

131 FERC ¶ 61,039
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

The Detroit Edison Company

Docket Nos. QM10-2-000
QM10-2-001
QM10-2-002

ORDER GRANTING THE APPLICATION TO TERMINATE
MANDATORY PURCHASE OBLIGATION

(Issued April 15, 2010)

1. On October 26, 2009, as amended on November 5, 2009, and January 22, 2010, Detroit Edison Company (Detroit Edison) filed an application pursuant to section 210(m) of the Public Utility Regulatory Policies Act of 1978 (PURPA)¹ and section 292.310 of the Commission's regulations.² Detroit Edison seeks termination of the obligation to enter into new power purchase obligations or contracts to purchase electric energy and capacity from qualifying cogeneration and small power production facilities (QFs) with net capacity in excess of 20 MW on a service territory-wide basis for its interconnected system under the control of the Midwest Independent Transmission System Operator, Inc. (Midwest ISO).
2. In this order, we grant Detroit Edison's request to terminate its mandatory purchase obligation pursuant to section 210(m) of PURPA and section 292.310 of the Commission's regulations on a service territory-wide basis effective October 26, 2009.

¹ 16 U.S.C. § 824a-3(m) (2006).

² 18 C.F.R. § 292.310 (2009).

Background

3. On October 20, 2006, the Commission issued Order No. 688,³ revising its regulations governing utilities' obligations to purchase electric energy produced by QFs. Order No. 688 implements PURPA section 210(m),⁴ which provides for termination of the requirement that an electric utility enter into new power purchase obligations or contracts to purchase electric energy from QFs if the Commission finds that the QFs have nondiscriminatory access to markets. The Commission found in Order No. 688 that the markets administered by the Midwest ISO were markets that satisfy the criteria of PURPA section 210(m)(1)(A).⁵ Accordingly, section 292.309(e) of the Commission's regulations⁶ established a rebuttable presumption that the Midwest ISO markets provide large QFs (over 20 MW net capacity) interconnected with member electric utilities with non-discriminatory access to markets described in section 210(m)(1)(A).

Detroit Edison's Application

4. Detroit Edison states that it meets the requirements for relief under section 292.309(a)(1) of the Commission's regulations,⁷ and that, as a member of the Midwest ISO, it is relying on the rebuttable presumption contained in section 292.309(e) and should be relieved of the obligation to purchase electric energy from QFs larger than 20 MW net capacity. Accordingly, Detroit Edison asks for relief from the requirement to enter into new power purchase obligations or contracts with QFs over 20 MW net capacity on a service territory-wide basis.

Notice and Responsive Pleadings

5. Notices of Detroit Edison's application and amended applications were mailed by the Commission to each of the potentially-affected QFs identified by Detroit Edison in its application and amended applications. Notices of the application and amended

³ *New PURPA Section 210(m) Regulations Applicable to Small Power Production and Cogeneration Facilities*, Order No. 688, FERC Stats. & Regs. ¶ 31,233 (2006), *order on reh'g*, Order No. 688-A, FERC Stats. & Regs. ¶ 31,250 (2007), *aff'd sub nom. American Forest and Paper Association v. FERC*, 550 F.3d 1179 (D.C. Cir. 2008).

⁴ Section 210(m) was added to PURPA by section 1253 of the Energy Policy Act of 2005. *See* Pub. L. No. 109-58, § 1253, 119 Stat. 594, 967-69 (2005) (EPAAct 2005).

⁵ 16 U.S.C. § 842a-3(m)(1)(A) (2006); *see* 18 C.F.R. § 292.309(a)(1) (2009).

⁶ 18 C.F.R. § 292.309(e) (2009).

⁷ 18 C.F.R. § 292.309(a)(1) (2009).

applications were published in the *Federal Register*, 74 FR 57300 (2009), 74 FR 59154 (2009), and 75 FR 5307 (2010), with interventions and protests due on or before February 22, 2010.

6. Timely motions to intervene were filed by Consumers Energy Company; Greater Detroit Resource Recovery Authority (MI); and Gas Recovery Systems, LLC, Arbor Hills Electric Gas Power Plant, et al. Novelution Wind, LLC (Novelution) filed a timely motion to intervene with comments. LES Project Holdings, LLC, Sumpter Energy Associates, Riverview Energy Systems, and EIF Northbrook, II LLC (collectively EIF Intervenors) filed a protest. Detroit Edison filed an answer to EIF Intervenors' protest on February 26, 2010, and EIF Intervenors filed an answer responding to Detroit Edison's answer on March 8, 2010.

7. EIF Intervenors claim that Detroit Edison's application is ambiguous with respect to whether Detroit Edison may be proposing to aggregate the capacity of individual QF projects within its service territory that are under common ownership and that, together, have a collective net capacity of over 20 MW. For purposes of terminating its obligation to purchase from QFs, EIF Intervenors argue that aggregating capacity in this manner would be inconsistent with the section 292.309 of the Commission's regulations. EIF Intervenors request that the Commission find that Detroit Edison may not aggregate the net capacity of its individual QFs for purposes of relief from the purchase obligation.

8. EIF Intervenors also argue that Detroit Edison has failed to state whether it will require existing QFs to execute new interconnection agreements or renegotiate existing interconnection agreements. EIF Intervenors argue that Detroit Edison may not require QFs with existing agreements to execute new interconnection agreements or renegotiate existing agreements for existing QFs.

Deficiency Letter and Detroit Edison's Response

9. On January 8, 2010, Detroit Edison was sent a letter advising that its application was deficient and directing Detroit Edison to amend its application with the following additional information: (1) provide the names and addresses of four wind power projects identified by Novelution and any other potentially-affected QFs that were not provided notice of its application, as well as all of the information required by section 292.310(c) of the Commission's regulations;⁸ (2) clarify whether Detroit Edison is proposing to terminate its mandatory purchase obligation only for individual QFs in its service territory that each have a net capacity in excess of 20 MW; and (3) indicate whether QFs with existing interconnection agreements will be required to execute new interconnection

⁸ 18 C.F.R. § 292.310(c) (2009).

agreements or renegotiate existing interconnection agreements and, if so, provide the information required by section 292.310(d)(5) of the Commission's regulations.⁹

10. On January 22, 2010, Detroit Edison filed its response to the January 8, 2010 deficiency letter as an amendment to its application. In its response, Detroit Edison identifies the four additional wind generators and identified one additional potentially-affected QF and provides information required by section 292.310(c) of the Commission's regulations.

11. Detroit Edison also confirms that it had not proposed to aggregate the capacity of QFs within its service territory that are under common ownership and that, together, have a collective net capacity of over 20 MW, i.e., it is proposing to terminate the mandatory purchase obligation only for individual QFs in its service territory that each have a net capacity in excess of 20 MW.¹⁰

12. Also, Detroit Edison affirms that QFs with existing interconnection agreements will not be required to execute new interconnection agreements or to renegotiate existing interconnection agreements for the remaining term of those existing agreements.

Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a protest or an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers of Detroit Edison and EIF Intervenors, and will therefore reject them.

Discussion

15. Detroit Edison, as a member of the Midwest ISO, relies upon the rebuttable presumption set forth in section 292.309(e) of the Commission's regulations, namely, that the Midwest ISO provides QFs larger than 20 MW net capacity with non-discriminatory

⁹ 18 C.F.R. § 292.310(d)(5) (2009).

¹⁰ However, Detroit Edison stated that it reserves the right to challenge future generation projects that appear designed to evade the 20 MW capacity limitation. For example, Detroit Edison stated that it might oppose purchasing the output of five 19 MW QF projects proposed to be constructed by a common owner in the same general time frame.

access to independently administered, auction-based day-ahead and real-time wholesale markets for the sale of electric energy and to wholesale markets for long-term sales of capacity and electric energy.¹¹ Moreover, the potentially-affected QFs identified by Detroit Edison were provided notice of Detroit Edison's application, and only EIF Intervenors protested. As explained below, we grant the request to terminate the mandatory purchase obligation pursuant to section 210(m) of PURPA with respect to all QFs larger than 20 MW net capacity.¹²

16. EIF Intervenors generally question how to calculate the size of a QF that is subject to the termination of the mandatory purchase obligation, and how interconnection procedures will be administered following the termination of the mandatory purchase obligation.

17. EIF Intervenors seek assurance that the termination of the requirement to enter into new obligations or contracts is limited to individual QF projects larger than 20 MW net capacity. The Commission finds that Detroit Edison's request to terminate its purchase obligation is limited to those QFs that individually have a net capacity larger than 20 MW; that threshold is measured on an individual QF-by-QF basis, rather than by aggregating the net capacity of all QFs owned by a single entity and a QF's net capacity is determined by its certification, whether self-certified or Commission certified. In Order Nos. 688 and 688-A,¹³ the Commission indicated that a QF's net capacity, whether self-certified or Commission-certified, would determine a QF's size for purposes of applying the rebuttable presumptions contained in section 292.309 of its regulations.¹⁴

18. EIF Intervenors also seek assurance that the relief granted in this proceeding will not affect existing interconnection agreements. Detroit Edison has confirmed that QFs with existing interconnection agreements will not be required to enter into new

¹¹ 18 C.F.R. §§ 292.309(a)(1), 292.309(e) (2009).

¹² To the extent that a potentially-affected QF is 20 MW or smaller, this order does not terminate the purchase obligation as to such QF.

¹³ Order No. 688, FERC Stats. & Regs. ¶ 31,233 at P 72 n.41; Order No. 688-A, FERC Stats. & Regs. ¶ 31,250 at P 104.

¹⁴ With regard to Detroit Edison's assertion that it may exercise its right to challenge the size at which some future QF may seek certification, if Detroit Edison seeks to challenge a QF's certified net capacity, it must do so in a Commission proceeding certifying the facility as a QF, or in the context of a petition for declaratory order seeking a ruling that the self-certified net capacity or the Commission-certified net capacity of a QF is not accurate. Alternatively, Detroit Edison may file a new section 210(m) of PURPA proceeding.

interconnection agreements or to renegotiate existing interconnection agreements for the remaining term of those contracts. Detroit Edison's statements comply with the filing requirements of section 292.310(d)(5) of the Commission regulations.

The Commission orders:

Detroit Edison is hereby relieved on a service territory-wide basis of the mandatory purchase obligation requirement, under section 210(m) of PURPA and section 292.310 of the Commission's regulations, to enter into new power purchase obligations or contracts with QFs that have a net capacity in excess of 20 MW, effective October 26, 2009, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.