

126 FERC ¶ 61,218
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Acting Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Glenns Ferry Cogeneration Partners, Ltd.

Docket Nos. EL09-22-000
QF93-159-007

ORDER GRANTING APPLICATION FOR RECERTIFICATION AS QUALIFYING
COGENERATION FACILITY AND GRANTING LIMITED WAIVER OF
OPERATING AND EFFICIENCY STANDARDS

(Issued March 12, 2009)

1. In this order the Commission grants Glenns Ferry Cogeneration Partners, Ltd. (Glenns Ferry) a recertification of its Glenns Ferry, Idaho facility as a qualifying cogeneration facility for 2008, as well as a limited waiver of the Commission's operating and efficiency standards¹ applicable to the cogeneration facility for the calendar year 2008.

I. Background

2. On December 15, 2008, Glenns Ferry filed an application for Commission recertification of its Glenns Ferry, Idaho cogeneration facility as a qualifying facility (QF) eligible for benefits under section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA)² and a request for waiver of the QF operating and efficiency standards

¹ The operating and efficiency standards are contained in section 292.205 of the Commission's regulations. *See* 18 C.F.R. § 292.205 (2008). For any qualifying topping-cycle cogeneration facility, the operating standard requires that the useful thermal energy output of the facility (i.e., the thermal energy made available to the host) must, during the applicable period, be no less than five percent of the total energy output. The efficiency standard requires that the useful power output of the facility plus one-half the useful thermal energy output must, during the applicable period, be no less than 42.5 percent of the total energy input of natural gas and oil to the facility or no less than 45 percent if the useful thermal energy output is less than 15 percent of the facility's total energy output.

² 16 U.S.C. § 824a-3 (2006).

due to the unexpected loss of its unaffiliated thermal host, Idaho Fresh-Pak. Glens Ferry explains that it is a 10 MW natural gas-fired topping-cycle cogeneration QF located in Glens Ferry, Idaho. Glens Ferry states that it consists of one combustion turbine generator which provides heat to a heat recovery steam generator which produces steam for Idaho Fresh-Pak, a potato processor located on the adjacent property. Glens Ferry sells its electric output to Idaho Power Company (Idaho Power). Glens Ferry was originally certified as a QF pursuant to a notice of self-certification in 1993³ and has filed several self-recertifications since.⁴

3. In 2007, Idaho Fresh-Pak ceased production which eliminated its use of the thermal energy from Glens Ferry. Glens Ferry has been without a thermal host since November 2007. Glens Ferry states that it satisfied the Commission's regulations for QF status for 2007, but that it would not in 2008.

4. Accordingly, Glens Ferry requests a temporary, limited waiver of the QF operating and efficiency standards for 2008. Glens Ferry states that it is seeking a replacement thermal host and expects to find a replacement in 2009. Glens Ferry asserts that the waiver request is timely and due to circumstances beyond its control, i.e., the closing of Idaho Fresh-Pak. Glens Ferry also contends that it is in discussion with several entities interested in utilizing the Fresh-Pak facility and that it does not expect to need any further waiver. Glens Ferry contends that it is a reliable and efficient cogeneration facility capable of supplying electric generation and converting waste heat to useful thermal energy providing energy savings. Finally, Glens Ferry asserts that the waiver request will allow it to remain economically viable and Glens Ferry does not anticipate any opposition. Glens Ferry contends that these factors support its waiver request.

II. Notice and Intervention

5. Notice of this filing was published in the *Federal Register*, 73 Fed Reg. 79,876 (2008), with interventions and protests due on or before January 14, 2009. Idaho Power filed an intervention.

6. Idaho Power states that it purchases power from Glens Ferry pursuant to a 20-year Firm Energy Sales Agreement (Agreement) pursuant to the requirements of PURPA. Idaho Power states that since Glens Ferry lost its thermal host, it has failed to

³ Docket No. QF93-159-000.

⁴ Glens Ferry self-recertified on: December 21, 1995 in Docket No. QF93-159-001; June 18, 1998 in Docket No. QF93-159-002; July 7, 2000 in Docket No. QF93-159-003; July 1, 2002 in Docket No. QF93-159-004; July 19, 2007 in Docket No. QF93-159-005 and January 26, 2007 in Docket No. QF93-159-006.

maintain its status as a QF. Idaho Power states that Glens Ferry has been without a thermal host for over 15 months and that Glens Ferry provided no evidence that it will be able to find a replacement thermal host. Idaho Power states that by failing to maintain its QF status Glens Ferry is in breach of its Agreement with Idaho Power. Idaho Power states that it is pursuing a state claim in Idaho district court to terminate the contract and recover liquidated damages.⁵

III. Discussion

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), Idaho Power's unopposed motion to intervene serves to make it a party to this proceeding.

8. The Commission's regulations provide that a QF must satisfy applicable operating and efficiency requirements during the 12-month period beginning with the date the facility first produces electric energy and any calendar year subsequent to the year in which the facility first produces electric energy.⁶ The regulations also provide that the Commission may waive any of its operating and efficiency standards "upon a showing that the facility will produce significant energy savings."⁷ The Commission has exercised its waiver authority in a number of cases based on a balancing of factors such as the limited duration of the requested waiver; whether non-compliance was confined to the start-up and testing stage and whether further waivers would therefore be unnecessary; the timeliness of the submission of the waiver request; whether non-compliance was the result of an unexpected and one-time operations event outside the applicant's control; whether the request was intended to remedy specific problems associated with an innovative technology; the amount of opposition, if any; and whether granting waiver would fulfill PURPA's goal of encouraging cogeneration and the development of alternative generation technologies.⁸

⁵ We need not and do not address whether Glens Ferry breached its Agreement with Idaho Power, or the state claim in Idaho district court.

⁶ 18 C.F.R. § 292.205(a) (2008).

⁷ 18 C.F.R. § 292.205(c) (2008).

⁸ See, e.g., *Ripon Cogeneration LLC*, 120 FERC ¶ 61,167 (2007); *PowerSmith Cogeneration Project Limited Partnership*, 118 FERC ¶ 61,021 (2007); *Oildale Energy LLC*, 103 FERC ¶ 61,060 (2003); *Kamine/Besicorp Allegany L.P.*, 73 FERC ¶ 61,290, at 61,808-09 (1995), *reh'g denied*, 74 FERC ¶ 61,094 (1996); *Gordonville Energy, L.P.*, 72 FERC ¶ 61,160, at 61,790-91 & n.7 (1995), and the cases cited therein.

9. Taking into account all relevant factors, we will grant Glens Ferry's request for a waiver for 2008. The need for waiver of the Commission's operating and efficiency standards is caused by unexpected events outside of Glens Ferry's control – the unexpected loss of its thermal host Idaho Fresh-Pak.

10. Glens Ferry has not received an earlier waiver and, while Glens Ferry may fail to meet the Commission's operating and efficiency standards for a short period, the many years during which it has operated and the years it intends to again operate in compliance with those standards will result in considerable energy savings. A grant of limited waiver is thus consistent with the PURPA goal of encouraging cogeneration and alternative generation technologies. Accordingly, we will grant Glens Ferry's waiver.

11. The requirements for QF status state that a topping-cycle cogeneration facility must either comply with the operating and efficiency requirements⁹ or obtain a waiver of such requirements.¹⁰ By virtue of the waiver granted to Glens Ferry for 2008, compliance with the Commission's regulations is established for 2008. Accordingly, the Commission will grant Glens Ferry's application for recertification for 2008.

12. While we grant Glens Ferry's requested waiver of the operating and efficiency standards for 2008, we note that Glens Ferry has not yet secured a replacement thermal host, and thus could not provide information demonstrating compliance with the operating and efficiency standards for 2009 or beyond. As such our grant of recertification is limited to 2008, the period of the approved waiver. In order to maintain QF status for 2009, Glens Ferry must either: (1) file a notice of self-certification or an application for Commission certification in 2009 when a replacement thermal host is obtained; or (2) obtain an additional waiver of the operating and efficiency requirements for 2009.¹¹

⁹ 18 C.F.R. § 292.205(a) (2008).

¹⁰ 18 C.F.R. § 292.205(c) (2008).

¹¹ We do not assume here that such a waiver is (or is not) warranted for 2009, or should (or should not) be granted, but rather simply point out that obtaining a waiver would be one way to maintain QF status.

The Commission orders:

Glenns Ferry's application for recertification for calendar year 2008 and its request for waiver of the operating and efficiency standards is hereby granted for calendar year 2008, as discussed in the body of this order.

By the Commission. Commissioner Kelliher is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.