

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Suedeem G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Pedricktown Cogeneration Company, LP

Docket Nos. EL06-99-000  
QF05-147-001

ORDER GRANTING REQUEST FOR WAIVER OF QF  
EFFICIENCY STANDARD

(Issued November 30, 2006)

1. This order addresses a request by Pedricktown Cogeneration Company, LP (Pedricktown) for a waiver of the Commission's efficiency standard<sup>1</sup> applicable to qualifying cogeneration facilities from July 1, 2005 through calendar year 2007. As discussed below, the Commission will grant Pedricktown's waiver request.

**I. Background**

**A. Factual Background**

2. Pedricktown operates a 134.5 megawatt (MW) natural gas fueled topping-cycle cogeneration facility (Facility) located in Pedricktown, New Jersey.<sup>2</sup> On July 1, 2005, TXU Corp. transferred 100 percent of the ownership interests in the Facility to a wholly-owned subsidiary of Morris Energy Group, LLC. The Facility was self-certified as a qualifying cogeneration facility on July 1, 2005. The thermal host of the Facility is

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<sup>1</sup> The efficiency standard applicable to Pedricktown is contained in 18 C.F.R. § 292.205(a)(2)(B) (2006). The Commission's regulations require an efficiency value of no less than 42.5 percent if the operating value is greater than 15 percent or if the operating value is less than 15 percent but greater than 5 percent then the efficiency value must exceed 45 percent. *See* 18 C.F.R. § 292.205(a)(2)(B) (2006).

<sup>2</sup> The Facility had previously been certified by the Commission on October 13, 1987 (41 FERC ¶ 62,025 (1987)), with the latest certification being on September 22, 2000, in Docket No. QF87-407-005 (92 FERC ¶ 62,245 (2000)). On April 24, 2002, TXU Corp. indirectly acquired 100 percent of the Facility's ownership interest causing the Facility to be out of compliance with the then-applicable ownership requirements for QF status. The Facility accordingly relinquished its QF status. From April 24, 2002 until July 1, 2005, the Facility operated as an exempt wholesale generator (EWG) with market-based rates on file with the Commission.

Poly-One Corporation (Poly-One), a chemical manufacturer that is not affiliated with the Facility. Poly-One owns and operates an adjacent industrial facility for the manufacture of chemical products. Poly-One applies the steam from the Facility to various industrial uses.

3. The Facility supplies approximately 11 MW of electric energy to Poly-One. Pedricktown sells the remaining electric energy into the market operated by PJM Interconnection, L.L.C. (PJM) or pursuant to other bilateral arrangements.<sup>3</sup> Pedricktown does not sell any power from the Facility at avoided-cost rates to any buyer pursuant to the purchase obligation mandated by the Public Utility Regulatory Policies Act of 1978 (PURPA).

#### **B. Request for Waiver**

4. On August 14, 2006, as completed on August 25, 2006, Pedricktown filed a petition for waiver of the Commission's efficiency standard set forth in 18 C.F.R. § 292.205(a)(2) (2006) from July 1, 2005 to July 1, 2007. Pedricktown states that after July 1, 2007, the Facility will no longer operate as a QF and will begin operating as an EWG. Pedricktown states that the waiver is necessary due to an unexpected permanent decline in steam consumption by Poly-One. As a result of this lower than expected steam consumption, the Facility has been and will be unable to comply with the Commission's efficiency standard.

5. Pedricktown explains that it had every reason to expect Poly-One to purchase enough steam from the Facility for it to satisfy the Commission's efficiency standard. Pedricktown notes that Poly-One had been a reliable steam host for over a decade, consuming as much as 50,800 lbs/hr of steam, which was more than enough to satisfy the efficiency standard. According to Pedricktown, Poly-One's prior steam consumption enabled the Facility to operate as a QF from 1992 until 2002 when TXU purchased the Facility. In its notice of self-certification, Pedricktown indicated that Poly-One would take no less than 35,000 lbs/hr of steam.<sup>4</sup> At this value, the Facility's operating value would be approaching 10 percent and an approximately 45 percent efficiency value. After July 1, 2005, Pedricktown notes that Poly-One's steam usage unexpectedly dropped

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<sup>3</sup> In compliance with Order No. 671, Pedricktown filed a new market-based rate tariff on March 6, 2006.

<sup>4</sup> Pedricktown and Poly-One have an agreement in place in which Poly-One is obligated to purchase and use at least the minimum amount of steam required for the Facility to maintain QF status. Pedricktown points out that it has taken appropriate steps to enforce the terms of the agreement, but Poly-One does not have the means to productively use more steam.

to an average of 33,000 lbs/hr.<sup>5</sup> As a result, between July 1, 2005 and June 30, 2006, the Facility achieved an efficiency value of 42.33 percent and an operating value of 10.85 percent. This is below the Commission's efficiency standard of 45 percent for a cogeneration facility with an operating value of less than 15 percent. Pedricktown anticipates the Facility's efficiency and operating values to remain around 42 percent and 10 percent from June 30, 2006 to July 1, 2007.

6. Pedricktown contends that it began to make arrangements to assign its retail power sales obligations to a power marketer so that it could operate as an EWG as soon as it determined that the Facility would not meet the efficiency standard during the initial 12-month period from July 1, 2005 to July 1, 2006. Due to state regulatory requirements and credit constraints, Pedricktown will not be able to finalize the assignment until July 1, 2007. Pedricktown explains that an affiliate must obtain a power marketer's license from the State of New Jersey, because Pedricktown currently cannot independently meet the credit requirements to sell to an existing third party power marketer. Pedricktown explains that the process of securing the New Jersey license takes up to one year to complete and as soon as the assignment is finalized, Pedricktown will relinquish QF status and begin operating as an EWG.<sup>6</sup> Accordingly, Pedricktown requests waiver of the Commission's efficiency standard until July 1, 2007.

7. Pedricktown argues that waiver of the efficiency standard is warranted because Poly-One's reduced steam consumption was unexpected and beyond Pedricktown's control. Pedricktown also argues that the waiver is warranted because: (1) the waiver period is of a limited duration – two years; (2) its waiver request was filed shortly after the initial 12-month period of QF operation ended; and (3) granting its waiver request is consistent with PUPRA's goal of encouraging cogeneration facilities. Pedricktown further argues that the Facility brings economic and environmental benefits to the local region. Finally, Pedricktown argues waiver of the efficiency standard will enable the Facility to continue to cogenerate and produce significant energy savings.

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<sup>5</sup> According to Pedricktown, Poly-One reports that the reduction in steam usage is due to a number of factors, including modification to Poly-One's chemical manufacturing process, reduction in market demand for its products, and warmer than average winter weather. Pedricktown argues that none of these factors were reasonably foreseeable to Pedricktown.

<sup>6</sup> Although Pedricktown will relinquish QF status, it will continue to operate as a cogeneration facility and will continue to supply thermal output to Poly-One, but in quantities insufficient to satisfy the Commission's efficiency standard and thus satisfy the Commission's criteria for QF status. Pedricktown states that the thermal output it sells to Poly-One is necessary for Poly-One's economic viability.

## II. Notice and Interventions

8. Notice of this filing was published in the *Federal Register*, 71 Fed. Reg. 51,595 (2006), with interventions, protests, or comments due on or before September 5, 2006. None was filed.

## III. Discussion

9. The Commission's regulations provide that a qualifying facility must satisfy applicable operating and efficiency requirements "during any calendar year period." Section 292.205(c) of the Commission's regulations provides that the Commission may waive any of its operating and efficiency standards "upon a showing that the facility will produce significant energy savings."<sup>7</sup> The Commission has exercised its waiver authority in a number of cases based on 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 operational 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.<sup>8</sup>

10. Taking into account all the relevant factors, we will grant Pedricktown's request for waiver. First, Pedricktown's need for waiver of the Commission's efficiency standard is due to events outside of Pedricktown's control – the unexpected reduction in Poly-One's steam consumption. Based on historical consumption patterns, it was reasonable for Pedricktown to expect Poly-One to continue to consume steam at a level that would satisfy the Commission's efficiency standard. In addition, Pedricktown had an agreement in place with Poly-One obligating Poly-One to purchase and use at least the minimum amount of steam required for the Facility to maintain QF status. Second, Pedricktown does not sell its output at avoided cost to any buyer pursuant to the PURPA mandatory purchase requirement; but rather, Pedricktown sells its output into the PJM market pursuant to its market-based rate authority. Accordingly, there are no wholesale rate consequences to granting the waiver request. Our decision to grant Pedricktown's waiver request is also based on the fact that the Facility will not operate as a QF after July 1, 2007.

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<sup>7</sup> 18 C.F.R. § 292.205(c) (2006); *see also* 16 U.S.C. § 825h (2000) (general authority to waive regulations as the Commission "may find necessary or appropriate").

<sup>8</sup> *See, e.g., 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.

11. By granting this waiver, the Commission realizes that the Facility will not have complied with our regulations from the time Pedricktown self-certified the Facility on July 1, 2005, to the time it will no longer operate as a QF. This waiver allows the Facility to maintain QF status through the waiver period. According to Pedricktown, it needs state authority to assign its retail power sales obligation to power marketers in order for its sale of electric energy to Poly-One to continue. According to the submittal, the low cost power Poly-One receives from the Facility helps Poly-One, which employs in excess of 400 persons, to meet its energy needs in a cost-effective manner and thus remain competitive with other suppliers. Thus the grant of waiver will be beneficial to Poly-One as well as Pedricktown and, as noted above, will not have an adverse effect on ratepayers.

12. We note that Pedricktown requested waiver of the Commission's efficiency standard is from July 1, 2005 to July 1, 2007. We note that pursuant to our regulations, the efficiency standard must be met "during the first 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."<sup>9</sup> Therefore, we clarify that the waiver period would be good for (1) the first 12-month period of Pedricktown's renewed operation as a QF, July 1, 2005 to June 30, 2006; (2) calendar year 2006; and (3) calendar year 2007. In granting this waiver request and, in effect, extending the waiver period through the end of 2007, the Commission does not expect Pedricktown to file for another waiver request, and, if such a request is filed, we would not be inclined to grant it.

13. Based on the reasons discussed above, we will grant Pedricktown's waiver request.

The Commission orders:

Pedricktown's request for waiver of the efficiency standard, 18 C.F.R. § 292.205(a)(2) (2006), is hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

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<sup>9</sup> See 18 C.F.R. § 292.205(a)(2) (2006).