

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Kentucky Municipal Energy Agency

| Docket No. EL18-\_\_\_\_-000

**REQUEST FOR PARTIAL WAIVER OF THE  
PURPA OBLIGATIONS OF ELECTRIC UTILITIES  
TO PURCHASE AND SELL ENERGY AND  
CAPACITY FROM AND TO QUALIFYING  
FACILITIES**

Pursuant to Section 292.402 of the regulations of the Federal Energy and Regulatory Commission (the “Commission”),<sup>1</sup> Kentucky Municipal Energy Agency (“KyMEA”) on behalf of itself and its authorizing member municipal electric utilities (“authorizing Members”), respectfully requests a partial waiver of certain obligations imposed on KyMEA and its authorizing Members through the Commission’s regulations<sup>2</sup> implementing Section 210 of the Public Utility Regulatory Policies Act of 1978, as amended (“PURPA”).<sup>3</sup>

As explained in greater detail below, the Commission should grant this request because compliance with the proposed partially waived requirements is not necessary to encourage cogeneration and small power production and is not otherwise required under Section 210 of PURPA. In support of this request, KyMEA states as follows:

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<sup>1</sup> 18 C.F.R. § 292.402.

<sup>2</sup> 18 C.F.R. §§ 292.303(a) and 292.303(b).

<sup>3</sup> 16 U.S.C. § 824a-3.

## **I. DESCRIPTION OF KyMEA AND THE AUTHORIZING MEMBERS**

KyMEA is a joint public agency established pursuant to Section 65.210 to 65.300 of the Kentucky Revised Statutes, as amended, known as the “Interlocal Cooperation Act,” and was created by virtue of the Interlocal Cooperation Agreement Creating the Kentucky Municipal Energy Agency by and among municipal electric systems in the Commonwealth of Kentucky (the “Interlocal Cooperation Agreement”), which was filed with and approved by the Attorney General of the Commonwealth of Kentucky in accordance with law. KyMEA was created with the purpose of providing adequate, reliable, and economic sources of electric power and energy to Kentucky municipalities operating municipal electric systems.

KyMEA has contracts to become the all-requirements wholesale power supplier to eight of its members (the “All Requirements Members”), beginning on May 1, 2019. KyMEA expects to initially meet its power-supply obligations to the All Requirements Members primarily using electric power resources acquired through various power purchase agreements, through contractual entitlements to resources of some of its All Requirements Members, and through opportunity energy market transactions. All of these members have passed resolutions adopting the PURPA policy described herein and authorizing KyMEA to file this waiver application on their behalf. They are referred to herein as the “authorizing Members” and are listed in Appendix A.

## II. COMMUNICATIONS

Communications regarding this matter should be addressed to the following persons:<sup>4</sup>

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## III. INTRODUCTION

### A. *General Description of Waiver Request*

In general, Sections 292.303(a)<sup>5</sup> and 292.303(b)<sup>6</sup> of the Commission's regulations require electric utilities (including KyMEA and its authorizing Members)<sup>7</sup> to purchase energy and capacity from QFs and sell energy and capacity to Qualifying Facilities ("QFs"). However, Section 292.402<sup>8</sup> of the Commission's regulations permits any "nonregulated electric utility,"<sup>9</sup> after appropriate public notice, to apply for a waiver of Sections 292.303(a) and 292.303(b). Section 292.402 also provides that the Commission

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<sup>4</sup> KyMEA requests a waiver of Commission Rule 203(b)(3) (18 C.F.R. § 385.203(b)(3)) so that each named person may be included on the official service list.

<sup>5</sup> 18 C.F.R. § 292.303(a).

<sup>6</sup> 18 C.F.R. § 292.303(b).

<sup>7</sup> "Electric utility" is defined as "any person, State agency, or Federal agency, which sells electric energy." 16 U.S.C. § 2602(4).

<sup>8</sup> 18 C.F.R. § 292.402.

<sup>9</sup> The term "nonregulated electric utility" is defined as "any electric utility other than a State regulated electric utility." 16 U.S.C. § 2602(9).

will grant such a waiver if an applicant demonstrates that compliance with any of the regulatory requirements “is not necessary to encourage cogeneration and small power production and is not otherwise required under section 210 of PURPA.”<sup>10</sup>

Because no State regulatory authority has ratemaking authority over KyMEA or its authorizing Members, KyMEA and its authorizing Members are nonregulated electric utilities that are eligible for a waiver under Section 292.402. Compliance with Sections 292.303(a)<sup>11</sup> and 292.303(b)<sup>12</sup> are not necessary here to encourage cogeneration and small power production. In place of the authorizing Members’ purchases from QFs, KyMEA will make such purchases at its full avoided cost. Likewise, in place of retail sales to QFs by KyMEA, the authorizing Members will make such sales. As a result, QFs interconnected with KyMEA and its authorizing Members will continue to have the ability to make sales at avoided-cost rates as well as assurance of a source of retail power for their operations.

***B. PURPA Implementation Plan***

Together, KyMEA and its authorizing Members have developed a Joint PURPA Implementation Plan, attached as Appendix B, that reflects the policy of KyMEA and its authorizing Members, consistent with the intent and requirements of PURPA, to implement programs to encourage cogeneration and small power production. Specifically, the Joint PURPA Implementation Plan provides that:

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<sup>10</sup> 18 C.F.R. § 292.402(b).

<sup>11</sup> 18 C.F.R. § 292.303(a).

<sup>12</sup> 18 C.F.R. § 292.303(b).

- (i) Any QF may interconnect with the electric system of KyMEA or any of its authorizing Members;<sup>13</sup>
- (ii) KyMEA will purchase capacity and energy from QFs at a rate equal to KyMEA's full avoided costs or at a negotiated rate;
- (iii) Authorizing Members will sell supplementary, back-up, and maintenance power to QFs, upon request, on either a firm or interruptible basis, at rates that are nondiscriminatory, just and reasonable, and in the public interest;<sup>14</sup> and
- (iv) No QF will be subject to duplicative charges for interconnection or wheeling as a result of selling to KyMEA and buying from an authorizing Member.

The Joint PURPA Implementation Plan allows KyMEA and the authorizing Members to implement their policy of encouraging QFs, while maintaining the functional division of power supply responsibilities between KyMEA and its authorizing Members. Granting this waiver request will be consistent with the waiver provision of the PURPA Regulations, which authorize the Commission to waive any of the requirements of its regulations (other than Section 292.302, requiring the availability of avoided-cost data) if a non-regulated utility, after giving notice in the area it serves, "demonstrates that compliance with any of the requirements of subpart C is not necessary to encourage cogeneration and small power production and is not otherwise required under section 210

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<sup>13</sup> KyMEA does not currently own any transmission facilities. The authorizing Members will receive network transmission service under the Louisville Gas and Electric Co./Kentucky Utilities Co. Open Access Transmission Tariff ("OATT"), either directly as an OATT customer or indirectly through OATT service procured for them by KyMEA.

<sup>14</sup> If in the future KyMEA owns transmission facilities, and a QF seeks to interconnect with KyMEA-owned transmission facilities that are not located within the retail service territory of an authorizing Member, upon request KyMEA will assist the QF in locating a supplier of supplemental, backup, maintenance, and interruptible power. KyMEA makes no commitments regarding the availability of such suppliers, nor their rates and charges or terms of service.

of PURPA.”<sup>15</sup> The Commission has granted materially similar waivers in similar circumstances, and this waiver request is supported by well-established precedent.<sup>16</sup>

#### IV. JUSTIFICATION FOR WAIVER

**A. *Waiver of authorizing Members’ purchase obligation is consistent with the PURPA statutory mandate.***

The Commission should waive the authorizing Members’ purchase obligation under Section 292.303(a) of its regulations<sup>17</sup> because this obligation will be fully assumed by KyMEA. Under the Joint PURPA Implementation Plan, KyMEA is obligated to purchase power from any QF from which an authorizing Member would be obligated to purchase, and QFs are permitted to sell energy and capacity to KyMEA at its full avoided costs or at a negotiated rate.<sup>18</sup>

KyMEA was established for the purpose of providing an adequate, reliable, and affordable supply of electrical power and energy to its authorizing Members. In order to carry out this function, it must predict the power supply needs of its authorizing Members, prepare system-wide load forecasts, coordinate and plan the resources it will

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<sup>15</sup> 18 C.F.R. § 292.402(b).

<sup>16</sup> See *Oglethorpe Power Corp.*, 32 FERC ¶ 61,103 (1985), *reh’g granted in part and denied in part*, 35 FERC ¶ 61,069 (1986), *aff’d sub nom. Greensboro Lumber Co. v. FERC*, 825 F.2d 518 (D.C. Cir. 1987); *Seminole Electric Cooperative, Inc.*, 39 FERC ¶ 61,354 (1987); *Missouri Basin Municipal Power Agency*, 69 FERC ¶ 62,250 (1994); *Com Belt Cooperative*, 68 FERC ¶ 62,249 (1994); *Southern Illinois Power Cooperative*, 66 FERC ¶ 62,010 (1994); *Northwest Iowa Power Cooperative*, 57 FERC ¶ 62,079 (1991); *Soyland Power Cooperative, Inc.*, 50 FERC ¶ 62,072 (1990); *Western Farmers Electric Cooperative*, 115 FERC ¶ 61,323 (2006); *Missouri Basin Municipal Power Agency*, Docket No. EL09-13-000, Letter Order (Feb. 6, 2009); *Arkansas Public Service Comm’n, et al.*, Docket No. EL09-37-000, Letter Order (April 30, 2009); *Missouri River Energy Servs.*, 145 FERC ¶ 62,022 (2013); *Oklahoma Municipal Power Authority*, 156 FERC ¶ 62,015 (2016).

<sup>17</sup> 18 C.F.R. § 292.303(a).

<sup>18</sup> The Commission has granted waivers of the purchase obligation where a generating and transmission cooperative committed to paying full avoided cost, even where avoided cost of certain members is higher. *Oglethorpe Power Corp.*, 32 FERC ¶ 61,069, at 61,136 (1986) (“[E]ven if Greensboro were able to demonstrate that in a particular case an [electric membership corporation’s] avoided cost would exceed Oglethorpe’s we would still hold that granting this waiver is appropriate.”).

use to meet those needs, and perform all necessary tasks to meet their energy requirements. The authorizing Members rely on KyMEA to perform these functions and do not engage in independent planning to meet their power supply needs. Consequently, integration of its supply resources is essential to KyMEA's ability to perform this primary function. The waiver of the authorizing Members' purchase obligation and KyMEA's assumption of this obligation will allow KyMEA MPA to deal directly with QFs in purchasing energy and capacity.

Further, QFs will not be subject to duplicative charges for interconnection or wheeling as a result of selling to KyMEA rather than to individual authorizing Members. The Joint PURPA Implementation Plan makes clear that a QF interconnecting with an authorizing Member and selling to KyMEA will not be subject to duplicative interconnection or wheeling charges. To the extent that additional costs of wheeling (*i.e.*, beyond the authorizing Member's facilities) are necessitated by the fact that KyMEA is the purchaser rather than the authorizing Member, such costs will be borne by KyMEA and not the QF. Thus, a QF interconnecting with an authorizing Member will be subject to the same charges if it sells to KyMEA as it would be if it were selling to the interconnecting authorizing Member.

Finally, the Commission has granted waivers of the purchase obligation of municipal members of a joint-action agency and distribution cooperative members of a generation and transmission cooperative under nearly identical circumstances. For example, in *Oglethorpe Power Corp.*, the Commission granted a waiver of the purchase obligation and explained that:

where [the generation and transmission cooperative] is ready and willing to stand in the shoes of [its distribution

participating members], waiving the [participating members'] purchase obligation will not frustrate Congress' intent, because no QF will be deprived of a market for its power and each will receive a rate established as sufficient to encourage QFs.

*Oglethorpe Power Corp.*, 32 FERC ¶ 61,103, at 61,285 (1985), *reh'g granted in part and denied in part*, *Oglethorpe Power Corp.*, 35 FERC ¶ 61,069 (1986). *See also, e.g., Oklahoma Municipal Power Authority*, 156 FERC ¶ 62,015 (2016); *Heartland Consumers Power District*, 154 FERC ¶ 61,203 (2016).

Here, KyMEA is similarly ready and willing to stand in the shoes of its authorizing Members by paying QFs its full avoided cost for their power. As a result, a waiver will not discourage cogeneration and small power production, and the requested waiver should be granted.

***B. Waiver of KyMEA's sale obligation is consistent with the PURPA statutory mandate.***

Similarly, the Commission should waive KyMEA's purchase obligation under Section 292.303(b) of its regulations<sup>19</sup> because this obligation will be undertaken by its authorizing Members. Under the terms of the Joint PURPA Implementation Plan, upon request by a QF located within an authorizing Member's retail service territory, that authorizing Member shall sell energy and capacity to the QF under the authorizing Member's applicable retail tariff or at rates equal to the rates to the authorizing Member's other customers with similar load and other cost-related characteristics. In addition, upon request by a QF located within an authorizing Member's retail service territory, the authorizing Member shall offer supplemental, back-up, and maintenance power on a firm

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<sup>19</sup> 18 C.F.R. § 292.303(b).



or interruptible basis. Thus, authorizing Members will simply stand in the shoes of KyMEA by providing QFs with retail service on reasonable terms and conditions. The Joint PURPA Implementation Plan is consistent with PURPA's mandate because the authorizing Members' supply of these services would encourage cogeneration and small power production.

Further, under the Joint PURPA Implementation Plan QFs will not be subject to duplicative charges for interconnection associated with retail service. QFs will also not be subject to additional charges associated with building separate facilities to enable the authorizing Members to deliver retail service in excess of charges that would have been incurred had KyMEA delivered service. Likewise, QFs will not incur additional wheeling charges by purchasing from the authorizing Members as opposed to purchasing from KyMEA. Thus, a QF will be subject to the same interconnection, facilities, and wheeling charges if it purchases from KyMEA or from any of its authorizing Members.

The arrangement proposed by the Joint PURPA Implementation Plan is also consistent with the functional division of power supply responsibilities between KyMEA and its authorizing Members. Retail service by KyMEA would result in operational and administrative problems. As a wholesale power supplier, KyMEA currently lacks the organizational structure and personnel necessary to make retail sales. However, the authorizing Members are retail entities already possessing the experience, staff, distribution facilities, and other attributes necessary to provide reliable retail service.

Finally, the Commission has previously granted waivers of the sale obligation under virtually identical circumstances. The Commission has approved waivers of the sale obligation where members have agreed to offer supplementary, backup, and

maintenance service on an interruptible basis to QFs, upon request, at rates that are nondiscriminatory, just and reasonable, and in the public interest.<sup>20</sup> Applicants in these cases have also agreed that QFs will not be subject to duplicative charges for interconnection or wheeling.<sup>21</sup> In approving such waivers, the Commission has explained that separate sale requirements by joint-action agencies or generating and transmission cooperatives were unnecessary to encourage cogeneration and small power production.<sup>22</sup>

Accordingly, the Commission should waive the QF sales obligation of KyMEA because KyMEA's compliance with this obligation is not necessary to encourage cogeneration and small power production.

## **V. PROCEDURAL/NOTICE MATTERS**

Pursuant to 18 CFR § 292.402(a), KyMEA caused to be published its Notice of Intent to File with the Federal Energy Regulatory Commission for Approval of a Joint PURPA Implementation Plan. The notices were published on \_\_\_\_\_, in the \_\_\_\_\_. Copies of the respective Affidavits of Publication are attached hereto, and incorporated herein by reference as Appendix C.

## **VI. CONCLUSION**

For the reasons stated above, KyMEA requests that the Commission grant a waiver, on behalf of KyMEA and its authorizing Members, of the PURPA obligations described above. Granting such a waiver will not undermine the PURPA statutory

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<sup>20</sup> See, e.g., *Oklahoma Municipal Power Authority*, 156 FERC ¶ 62,015 (2016); *Heartland Consumers Power District*, 154 FERC ¶ 61,203 (2016); *Western Farmers Electric Cooperative*, 115 FERC ¶ 61,323 (2006).

<sup>21</sup> *Id.*

<sup>22</sup> *Heartland Consumers Power District* at P 27 (citing *Seminole Elect. Power Coop.*, 39 FERC ¶ 61,354, at 62,112 (1987)).

mandate of encouraging cogeneration and small power production by QFs. The Joint PURPA Implementation Plan of KyMEA and its authorizing Members advances the policies of Section 210 of PURPA in a manner consistent with shared responsibilities under the Joint PURPA Implementation Plan. No QF will be disadvantaged, because KyMEA will stand in the shoes of its authorizing Members with regard to the purchase obligation, and the authorizing Members will stand in the shoes of KyMEA with regard to the sales obligation.

Furthermore, KyMEA and its authorizing Members have included in their Joint PURPA Implementation Plan those elements that the Commission has determined to be necessary for the grant of similar waivers. Specifically, the Joint PURPA Implementation Plan ensures that QFs will (1) have a market for their power at KyMEA's full avoided cost rate; (2) be offered back-up, supplementary, and maintenance power, upon request, on either a firm or interruptible basis, at rates that are nondiscriminatory, just and reasonable, and in the public interest; (3) be protected from duplicative interconnection charges or wheeling charges as a result of dealing with an individual authorizing Member for retail service and KyMEA for purchases of QF capacity and energy.

Wherefore, on behalf of itself and its authorizing Members, KyMEA respectfully requests waiver of Sections 292.303(a) and 292.303(b) of FERC's Regulations implementing PURPA in order to effect KyMEA and its authorizing Members' Joint PURPA Implementation Plan.

Respectfully submitted,

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