

FERC 131 ¶ 61,215
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

Medical Area Total Energy Plant, Inc. and
New MATEP Inc.

Docket No. QF83-334-003

ORDER DENYING REHEARING

(Issued June 3, 2010)

1. The Harvard Medical Collaborative, Inc. (HMC) has filed a request for rehearing of the Commission's March 30, 2010 order in this proceeding.¹ In the March 30 Order, the Commission granted the application of Medical Area Total Energy Plant, Inc. (MATEP) and New MATEP, Inc. (New MATEP) (collectively Applicants) for recertification of the qualifying facility (QF) status of the Applicants' 77.8 MW net capacity cogeneration facility located in the Longwood Medical and Academic Area of Boston, Massachusetts. On rehearing, HMC argues that the Commission should not have recertified Applicants' QF, but instead should have certified it as a "new" cogeneration facility. We will deny rehearing.

2. Section 292.205(d) of the Commission's regulations² requires that "new" cogeneration facilities must satisfy certain additional criteria for certification of QF status that older cogeneration facilities did not need to satisfy. "New" cogeneration facilities are defined as:

any cogeneration facility that was either not certified as a qualifying cogeneration facility on or before August 8, 2005, or that had not filed a

¹ *Medical Area Total Energy Plant, Inc. and New MATEP Inc.*, 130 FERC ¶ 61,254 (2010) (March 30 Order).

² 18 C.F.R. § 292.205(d) (2009).

notice of self-certification, self-recertification or an application for Commission certification or Commission recertification as a qualifying cogeneration facility under § 292.207 of this chapter prior to February 2, 2006, and which is seeking to sell electric energy pursuant to section 210 of the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 824a-[3].^{3]}

3. On rehearing, HMC argues that the Commission should have found that Applicants' cogeneration facility is a "new" cogeneration facility. HMC does not, however, argue that Applicants' cogeneration facility should not have been certified as a QF. Indeed, HMC, both in its protest⁴ and on rehearing,⁵ acknowledges that Applicants' facility satisfies the criteria for certification as a "new" cogeneration facility.⁶ On rehearing, HMC merely argues that the Commission should have found that the cogeneration facility is a "new" cogeneration facility.

4. Applicants' facility was originally certified in 1983.⁷ It thus does not meet the first prong of the definition of "new" cogeneration facility contained in our regulations; it was certified as a qualifying cogeneration facility on or before August 8, 2005. Moreover, most of the electric output of the facility is sold to its institutional thermal hosts and the remainder is sold to ISO New England Inc. under MATEP LLC's market-

³ In defining "new" cogeneration facilities, the Commission defined "new" cogeneration facilities consistent with the requirements of section 210(n) of PURPA, 16 U.S.C. § 824a-3(n) (2006), which provided that the criteria for a "new" cogeneration facility would not be applicable to a cogeneration facility which was a QF on the date of enactment of section 210(n) of PURPA or which had filed a self-certification, self-recertification, or an application for Commission certification prior to the date the Commission issued rules implementing section 210(n) of PURPA. *Revised Regulations Governing Small Power Production and Cogeneration Facilities*, Order No. 671, FERC Stats. & Regs. ¶ 31,203, at P 115 (2006), *clarified*, 114 FERC ¶ 61,128 (2006), *order on reh'g*, Order No. 671-A, FERC Stats. & Regs. ¶ 31,219 (2006).

⁴ See March 30 Order, 130 FERC ¶ 61,254 at P 10 n.10.

⁵ See HMC request for rehearing at 6 n.12.

⁶ The Commission, in the March 30 Order, 130 FERC ¶ 61,254 at P 10 n.10, found that the facility, in fact, satisfies the criteria for certification as a "new" cogeneration facility and that the Commission would certify the facility as a QF even if it were a "new" cogeneration facility.

⁷ See March 30 Order, 130 FERC ¶ 61,254 at P 1 n.2.

based rate tariff.⁸ Thus, the facility does not meet the second prong of the definition of “new” cogeneration facility contained in our regulations, i.e., it is not “seeking to sell electric energy pursuant to section 210 of the Public Utility Regulatory Policies Act of 1978.” In sum, Applicants’ cogeneration facility does not fall within the definition of “new” cogeneration facility contained in our regulations.

5. HMC argues that the Commission should nonetheless view Applicants’ cogeneration facility as “new” because Applicants “made significant modifications to the MATEP plant between 1999 and the present and failed to timely report those modifications in compliance with the Commission’s mandatory requirements.”⁹ HMC in essence raises two issues: (1) whether the changes to Applicants’ facility since it was last certified are so significant that it should be considered a “new” cogeneration facility even though it does not fall within the regulatory definition of “new;” and (2) whether a recertification of Applicants’ cogeneration facility at the time the changes were made was necessary to preserve its QF status.

6. Applicants’ cogeneration facility was originally self-certified as a 62 MW facility in 1983. Ownership of the facility changed in 1998 and the facility was repowered and expanded to its current 77.8 MW net capacity. In Order No. 671, the Commission stated that there is a rebuttable presumption that an existing QF does not become a “new cogeneration facility” for purposes of section PURPA 210(n) merely because it files for recertification.¹⁰ The Commission, however, held out the possibility that changes to an existing cogeneration facility could be so great (such as an increase from 50 MW to 350 MW) that it should be considered a “new” cogeneration facility for purposes of PURPA section 210(n). In the March 30 Order, the Commission saw no reason to treat the facility as “new.” The change from 62 MW to 77.8 MW is not so significant as to warrant such a finding, especially where the changes were made to serve the increased needs of the thermal host.

7. Finally, in the March 30 Order, the Commission explained that recertification of the facility at the time the changes occurred was not necessary to preserve its QF status. The facility met the technical criteria, and had previously been certified; recertification is not a prerequisite to QF status, but merely provides assurance to the facility that it is entitled to the benefits of QF status.¹¹ HMC’s arguments do not convince us that we

⁸ See March 30 Order, 130 FERC ¶ 61,254 at P 3.

⁹ HMC Request for Rehearing at 2.

¹⁰ Order No. 671, FERC Stats. & Regs. ¶ 31,203 at P 115.

¹¹ March 30 Order, 130 FERC ¶ 61,254 at P 10. While HMC faults our “sole”

(continued...)

erred in finding that the decision not to recertify, in and of itself, does not affect the QF status of the facility.

The Commission orders:

HMC's request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

reliance on *Mesquite Lake Associates, Ltd.*, 63 FERC ¶ 61,351 (1993), that precedent is valid precedent that can be relied upon and has been relied upon. *E.g.*, *Lake Cogen, Ltd.*, 101 FERC ¶ 61,138, at P 10 & n.7-8 (2002). And while we have also said that, due to a change in facts, an order may no longer be relied upon, *see* HMC request for rehearing at 9 n.14, in fact, we have evaluated the facts here and found that whether viewed as an existing cogeneration facility or as a “new” cogeneration facility, the facility here continues to qualify for QF status. March 30 Order, 130 FERC ¶ 61,254 at P 10 & n.10, P 11-13.