

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Woodland Biomass Power, Ltd.

Docket No. QF88-61-004

ORDER GRANTING WAIVER OF REGULATIONS AND
RECERTIFICATION OF SMALL POWER PRODUCTION FACILITY
AS A QUALIFYING FACILITY

(Issued October 25, 2005)

1. In this order we grant an application for recertification of a small power production facility and grant authority to the Director of the Office of Markets, Tariff and Rates to act on any future, uncontested filings requesting waiver of the Commission's ownership criteria for qualifying cogeneration and small power production facilities (QFs). Satisfaction of the ownership requirements for QF status is based on the Commission's grant of waiver of its ownership criteria for QF status set forth in section 292.206 of the Commission's Rules.¹

Background

2. The Public Utility Regulatory Policies Act of 1978 (PURPA)² was designed to lessen the country's dependence on foreign oil. Congress believed that increased use of non-utility energy resources would reduce the demand for traditional fossil fuels.³ As directed by Congress in section 210 of PURPA, the Commission prescribed regulations designed to encourage the development of cogeneration and small power production and setting forth criteria and procedures for QF status.⁴

¹ 18 C.F.R. § 292.206 (2005).

² 16 U.S.C. § 824a-3(a) (2000).

³ See *FERC v. Mississippi*, 456 U.S. 742, 750-51 (1982) (citing legislative history of PURPA).

⁴ 18 C.F.R. §§ 292.201-292.211 (2005).

3. The current general requirements for qualifying facility status are set forth in section 292.203 of the Commission's regulations.⁵ A small power production facility must satisfy size criteria, fuel use criteria and ownership criteria to be a QF.⁶ A cogeneration facility must satisfy the applicable operating and efficiency standards as well as ownership criteria to be a QF.

4. PURPA specified ownership criteria for QF status that are codified in sections 3(17)(C)(ii) and (18)(B)(ii) of the Federal Power Act (FPA).⁷ Those sections provide that a QF must be:

owned by a person not primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration facilities or small power production facilities).

The Commission's regulation implementing these sections of the FPA repeats this statutory requirement, stating that:

General Rule. A cogeneration facility or small power production facility may not be owned by a person primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration facilities or small power production facilities).⁸

The Commission's regulations further set forth a quantitative test for determining whether a facility is owned by "a person primarily engaged in the generation or sale of electric power." That test is:

Ownership test. For purposes of this section, a cogeneration or small power production facility shall be considered to be owned by a person primarily engaged in the generation or sale of electric power, if more than 50 percent of the equity interest in the facility is held by an electric utility or utilities, or by an electric utility holding company, or companies, or any combination thereof. If a wholly or partially owned subsidiary of an

⁵ *Id.* at § 292.203.

⁶ *Id.* at § 292.203(a).

⁷ 16 U.S.C. §§ 796(17)(C)(ii) and (18)(B)(ii) (2000).

⁸ 18 C.F.R. § 292.206 (a) (2005).

electric utility or electric utility holding company has an ownership interest of a facility, the subsidiary's ownership interest shall be considered as ownership by an electric utility or electric utility holding company.[⁹]

5. The Energy Policy Act of 2005 (EPAAct),¹⁰ was enacted on August 8, 2005. Section 1253(b) of EPAAct amends sections 3(17)(C) and 3(18)(B) of the Federal Power Act by eliminating the ownership limitations for QFs currently contained in those sections.

6. On October 3, 2005, Woodland Biomass Power, Ltd. (Woodland) and DTE Woodland, LLC (DTE) (collectively, Applicants) filed an application for recertification of Woodland's 28 MW electric generating facility, located in Woodland, California (Woodland Facility), as a qualifying small power production facility. Applicants state that the purpose of their submittal is to reflect changes in the upstream ownership of the Woodland Facility resulting from a proposed transfer of certain upstream ownership interests in Woodland to DTE. In addition, Applicants state that their requested recertification is based on updated technical information regarding the fossil fuel usage of the Woodland Facility. Notice of Applicants' filings was published in the *Federal Register*,¹¹ with motions to intervene, comments, and protests due on or before October 14, 2005. None was filed.

Discussion

7. We will grant recertification of Applicants' small power production facility as requested. The Commission, in a notice of proposed rulemaking (NOPR) issued October 11, 2005, is proposing to revise its rules, including 18 C.F.R. § 292.206, consistent with the requirements of EPAAct section 1253(b).¹² In the interim, the Commission will waive the requirements of section 292.206, as it would apply to the Applicants,¹³ until such time as the Commission revises its regulations. We will grant authority to the Director (or the Director's designee) of the Office of Markets, Tariffs and

⁹ 18 C.F.R. § 292.206 (b) (2005).

¹⁰ Pub. L. No. 109-58, 119 Stat. 594 (2005).

¹¹ 70 Fed. Reg. 60,323 (2005).

¹² See Notice of Proposed Rulemaking, *Revised Regulations Governing Small Power Production and Cogeneration Facilities*, 70 Fed. Reg. 60,456 (October 11, 2005).

¹³ See *UtiliCorp. United Inc.*, 99 FERC ¶ 61,280 (2002).

Rates to act on any future, uncontested filings requesting waiver of the Commission's ownership criteria for QF status. Finally, we find that the Woodland Facility continues to meet the fossil fuel requirement of 18 C.F.R. § 292.204(b)(2) (2005).

The Commission orders:

(A) Applicants' request for recertification as a qualifying small power production facility is hereby granted, as discussed in the body of this order.

(B) The Director (or the Director's designee) is hereby authorized to act on any future, uncontested filings requesting waiver of the Commission's ownership criteria for QF status.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.