

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Morgan Energy Center, LLC

Docket Nos. EL04-83-000
QF01-84-001

ORDER GRANTING LIMITED WAIVER OF EFFICIENCY STANDARD

(Issued April 16, 2004)

1. This order addresses a request by Morgan Energy Center, LLC (Morgan or Applicant) for a limited waiver of the Commission's efficiency standard¹ applicable to the cogeneration facility for April 5, 2003 through April 4, 2004.² Morgan's request for a

¹ The operating and efficiency standards are contained in section 292.205 of the Commission's regulations. See 18 C.F.R. § 292.205 (2003). 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 Commission's operating standard ensures that the facility's thermal host meets a certain threshold level of heat utilization. See *Everett Energy Corp.*, 45 FERC ¶ 61,314 (1988).

Section 292.205(a)(2) of the Commission's regulations establishes an efficiency standard for topping-cycle cogeneration facilities for which any of the energy input is natural gas or oil. The useful power output of the facility plus one-half the useful thermal energy output during the applicable period must be no less than 42.5 percent of the total energy input of natural gas or oil. If the useful thermal energy output is less than 15 percent of the total energy output of the facility, the useful power output of the facility plus one-half of the useful energy output must be no less than 45 percent, rather than 42.5 percent. 18 C.F.R. § 292.205(a)(2) (2003). The Commission's efficiency standard ensures that the facility operates at or above a certain level of performance when it uses natural gas or oil.

² This is the first 12-month period of the cogeneration facility's operations. A new
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limited waiver of the efficiency standard is triggered by technical difficulties that occurred during the start-up and testing of its facility. As a result, the facility is not expected to satisfy the Commission's efficiency standard for its first 12 months of operation. As discussed below, we will grant Morgan's request.

Background

Factual Background

2. The 825 MW topping-cycle cogeneration facility (Facility) is located in Decatur, Alabama. The Facility is located at the BP Amoco Decatur Plant, which is owned by BP Amoco, PLC (BP). The Facility consists of three combustion turbine generators and three heat recovery steam generators that provide steam to a single steam turbine generator. Applicant sells electric energy produced by the Facility at wholesale to the Tennessee Valley Authority (TVA) and an affiliated power marketer. Applicant sells steam to BP for process use at its Decatur Plant.³

Request for Waiver

3. On February 17, 2004, Morgan filed an application requesting that the Commission waive the efficiency standard for the period of April 5, 2003 through April 4, 2004. Morgan states that after commissioning activities began in April 2003, a Toshiba 300 MW tandem compound non-reheat steam turbine generator that it had installed began to experience severe internal differential expansion between the turbine shell and turbine rotor. Morgan states that this defect resulted in prolonged and extensive testing and analysis to determine the root cause. In addition, after the problem was identified and alignment modifications were made by the original manufacturer, the steam turbine continued to exhibit operational difficulties during startup, which contributed to loss of efficiency. Applicant has taken several steps to correct the problem, including commissioning a 6-inch steam turbine warm-up pipe header, which will allow the combustion turbines to operate at a more efficient load point while steam conditions are being obtained for bringing the steam turbine on line.

cogeneration facility, to meet the criteria for qualifying facility (QF) status, must satisfy the operating and efficiency standards during the 12-month period beginning with the date the facility first produces electric energy, and during any calendar year subsequent to the year in which the facility first produces electric energy. 18 C.F.R. § 292.205 (2003).

³ The steam is used in petrochemical processes to heat fluids for distillation, purification, and reaction and to modify the physical and chemical characteristics of fibers during various processes in the manufacturing of textiles.

4. In addition, Applicant discovered a second problem that has adversely affected its efficiency: a bypass valve leak that caused steam to flow directly to the condenser without going through the steam turbine. Applicant commenced an investigation after observing that the Facility's heat rate was higher than expected. Applicant has identified the problem and intends to complete repairs on the bypass valve shortly.

5. Morgan seeks a limited waiver to allow for needed repairs and corrective modifications to the Facility during its first twelve months of operations. Based on the Facility's performance in January 2004, when the efficiency value was approximately 46.5 percent, Applicant is confident that the Facility will satisfy the efficiency standard for calendar year 2004. Morgan anticipates that additional waivers will be unnecessary.

Notice, Interventions and Protests

6. Notice of the Applicant's filing was published in the Federal Register, 69 Fed. Reg. 9608 (2004), with comments, protests, and interventions due on or before March 9, 2004. A timely motion to intervene raising no substantive issues was filed by the TVA.

Discussion

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the timely, unopposed motion to intervene serves to make TVA a party to this proceeding.

8. The Commission's regulations (*see supra* note 1) provide that a qualifying facility must satisfy applicable operating and efficiency requirements "during the 12-month period beginning with the date the facility first produces electric energy." 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."⁴ 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 request; 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.⁵

⁴ 18 C.F.R. § 292.205(c) (2003); *see also* City of Fremont v. FERC, 336 F.3d 910, 916-17 (9th Cir. 2003).

⁵ *See, e.g.*, Oildale Energy LLC, 103 FERC ¶ 61,060 (2003); Kamine/Besicorp
(continued...)

9. Balancing the relevant factors, we will grant Morgan's request for waiver. The need for waiver is the result of events outside of Morgan's control, i.e., an unforeseeable mechanical failure in its steam turbine and is confined to the facility's start-up and testing phase. While Morgan's facility may fail to comply with the Commission's efficiency standard for a short period, the many years during which it intends to 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 waiver for the period of April 5, 2003 through April 4, 2004.

The Commission orders:

Morgan's request for temporary waiver of the efficiency standard, 18 C.F.R. § 292.205 (2003), is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

Allegany L.P., 73 FERC ¶ 61,290 at 61,808-09 (1995), reh'g denied, 74 FERC ¶ 61,094 (1996); Gordonsville Energy, L.P. 72 FERC ¶ 61,160 at 61,790-91 & n.7 (1995), and the cases cited therein.