

157 FERC ¶ 61,106  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;  
Cheryl A. LaFleur, and Colette D. Honorable.

Goodyear Tire & Rubber Company

v.

Docket No. EL16-105-000

Entergy Texas, Inc.

ORDER GRANTING COMPLAINT

(Issued November 17, 2016)

1. On August 9, 2016, Goodyear Tire & Rubber Company (Goodyear), filed a complaint against Entergy Texas, Inc. (Entergy Texas), pursuant to section 306 of the Federal Power Act (FPA),<sup>1</sup> Rule 206 of the Commission's Rules of Practice and Procedure (Complaint),<sup>2</sup> and section 292.303 of the Commission's regulations.<sup>3</sup>
2. Goodyear alleges that Entergy Texas' notice of intent to terminate its Power Purchase Agreement (PPA)<sup>4</sup> for purchases from Goodyear's qualifying facilities (QF) located at Goodyear's Beaumont Chemical Plant in Beaumont, Texas is contrary to Entergy Texas' obligation to purchase energy and capacity from Goodyear pursuant to section 292.303 of the Commission's regulations implementing section 210 of the Public

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<sup>1</sup> 16 U.S.C. § 825e (2012).

<sup>2</sup> 18 C.F.R. § 385.206 (2016).

<sup>3</sup> 18 C.F.R. § 292.303 (2016).

<sup>4</sup> The PPA was originally between Goodyear and Entergy Gulf States, Inc., and was dated December 10, 1999, but was fully executed as of December 14, 1999. Entergy Texas is the successor-in-interest to Entergy Gulf States, Inc.

Utility Regulatory Policies Act of 1978 (PURPA),<sup>5</sup> and the Commission's order issued on January 21, 2016 granting, only in part, Entergy Services, Inc.'s (Entergy) application to terminate the Entergy Operating Companies' mandatory purchase obligation.<sup>6</sup>

3. As discussed below, we grant Goodyear's Complaint and find that Entergy Texas may not rely on the January 21 Order as a basis for terminating its PPA with Goodyear.

### **I. Background**

4. In its January 21 Order, the Commission granted Entergy's petition, pursuant to section 210(m) of PURPA,<sup>7</sup> to terminate the Entergy Operating Companies' mandatory purchase obligation to enter into new contracts or obligations with QFs greater than 20 MW in the Entergy Operating Companies' service territory within the Midcontinent Independent System Operator, Inc., with the exception of Dow Chemical Company's and Union Carbide Corporation's greater-than-20-MW Plaquemines QF.<sup>8</sup>

5. Goodyear owns and operates two cogeneration facilities which support its chemical plant in Beaumont, Texas. Its Beaumont/West QF was self-certified in 1987 in Docket No. QF87-116-000, and has a net capacity of 13 MW.<sup>9</sup> Its Beaumont/East QF was self-certified in 1999 in Docket No. QF99-85-000, and has a net capacity of 18.835 MW.<sup>10</sup> On April 22, 2016, Entergy Texas e-mailed Goodyear, stating that it planned to issue notices of termination of contracts to affected QFs, including Goodyear's facilities.<sup>11</sup> Goodyear responded to Entergy Texas, explaining that the termination of the must-purchase obligation granted in the January 21 Order is not applicable to Goodyear's QFs. On June 6, 2016, Goodyear received a letter from Entergy Texas providing notice of termination of the PPA.

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<sup>5</sup> 16 U.S.C. § 824a-3 (2012).

<sup>6</sup> *Entergy Services, Inc.*, 154 FERC ¶ 61,035 (2016) (January 21 Order).

<sup>7</sup> 16 U.S.C. § 824a-3(m) (2012).

<sup>8</sup> *Id.*

<sup>9</sup> Goodyear Complaint at 6 (referencing Docket No. QF87-116-000 filed November 28, 1986). *Id.* at n.12.

<sup>10</sup> *Id.* at 6-7 (citing Docket No. QF99-85-000 filed June 2, 1999). *Id.* at n.13.

<sup>11</sup> *Id.* at 11.

## II. Goodyear's Complaint

6. Goodyear asserts that, since its Beaumont/East QF and Beaumont/West QF were separately self-certified as under-20 MW QFs, the January 21 Order allowing Entergy to terminate its mandatory purchase obligation for over-20 MW QFs does not apply to Goodyear's QFs. Furthermore, Goodyear asserts that the energy from its Beaumont/West QF (which is only operational when the chemical plant is operating) is fully utilized by the chemical plant, and that the PPA only applies to the Beaumont/East QF.<sup>12</sup> Goodyear argues that since only the energy from its Beaumont/East QF is available for sale, and since the Beaumont/East QF has a net capacity of 18.835 MW, the January 21 Order did not terminate Entergy's mandatory purchase obligation as to that QF. Goodyear further emphasizes that Entergy's application for termination of its mandatory purchase obligation acknowledged that the Goodyear QF that is the subject of the PPA is an under-20 MW QF from which Entergy Texas remains obligated to purchase energy and capacity. Goodyear asserts that Entergy now seeks to improperly terminate the PPA.<sup>13</sup>

## III. Notice of Filing and Responsive Pleadings

### A. Notice

7. Notice of Goodyear's Complaint was published in the *Federal Register*, 81 Fed. Reg. 54,573 (2016), with interventions and protests due on or before August 25, 2016.

8. Entergy filed a motion to intervene and a request for extension of time. As part of its request for extension of time, Entergy committed to extend the termination of the PPA between Goodyear and Entergy Texas by three months to December 1, 2016. Upon further consideration and given Entergy's commitment to extend the termination of the PPA, the Commission granted Entergy's request for extension of time and established a September 8, 2016 due date for answers, interventions and protests to the Complaint.

9. Entergy filed a timely answer to the Complaint, and subsequently, Goodyear answered Entergy's answer.

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<sup>12</sup> *Id.* at 6-7.

<sup>13</sup> *Id.* at 2.

**B. Entergy's Answer**

10. Entergy argues that, regardless of Goodyear's QF self-certifications, Goodyear's two QFs should be considered as one unit for purposes of the January 21 Order, thereby allowing Entergy to terminate its mandatory purchase obligation. Entergy asserts that small QFs – less than or equal to 20 MW – have access to relevant markets; Entergy argues that the Commission has distinguished QFs based on size to reflect their ability to access markets. Entergy argues that: (1) Goodyear owns both QFs; (2) the QFs are located on the same site; (3) the QFs are less than a half mile apart;<sup>14</sup> and (4) the energy produced by the QFs is commingled behind the meter with the excess sold to Entergy over a single point of interconnection. As such, Entergy argues that Goodyear's facilities fall within the scope of relief granted by the January 21 Order, and thus are eligible for termination.

11. Entergy asserts that, in Order No. 688,<sup>15</sup> the Commission did not state it would be bound by a generator's choice to certify generating units as separate QFs if the facts show that the units are operating as a single resource for making wholesale sales. Entergy asserts that such reliance would be inconsistent with the goals of PURPA section 210(m). Entergy thus argues that the Commission should aggregate the net capacity of both Goodyear QFs for purposes of relief under the January 21 Order.

**IV. Discussion****A. Procedural Matters**

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2016), Entergy's timely, unopposed motion to intervene serves to make it a party to this proceeding.

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<sup>14</sup> The Commission notes that the one-mile rule applies only to small power production facilities, and does not apply to cogeneration facilities, and therefore, is not applicable here.

<sup>15</sup> *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. Am. Forest & Paper Ass'n v. FERC*, 550 F.3d 1179 (D.C. Cir. 2008).

13. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2016), prohibits an answer to a protest and/or answer unless otherwise ordered by the decisional authority. We are not persuaded to accept Goodyear's answer and will, therefore, reject it.

**B. Commission Determination**

14. As discussed below, the Commission grants Goodyear's Complaint and finds that Entergy Texas may not rely on the January 21 Order as a basis for terminating its PPA with Goodyear.

15. In the January 21 Order, the Commission terminated Entergy's obligation to purchase from QFs larger than 20 MW. Goodyear has self-certified two QFs, each smaller than 20 MW. Orders Nos. 688 and 688-A provide that a QF's size for purposes of being relieved of the mandatory purchase obligation is determined by its certified size.<sup>16</sup> Because each of Goodyear's QFs was certified as smaller than 20 MW, the January 21 Order did not affect Entergy's obligation to purchase from Goodyear's QFs.

The Commission orders:

Goodyear's Complaint is hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>16</sup> Order No. 688, at P 72 & n.41 (2006); Order No. 688-A at P 104.