

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
William L. Massey, and Nora Mead Brownell.

Wilbur Power LLC

Docket Nos. EL03-118-001 and  
QF83-168-006

ORDER ON CLARIFICATION

(Issued July 10, 2003)

1. In this order we provide the limited clarification requested by Wilbur Power LLC, (Wilbur Power) to the Commission's order granting recertification as a qualifying facility (QF) issued in this docket on May 16, 2003. Wilbur Power LLC, 103 FERC ¶ 61,183 (2001) (May 16 Order).

**Background**

**Factual Background**

2. The 49 MW, topping cycle natural gas-fired cogeneration facility (Facility) at issue here is located in Antioch, California. The Facility consists of a combustion turbine generator, a heat recovery steam generator, a condensing and extraction steam turbine generator, an auxiliary boiler, and appurtenant facilities. The Facility was originally certified as a qualifying cogeneration facility in 1983.<sup>1</sup> Gaylord Container Limited (Gaylord Container) purchased the Facility and was granted recertification in 1986.<sup>2</sup>
3. Gaylord Container operated the Facility until October 2002, when the Facility's thermal host, an affiliated paper-mill, ceased operations. Wilbur Power is currently engaged in negotiations to purchase the Facility from Gaylord Container.

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<sup>1</sup>Crown Zellerbach Corp., 23 FERC ¶ 62,135 (1983).

<sup>2</sup>Gaylord Container Ltd, 36 FERC ¶ 62,148 (1986). Notices of self-recertification have also been filed with the Commission in Docket No. QF83-168.

4. Wilbur Power will sell its electric power output to Pacific Gas & Electric Company (PG&E). Wilbur Power plans to build a new thermal host for the Facility, a water distillation unit. The thermal energy output of the Facility will be processed in a steam host evaporator to produce high-quality distilled water. Wilbur Power states that it plans to sell the distilled water to an affiliated small power production facility, or, if the Commission finds that sale to be inconsistent with QF status, the distilled water will be sold to an unaffiliated third party.

### **Request for Recertification and Waiver**

5. Wilbur Power filed an application for Commission recertification of the Facility as a QF. Wilbur Power also requested that the Commission grant it waiver of the operating and efficiency standards for calendar year 2003. The Facility is currently idle. Wilbur Power stated that it was implementing plans to enable it to meet the Commission's operating and efficiency standards. However, Wilbur Power did not expect that the proposed new water distillation facility would commence commercial operation before January 31, 2004. Wilbur Power stated that it needed a waiver to allow it to restart the Facility and resume sales of electricity while it was in the process of replacing the Facility's now idle thermal host with the proposed new water distillation plant.

### **May 16 Order**

6. In the May 16 Order, the Commission granted both Wilbur Power's application for certification and its request for waiver.

7. The principal issue on recertification was whether Wilbur's proposed use of steam was permissible. The Commission stated that in prior cases it had found that the use of steam to produce distilled water is common and thus presumptively useful for purposes of meeting the Commission's definition of a cogeneration facility.<sup>3</sup> The Commission noted, however, that Wilbur Power proposed to sell the water to an affiliated power producer. The Commission stated that, in order to be useful for cogeneration purposes, the thermal output of a facility must be used in a process that is independent of the power production

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<sup>3</sup>See, e.g., *Brazos Electric Power Cooperative v. Tenaska IV Texas Partners, Ltd.*, 83 FERC ¶ 61,176 at 61,727, *reh'g denied*, 85 FERC ¶ 61,097 (1998), *aff'd*, *Brazos Electric Power Cooperative, Inc. v. FERC*, 205 F.3d 235 (5th Cir. 2000), *reh'g denied en banc*, 214 F.3d 214 (5th Cir. 2000), *cert. denied*, 531 U.S. 957 (2000).

process, i.e., the ultimate use of the thermal output cannot be power production.<sup>4</sup> The Commission further stated that:

The Commission has found that processing material for use as a boiler fuel in unrelated electric generating facilities or for other heating used by entities unaffiliated with the cogeneration facility is independent of the power production cycle, but that use of steam to process material for use in an affiliated facility is not.<sup>5</sup>

8. The Commission concluded that Wilbur Power's proposal to sell the distilled water to an affiliated power producer is not consistent with QF status and that Wilbur Power, to be a QF, must sell the distilled water it produces to an unaffiliated entity.

#### **Request for Clarification**

9. Wilbur Power, noting that it is in discussions with an unaffiliated company that produces distilled water, requests the Commission to clarify that the May 16 Order means that, if it operates in the manner described in its application, and uses its thermal output to produce distilled water to be sold to an unaffiliated company, or uses its thermal output to produce steam to be sold to an unaffiliated company to be used to distill water, that there is no further examination of the unaffiliated entity's use of the distilled water.<sup>6</sup>

#### **Discussion**

10. Wilbur Power is correct in stating that, if a cogeneration facility seeking QF certification proposes to sell distilled water to an unaffiliated entity, or to sell steam to an unaffiliated entity which produces distilled water from that steam, the Commission does

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<sup>4</sup>See, e.g., EG&E, Inc., 16 FERC ¶ 61,060 at 61,104 (1981); LaJet Energy Company, 43 FERC ¶ 61,288 at 61,789, reh'g denied, 44 FERC ¶ 61,070 (1988).

<sup>5</sup>103 FERC ¶ 61,183 at P10.

<sup>6</sup>Request for Clarification at 4.

not consider how the unaffiliated entity, in turn, uses the distilled water in making its QF certification determination.<sup>7</sup>

The Commission orders:

Wilbur Power's request for clarification is hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

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<sup>7</sup>Brazos Electric Power Cooperative v. FERC, 205 F.3d 235, 244 (D.C. Cir. 2000) (the use that an unaffiliated thermal host makes of its arm's length purchase is irrelevant).