

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.

Enron Wind Systems, LLC

Docket Nos. EL06-104-000
ER06-1472-000
QF83-48-002
QF84-283-002

ORDER GRANTING LIMITED WAIVER OF REGULATIONS

(Issued November 30, 2006)

1. This order addresses a request by Enron Wind Systems, LLC (Enron Wind) for a limited waiver of the Commission's ownership requirements as they were in effect¹ for qualifying status applicable to two qualifying facilities (Enron Wind QFs) from January 1, 2006 to March 17, 2006. As discussed below, the Commission will grant Enron Wind's request for limited waiver. As a result, Enron Wind's in the alternative request that previously filed rate schedules become effective for the same limited time period is moot and will accordingly be denied.

I. Background

2. On November 15, 1983, and on May 23, 1984, Zond Systems, Inc. (Zond) submitted separate applications for an order certifying as QFs certain wind facilities (Enron Wind QFs) located in Tehachapi, California.² The Commission granted the requested certifications, respectively, by orders issued on February 7, 1983, and

¹ 18 C.F.R. § 292.206 (2005).

² The docket numbers associated with the certification requests are QF83-48-000 and QF84-283-000, respectively.

August 16, 1984.³ In January of 1997, Enron Corp. (Enron) acquired an interest in Zond, and in February of 2000, Enron acquired additional ownership interests in Zond and changed Zond's name to Enron Wind. Enron Wind thus became an indirect, wholly-owned subsidiary of Enron. Additionally, between 1997 and April of 2006, Enron indirectly owned Portland General Electric Company (Portland General), a public utility under section 201(e) of the Federal Power Act (FPA).

3. Prior to January 1, 2006, the Enron Wind QFs were owned by joint ventures between Enron Wind and individuals pursuant to joint venture agreements. The joint venture agreements expired on December 31, 2005, by their own terms. Thereafter, as of January 1, 2006, Enron Wind, a wholly-owned subsidiary of Enron, owned 100 percent of the Enron Wind QFs. Thus, as of January 1, 2006, the Enron Wind QFs did not satisfy the Commission's regulations with respect to the ownership requirements due to Enron's ownership of Portland General.

II. Request for Waiver of the Ownership Requirements

4. On September 7, 2006, as completed on October 12, 2006, Enron Wind submitted a request for limited waiver of the Commission's ownership requirements applicable to the Enron Wind QFs for the time period of January 1, 2006 to March 17, 2006.⁴ Enron Wind also requests that if the Commission denies its waiver request, that certain rate schedules become effective for the same period of time.⁵

5. Enron Wind argues that waiver of the Commission's now-abolished ownership requirement for qualifying small power production facilities is appropriate for the Enron Wind QFs because: (1) no party will be harmed by such waiver; (2) it is consistent with

³ *Zond Systems, Inc.*, 22 FERC ¶ 62,166 (1983) and *Zond Systems, Inc.*, 28 FERC ¶ 62,230 (1984).

⁴ March 17, 2006 is the effective date of Order No. 671. In Order No. 671, the Commission, among other things, removed the ownership criteria for obtaining qualifying status from its regulations. *Revised Regulations Governing Small Power Production and Cogeneration Facilities*, Order No. 671, 71 *Fed. Reg.* 7852 (February 2, 2006), *order on reh'g*, Order No. 671-A, 71 *Fed. Reg.* 30,585 (May 30, 2006).

⁵ With its request for limited waiver of the ownership requirements, Enron Wind also submitted for filing a notice of self-recertification for the Enron Wind QFs.

the Energy Policy Act of 2005 (EPAct 2005)⁶; and (3) it is consistent with Commission precedent.⁷

III. Notice and Interventions

6. Notice of the filing was published in the *Federal Register*⁸ with comments, protests or motions to intervene due on or before October 27, 2006. None was filed.

IV. Discussion

7. Prior to March 17, 2006, the general requirements for qualifying facility status were set forth in 18 C.F.R. § 292.203 (2005). A small power production facility, such as the Enron Wind QFs, had to satisfy a size criteria, a fuel use criteria, and an ownership criteria in order to be a QF or to maintain QF status.⁹ A cogeneration facility must satisfy the applicable operating and efficiency standards as well as ownership criteria to be a QF.

8. The Public Utility Regulatory Policies Act of 1978 (PURPA)¹⁰ specified the ownership criteria for QF status that was codified in sections 3(17)(C)(ii) and (18)(B)(ii) of the FPA.¹¹ 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).”¹² The Commission’s regulation implementing these sections of the FPA repeats this statutory requirement, stating that, as a general rule, “[a] cogeneration facility or small power production facility may not be owned by a person primarily engaged in the generation or

⁶ Pub. L. No. 109-58, 119 Stat. 594, 967 (2005).

⁷ See *Woodland Biomass Power, Ltd.*, 113 FERC ¶ 61,090 (October 25, 2005) (*Woodland Biomass*) (Commission waived ownership requirements in light of proposed rulemaking to enact EPAct section 1253(b)); See also *JMC Wind, LLC*, 114 FERC ¶ 62,060 (January 25, 2006) (*JMC Wind*).

⁸ 71 Fed. Reg. 62,100 (2006).

⁹ 18 C.F.R. § 292.203(a) (2005).

¹⁰ 16 U.S.C. § 824a-3(a) (2000).

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

¹² *Id.*

sale of electric power (other than electric power solely from cogeneration facilities or small power production facilities).”^[13]

9. The Commission’s regulations further set forth a quantitative ownership test for determining whether a facility was owned by “a person not primarily engaged in the generation or sale of electric power.” That test was:

.... 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 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.^[14]

Section 1253(b) of the EAct 2005, enacted on August 8, 2005, amended sections 3(17)(C) and 3(18)(B) of the FPA by eliminating the ownership limitations for QFs previously contained in those sections.

10. As of January 1, 2006, the Enron Wind QFs were 100 percent owned by Enron Wind, an indirect wholly-owned subsidiary of Enron, which also indirectly wholly-owned Portland General. As such, the Enron Wind QFs were out of compliance with the Commission’s ownership requirements set forth in 18 C.F.R. § 292.206 (2005) during the 10-week period from January 1, 2006 to March 17, 2006. On September 7, 2006, as completed on October 12, 2006, Enron Wind submitted a request for limited waiver of the then-in-effect Commission’s ownership criteria for QF status for the 10-week period.

11. We will grant Enron Wind’s request for limited waiver of the Commission’s ownership requirement for QF status. On October 11, 2005, the Commission, in a notice of proposed rulemaking (NOPR), proposed to revise its rules, including 18 C.F.R. § 292.206, to be consistent with the requirements of EAct 2005 section 1253(b).¹⁵ In *Woodland Biomass*, the Commission acknowledged there was a gap between August 8, 2005, the date of enactment of section 1253(b) of EAct 2005, and when the revision of

¹³ 18 C.F.R. § 292.206(a) (2005).

¹⁴ 18 C.F.R. § 292.206(b) (2005).

¹⁵ See Notice of Proposed Rulemaking, *Revised Regulations Governing Small Power Production and Cogeneration Facilities*, 70 Fed. Reg. 60,456 (October 11, 2005).

its own regulations implementing section 1253(b) of EPAct 2005 would become effective. The Commission stated that “the Commission will waive the requirements of section 292.206 . . . until such time as the Commission revises its regulations.”¹⁶ As we found in *Woodland Biomass* and in *JMC Wind*, we find it appropriate to waive the ownership requirements for the Enron Wind QFs as they were set forth in 18 C.F.R. § 292.206 (2005).

12. Enron Wind also requested in the instant submittal that if the Commission denied its request for waiver, that certain rate schedules become effective for the same 10-week period discussed above. Because the Commission is granting Enron Wind’s waiver request, this second request is moot and will be denied.

The Commission orders:

(A) Enron Wind’s request for waiver is granted, as discussed in the body of this order.

(B) Enron Wind’s in the alternative request that certain rates schedules become effective is denied as moot.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

¹⁶ See 113 FERC ¶ 61,090 at P 7.