

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeem G. Kelly.

POSDEF Power Company, L.P.

Docket No. EG04-25-000

ORDER GRANTING APPLICATION FOR DETERMINATION OF EXEMPT  
WHOLESALE GENERATOR STATUS

(Issued February 13, 2004)

1. On December 23, 2003, POSDEF Power Company, L.P. (POSDEF or Applicant) filed an application for determination of exempt wholesale generator (EWG) status pursuant to Section 32 of the Public Utility Holding Company Act of 1935, as amended by the Energy Policy Act of 1992 (PUHCA).<sup>1</sup> In this order, we grant the Applicant's request for EWG status. Our determination serves customers by ensuring that applicants who qualify for EWG status under PUHCA will receive such status, as Congress intended.
2. POSDEF submitted a sworn statement by a representative legally authorized to bind it stating that it owns and operates a 44 MW coal-fuel fired cogeneration facility located in Stockton, California (Facility). POSDEF states that the Facility includes certain interconnecting facilities necessary to effectuate the sale of wholesale electricity.
3. POSDEF states that it is engaged directly and exclusively in the business of owning and operating the Facility and selling electric energy at wholesale. POSDEF may engage in activities incidental to wholesale electrical sales that are consistent with Commission precedent.
4. POSDEF submits that the Facility is an "eligible facility" as defined in Section 32(a)(2) of PUHCA because it will be used for the generation of electric energy exclusively for sale at wholesale.

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<sup>1</sup> 15 U.S.C. § 79z-5a (2000).

5. Notice of the application was published in the Federal Register,<sup>2</sup> with interventions or comments due no later than January 13, 2004. On that date, Pacific Gas and Electric Company (PG&E) filed a motion to intervene and for consolidation with another proceeding in which the same facility's Qualifying Facility (QF) status is at issue.

#### Discussion

6. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>3</sup> the timely, unopposed motion to intervene makes PG&E a party to this proceeding.

7. POSDEF's application, on its face, meets the requirements for EWG status, and PG&E does not allege otherwise. Accordingly, we will grant POSDEF's application.

8. PG&E purchases electricity from the Facility under a long-term power purchase agreement. In its January 13, 2004 motion, PG&E asserts that because this proceeding and the QF proceeding referenced in its motion both concern the regulatory status of the identical facility, the proceedings should be consolidated.

9. Because there are no common issues of fact or law between this docket and the proceeding referenced by PG&E in its motion, we will deny PG&E's motion to consolidate.

#### The Commission orders:

10. Based on the information contained in POSDEF's application, the Commission determines that POSDEF is an EWG as defined in Section 32(a)(1) of PUHCA. As required by Section 32(a)(1) of PUHCA, the Secretary is directed to notify the Securities and Exchange Commission of this determination.

By the Commission.

Magalie R. Salas,  
Secretary.

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<sup>2</sup> 69 Fed. Reg. 1,711 (2004).

<sup>3</sup> 18 C.F.R. § 385.214 (2003).