies for generation interconnections. The Company also provided an internet link to PJM's Open Access Same-Time Information System. Additionally, pursuant to Section 292.310(d)(4), PPL provided a link to the PJM website describing the procedures to be followed by IPS Power if IPS Power were to seek to transfer power to purchasers other than PPL. Finally, pursuant to Section 292.310(d)(5), PPL provided internet links to PJM's website which address interconnection procedures for QFs.[5]

On June 21, 2013, IPS Power filed an Answer to PPL's Application urging the Commission to: 1) deny the Application, 2) require PPL to provide avoided costs for energy and capacity for the IPS Power project, and 3) require PPL to enter into a long-term power purchase agreement, including reasonable interconnection, for the IPS Power project. On July 19, 2013, PPL filed a response to the Answer of IPS Power and re-stated the facts in support of its position that IPS Power will have nondiscriminatory access to energy and capacity markets. Additionally, PPL rebutted IPS Power's assertion that the Company is required to have an avoided cost rate on file with the Pa. PUC. On August 16, 2013, IPS Power filed another

[5] On May 23, 2013, the Pa. PUC filed a Motion to Intervene in this proceeding.

Answer reiterating its position that PPL has not established that IPS has non-discriminatory access to one of three categories of wholesale markets.

III. SUMMARY OF THE ORDER

On October 17, 2013, FERC issued an Order denying PPL's Application. Also on this date, FERC Commissioners Tony Clark and Philip D. Moeller issued a concurring statement in support of the Order. In its Order, FERC stated that, as set forth in Section 292.309 of its regulations, there is a rebuttable presumption that a QF with a capacity at or below 20 MW does not have nondiscriminatory access to one of three categories of wholesale markets and PPL has failed to rebut this presumption. *PPL Electric Utilities Corporation*.[6] Therefore, the Commission determined that PPL must comply with the applicable purchase obligations of PURPA with respect to the IPS Power project. In the concurring statement, however, Commissioners Clark and Moeller supported the Order, but also encouraged the Commission "to consider how it can provide more guidance to applicants such as PPL Electric regarding how they can be relieved of PURPA obligations for 20 MW and below facilities". *PPL Electric Utilities Corporation*, Docket Nos. QM13-2-000 and QM13-2-001 (*Concurring Statement of CLARK, Commissioner, and MOELLER, Commissioner*), (2013).

IV. REQUESTED CLARIFICATION

The Pa. PUC supports the position of the concurring Commissioners that it would be beneficial for the Commission to provide additional guidance for applicants seeking to be relieved of PURPA obligations for facilities below 20 MW. As FERC states in the Order:

> To date, the Commission has not granted any utility relief from the mandatory purchase obligation for a QF that is 20 MW or smaller.

[6] 145 FERC ¶ 61,053 (2013).

Order at 3. The Pa. PUC submits that in light of the fact that no utility has yet to overcome the presumption and gain relief from the mandatory purchase obligation, additional clarification of the applicable standard may be necessary so that, as stated in the concurring statement, the presumption is not so high as to "preclude a utility from successfully making a showing before the QF is fully operational and the utility is obligated to purchase." Moreover, further clarity will provide greater legal predictability for the states where these requests are first presented.

In the Order, the Commission's denial of the Application appears to be premised on two specific deficiencies: 1) the lack of any IPS Power- specific studies provided by PPL that would demonstrate the absence of any specific transmission constraints that may be facing the project, and 2) a premature expectation that the facility will be built according to its anticipated plan and that the facility will be able to sell net capacity into the PJM markets at that time. However, the Pa. PUC agrees with the concurring statement that, although PPL did not provide all of the necessary, specific information as to the IPS Power project itself, the information related to the PJM market rules and planning process were very instructive. As set forth in the concurring statement:

> These provisions are fundamental to our evaluation of whether the Souderton[7] QF will have nondiscriminatory access to the markets, as they provide the playbook for the interconnection process, transmission system operations, and revenues earned by a resource in the region where the Souderton QF will be located.

Concurring Statement of CLARK, Commissioner, and MOELLER, Commissioner at 2. Therefore, the Pa. PUC requests that FERC clarify that this type of information regarding Regional Transmission Organization market rules and planning is important in the Commission's consideration of applications filed under Section 292.303.

[7] The IPS Power facility will be located in Souderton, Pa.

Additionally, the Pa. PUC further requests that FERC provide guidance as to how PURPA should be applied in deregulated states, i.e., states in which the electric utilities do not own their generation and may not occupy a default supplier role in the future. Pennsylvania is a fully deregulated state and its electric distribution utilities have divested themselves of all generation. Pennsylvania has enacted a default supply procurement policy that discourages entry into long term contracts.[8] Therefore, requiring utilities such as PPL to enter into long term contracts with QFs may be inconsistent with state law and may result in consequences unintended by FERC.

Furthermore, due to pending legislation, it is possible that Pennsylvania electric utilities may not be required to provide default supply in the future.[9] If this were to occur, it is unclear how utilities such as PPL would be expected to comply with the QF purchase obligations of PURPA. Consequently, the Pa. PUC requests FERC to provide clarification on these important questions and to provide the necessary legal predictability that will be required to implement its PURPA obligations in the future.

[8] 66 Pa.C.S.A. § 2807(e).
[9] S. B. 1121, The General Assembly of Pennsylvania (Session of 2013).

V. CONCLUSION

For the foregoing reasons, the Pa. PUC respectfully requests that the Commission consider granting the relief requested in this Motion.

Respectfully submitted,

/s/ James P. Melia
James P. Melia

/s/ James A. Mullins
James A. Mullins

Counsel for the Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
Tel: 717-787-5987; 717-787-1859
jamullins@pa.gov
jmelia@pa.gov

Dated: December 3, 2013

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been served in accordance with 18 C.F.R. Sec. 385.2010 upon each person designated on the official service list compiled by the Secretary in this proceeding.

James P. Melia
James P. Melia

Dated at Harrisburg, PA this December 3, 2013.