

120 FERC ¶ 61,167  
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.

Ripon Cogeneration LLC

Docket Nos. EL07-64-000  
QF85-93-005

ORDER GRANTING REQUEST FOR LIMITED WAIVER OF QF  
OPERATING AND EFFICIENCY STANDARDS

(Issued August 17, 2007)

1. This order addresses a request by Ripon Cogeneration LLC (Ripon Cogeneration) for a limited waiver of the Commission's operating and efficiency standards<sup>1</sup> applicable to a qualifying topping-cycle cogeneration facility for calendar years 2007 and 2008. Ripon Cogeneration's request for waiver of the qualifying facility (QF) operating and efficiency standards results from the unexpected loss of its unaffiliated thermal steam host, Blue Heron Paper Company of California, LLC (Blue Heron). As discussed below, the Commission will grant Ripon Cogeneration's waiver request.

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<sup>1</sup> The operating and efficiency standards are contained in section 292.205 of the Commission's regulations. *See* 18 C.F.R. § 292.205 (2007). 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.

## I. Background

### A. Factual Background

2. The Commission certified the Ripon Cogeneration Facility (Facility) as a 44 MW cogeneration QF located in Pomona, California.<sup>2</sup> Ripon states that at the time of certification, it served two paper mill steam hosts, the Simpson Paper Facility and the Smurfit Paper Facility.<sup>3</sup> Since certification by the Commission, the Facility has self-recertified several times.<sup>4</sup> The Facility is interconnected with Southern California Edison Company (SoCal Edison), and Ripon sells its electric output exclusively to SoCal Edison. Since the Facility achieved full commercial operation in 1986, it has continuously satisfied the Commission's operating and efficiency standards.
3. Blue Heron, based in Oregon City, Oregon, is a 100 percent employee-owned integrated producer of newsprint and specialty papers utilizing over 50 percent recycled material. Blue Heron acquired the 100 percent recycled newsprint mill in Pomona, California from Smurfit Group, PLC in 2005. Prior to suspension of its operations, the Pomona paper mill produced 140,000 tons/year of 100 percent recycled newsprint.
4. On March 7, 2007, Blue Heron issued a press release announcing that it intended to close its plant indefinitely by May 6, 2007 due to "combination of high waste paper prices, high energy prices and sagging price and demand for mill's

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<sup>2</sup> *Simpson Paper Company*, 30 FERC ¶ 62,176 (1985).

<sup>3</sup> Blue Heron purchased the Smurfit Paper Facility.

<sup>4</sup> Ripon Cogeneration self-recertified on March 2, 1998, in Docket No. QF85-93-001, and on January 8, 2004, in Docket No. QF85-93-002, to reflect changes in upstream ownership. It self-recertified again on January 15, 2004, in Docket No. QF85-93-003, to notify the Commission of: (1) a change of upstream ownership, (2) the conversion of Ripon Cogeneration, Inc. to Ripon Cogeneration, a limited liability corporation, and (3) the fact that the Facility was supplying useful thermal output to only one steam host. Ripon cogeneration self-recertified again on July 26, 2005, in Docket No. QF85-93-004, to reflect a further change in its upstream ownership.

products.” On May 7, 2007, Blue Heron followed through on its earlier announcement by taking steps to close the mill, rather than operate it at a loss. Blue Heron notified Ripon Cogeneration of its decision to close its Pomona paper mill and to suspend its steam supply agreement with Ripon Cogeneration in a letter sent on May 11, 2007. Blue Heron’s letter stated that it has not yet determined whether the closure will be permanent. Ripon Cogeneration states that in light of the circumstances cited in Blue Heron’s letter, however, it is possible that Blue Heron’s shut-down of the Pomona paper mill will be permanent. In any event, Blue Heron is currently not purchasing thermal energy from Ripon Cogeneration.

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

5. On May 23, 2007, Ripon Cogeneration filed a petition for limited waiver of the Commission’s operating and efficiency standards set forth in 18 C.F.R. § 292.205(a)(2) (2007) for calendar years 2007 and 2008. Ripon Cogeneration states that it is requesting the waiver due to the fact that Blue Heron’s failure to take useful thermal output from its facility pursuant to steam purchase agreement will cause Ripon to fail to comply with the operating and efficiency standards for calendar year 2007 and subsequent years unless it finds a new thermal host. Ripon Cogeneration states that it is exploring its options to ensure that it is again available to meet the operating and efficiency standards by 2009.

6. In this regard, Ripon Cogeneration explains that its unaffiliated thermal host, Blue Heron, has suspended performance of its obligations under the parties’ steam purchase agreement and that Blue Heron has announced that the shut-down of its paper mill may be permanent. Ripon Cogeneration notes that Blue Heron has stated that the rise in the global market for waste paper coupled with increasing production costs and low demand locally have forced Blue Heron to close its doors. Ripon Cogeneration argues that it has no control over Blue Heron’s decision to shut down its paper mill.<sup>5</sup> Ripon Cogeneration urges that waiver is appropriate because the circumstances that gave rise to Blue Heron’s decision are beyond Ripon Cogeneration’s control.

7. Ripon Cogeneration states that it is submitting its request promptly upon learning that its thermal host has suspended its performance under the steam purchase agreement. Ripon Cogeneration concludes that by submitting its waiver

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<sup>5</sup> See *Lake Cogen, Ltd.*, 101 FERC ¶ 61,138 (2002) (granting waiver of operating and efficiency standards where steam host unexpectedly went bankrupt and rejected its contract with Lake); see also, *Panda Rosemary Limited Partnership*, 100 FERC ¶ 61,189, at 61,671 (2002) (finding that a decline in steam consumption by a thermal host is an event beyond the control of a QF).

application before reaching the “point of no return” with its steam host, Ripon Cogeneration’s waiver petition is clearly timely.<sup>6</sup>

8. Ripon Cogeneration claims its request for a limited two-year waiver of the Commission’s regulations is well within the acceptable time periods granted by the Commission for similar requests in the cases cited above.<sup>7</sup> Ripon Cogeneration further adds that the Commission has noted that “Commission precedent does not require a QF to reduce its output in order to retain its status,” and that “granting a temporary waiver is the desirable alternative” because “[t]o require otherwise would frustrate the purposes of Public Utility Regulatory Policies Act of 1978 (PURPA)<sup>8</sup> by discouraging the development of cogeneration facilities; if developers thought that a temporary, unforeseen event could strip away their qualifying status, they may be reluctant to consider such ventures.”<sup>9</sup>

9. Ripon Cogeneration argues that a two-year waiver is necessary to give it sufficient time to explore its alternatives to secure a replacement steam host. Ripon Cogeneration states that it also is considering various alternatives, including development of a water distillation plant near the Facility.<sup>10</sup> Ripon Cogeneration states that this request for a two year limited waiver will result in Ripon

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<sup>6</sup> *Wilbur Power LLC*, 103 FERC ¶ 61,183 (2003) (finding that a waiver request was timely when it was filed five months after the QF’s steam host — an affiliated paper mill — shut down operations).

<sup>7</sup> *E.g.*, *Pasco Cogen, Ltd.*, 109 FERC ¶ 61,171 (2004) (granting 2 year limited waiver of operating standard); *Calpine King City Cogen, LLC*, 108 FERC ¶ 61,149 (2004) (granting 2 year limited waiver of operating standard); *Calpine Newark, LLC*, 105 FERC ¶ 61,104 (2003) (granting 2 year limited waiver of operating and efficiency standards); *Oildale Energy LLC*, 103 FERC ¶ 61,060 (2003) (granting 2 year limited waiver of efficiency standard).

<sup>8</sup> 16 U.S.C. § 824a-3 (2000).

<sup>9</sup> *Lake Cogen*, 101 FERC ¶ 61,138 at 61,579-80.

<sup>10</sup> *See Brazos Electric Power Cooperative, Inc. v. FERC*, 205 F.3d 235 (5th Cir. 2000); *Calpine King City Cogen, LLC*, 111 FERC ¶ 61,174, at P 20 *reh ‘g denied*, 112 FERC ¶ 61,088 (2005); *Wilbur Power LLC*, 103 FERC ¶ 61,183, *clarified*, 104 FERC ¶ 61,055 (2003); *Brooklyn Navy Yard Cogeneration Partners, L.P.*, 74 FERC ¶ 61,015 (1996).

Cogeneration failing to meet the Commission's operating and efficiency standards for only a "short period."<sup>11</sup> After this brief period, Ripon Cogeneration states that it intends to again operate in compliance with the Commission's standards, which will result in considerable energy savings.

10. Ripon Cogeneration states that its Facility produces substantial amounts of steam and has been in continuous compliance with the Commission's operating and efficiency standards since its initial certification as a QF. Thus, Ripon Cogeneration argues that it has been fulfilling Congress' vision under PURPA to produce significant energy savings, and it intends to continue to do so in the future. Ripon Cogeneration claims that granting a limited waiver for a two-year period will allow the Facility to continue operation as an energy efficient cogeneration facility consistent with PURPA's goals.

11. Ripon Cogeneration also adds that the Facility has historically achieved the energy savings contemplated by PURPA. Ripon Cogeneration claims that the steam that it has delivered to Blue Heron's paper mill replaces steam that would otherwise need to be produced by other means. Ripon Cogeneration concludes that its request satisfies the requirement for waivers that the Facility must "produce significant energy savings."<sup>12</sup>

12. Lastly, Ripon Cogeneration adds that granting the requested waiver will satisfy PURPA's goals to encourage cogeneration technologies.<sup>13</sup> Ripon Cogeneration states that in Order No. 671, the Commission embraced this goal and its commitment to ensure the continuing development of efficient generating technologies.<sup>14</sup> Ripon Cogeneration states that the Facility has been in continuous operation since 1986 producing energy savings through the co-generation of

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<sup>11</sup> *Calpine Newark*, 105 FERC ¶ 61,104 at P 9 (2003).

<sup>12</sup> 18 C.F.R. § 292.205(c).

<sup>13</sup> Energy Policy Act of 2005, § 1253, Pub. L. No. 109-58, 119 Stat. 594 (2005).

<sup>14</sup> Revised Regulations Governing Small Power Production and Cogeneration Facilities, Order No. 671, FERC Stats. & Regs. ¶ 31,203, at PP 48, 55 (2006).

electricity and steam using clean natural gas. Ripon Cogeneration adds that it has consistently met the Commission's operating and efficiency standards throughout this time period and that the use of this cogeneration technology has produced significant energy savings. Accordingly, Ripon Cogeneration adds that granting its waiver request is in the public interest.

## **II. Notice, Interventions, and Protests**

13. Notice of this filing was published in the *Federal Register*, 72 Fed. Reg. 33,477 (2007), with interventions, protests, or comments due on or before June 18, 2007. SoCal Edison filed a motion to intervene and a protest. Ripon Cogeneration filed an answer to SoCal Edison's protest.

14. SoCal Edison claims that Ripon Cogeneration's petition lacks specific information related to its action in securing a replacement steam host. For this reason, SoCal Edison claims that Ripon Cogeneration should only be granted a waiver for the calendar year 2007. SoCal Edison adds that at the conclusion of this year, and assuming Ripon Cogeneration is unable to secure a replacement steam host, Ripon Cogeneration should be provided an opportunity to seek a waiver for the calendar year 2008, if Ripon Cogeneration is able to demonstrate that it has taken specific actions to secure a replacement steam host and that these efforts will likely result in securing a host.

15. In its answer, Ripon Cogeneration does not object to SoCal Edison's motion to intervene. Ripon Cogeneration states that SoCal Edison's protest, however, inappropriately faults Ripon Cogeneration for not having a comprehensive plan for replacing its steam host given that Ripon Cogeneration received formal notice of its thermal host's intent to suspend operations indefinitely only two weeks before Ripon Cogeneration filed its petition.

## **III. Discussion**

### **A. Procedural Matters**

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), SoCal Edison's unopposed motion to intervene serves to make it a party to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept Ripon Cogeneration's answer and will, therefore, reject it.

## B. Commission Determination

17. Ripon Cogeneration's request for waiver and SoCal Edison's protest raise two issues: (1) whether to grant waiver of the operating and efficiency standards; and, (2) if waiver is granted, whether it should be granted for calendar years 2007-2008, or only for calendar year 2007.

18. Section 292.205(a) of the Commission's regulations provides that a qualifying facility must satisfy applicable operating and efficiency requirements "during . . . any calendar year." 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>15</sup> 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 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>16</sup>

19. Taking into account all the relevant factors, we will grant Ripon Cogeneration's request for waiver. First, the need for waiver of the Commission's operating and efficiency standards is caused by unexpected events outside of Ripon Cogeneration's control – the unexpected loss of its thermal host Blue Heron due to Blue Heron's financial difficulties.

20. Ripon Cogeneration has not received an earlier waiver and this waiver request is timely. The filing was made immediately after losing the host and in advance of the period for which the waiver is needed. Finally, while Ripon Cogeneration may fail to meet the Commission's operating and efficiency

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<sup>15</sup> 18 C.F.R. § 292.205(c) (2007); *see also*, 16 U.S.C. § 825h (2000) (general authority to waive regulations as the Commission "may find necessary or appropriate").

<sup>16</sup> *See, e.g., 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.

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 Ripon Cogeneration's waiver.

21. We will grant the waiver for two calendar years, 2007-2008. We believe that is reasonable under the circumstances. Ripon Cogeneration was informed that its host was shutting down operations, at least temporarily, and likely permanently on May 11, 2007. It was at that point clear that Ripon Cogeneration would need a waiver, and would need to make arrangements for a replacement thermal host. Ripon Cogeneration's application followed two weeks later. It is not surprising that Ripon Cogeneration at that point did not have plans for a replacement host. Given the time required to find a potential host, to conduct negotiations, finalize a contract, and install and start-up equipment for delivery of steam to the new host, and the fact that the Commission measures compliance with the operating and efficiency standards on a calendar-year basis, a waiver for calendar years 2007-2008 is reasonable. We see no reason to require Ripon Cogeneration to come in again in November or December this year, as it would certainly need to do, if we deny waiver for 2008 as SoCal Edison has urged in its protest. Ripon Cogeneration has indicated that it is actively searching for potential new thermal hosts. Ripon Cogeneration has the incentive to find a new thermal host, and make the necessary arrangements for a new thermal host to take sufficient useful thermal output so that Ripon Cogeneration will satisfy the operating and efficiency standards in calendar year 2009. We thus expect that Ripon Cogeneration will be able to satisfy the Commission's operating and efficiency standards for calendar year 2009. This approach of granting waiver of the operating and efficiency standards for a facility that has lost its thermal host for the calendar year in which it loses the host, and the following calendar year, is consistent with Commission practice and gives the QF a realistic opportunity to restructure its operations so that it will once again be able to satisfy all requirements for QF status. While the Commission has refused requests for waivers that would last for three calendar years,<sup>17</sup> it has granted waivers for a two year period where, as in this case, the generator is actively seeking a substitute host.<sup>18</sup>

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<sup>17</sup> *Pittsfield Generating Company, L.P.*, 91 FERC ¶ 61,064 at 61,122 (2000).

<sup>18</sup> *Decatur Energy Center, LLC*, 110 FERC ¶ 61,045 at 61,177 (2005); *Pasco Cogen, Ltd.*, 109 FERC ¶ 61,171, at 61,840-41 (2004); *Calpine Newark, LLC*, 105 FERC ¶ 61,104 at 61,612-13 (2003).

The Commission orders:

Ripon Cogeneration's request for temporary waiver of the operating and efficiency standards is hereby granted for calendar years 2007 and 2008, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.