

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Ormesa LLC

Docket No. QF86-681-006

ORDER DENYING REHEARING

(Issued September 22, 2004)

1. In an order issued on April 15, 2004,¹ the Commission recertified Ormesa LLC's (Ormesa) geothermal-fueled small power production facility as a qualifying facility (QF). The Commission also found that the electric power used by Ormesa for reinjection of geothermal fluid is part of the auxiliary load (also referred to as station use) of Ormesa's facility, and therefore, may not be included in the net capacity of the facility. This order denies the requests for rehearing of the April Order.

Background

2. On February 3, 2004, Ormesa filed an application requesting that the Commission certify its Imperial County, California facility as a QF with a net capacity of 16.57 MW. The application stated that the facility has a gross capacity of 19.95 MW. Ormesa stated that it uses 3.38 MW within the facility for power production (including power for essential fuel handling within the facility). Subtracting the 3.38 MW from the 19.95 MW gross capacity results in the 16.57 MW net capacity claimed by Ormesa. The facility also uses 3.24 MW of electricity for extraction of the geothermal fluids from the wells and for transportation of the geothermal fluids from the wells to the facility. In addition, the facility uses 1.35 MW of electricity for reinjection of the geothermal fluids.

¹ Ormesa LLC, 107 FERC ¶ 61,043 (2004) (April Order).

3. In the April Order, the Commission recertified Ormesa's facility as a 15.22 MW net capacity small power production facility. The Commission found that, consistent with the decision in *Geo East Mesa Limited Partnership*,² the power for the extraction and transportation of geothermal brine is not a necessary and integral part of the production process and, therefore, not auxiliary load. Accordingly, the power to do this did not need to be subtracted from the gross capacity. However, the Commission concluded that the 1.35 MW used by Ormesa to reinject the fuel is part of the auxiliary load of Ormesa's facility and thus should be deducted from the gross capacity of the facility.

Requests For Rehearing and Other Pleadings

4. Ormesa filed a timely request for rehearing arguing that the Commission failed to provide a rational explanation in the April Order for the finding that the electric power used for reinjection of the geothermal fluid is part of the auxiliary load of Ormesa's facility. In addition, it argues, the Commission erred in rejecting its answer, which presented evidence that reinjection of geothermal brine is not "necessary and integral" to the facility's power production process. Thus, Ormesa maintains, the Commission erred in certifying its facility as a 15.22 MW qualifying small power production facility, rather than a 16.57 MW facility.

5. Southern California Edison (SCE) also filed a timely request for rehearing. It argues that the Commission erred in the April Order by permitting sales in excess of the facility's net output where the output consists solely of power from other cogeneration or small power production facilities. SCE contends that this policy has significant statutory and administrative implications. SCE also argues that the Commission erred by not overturning the decision in *Geo Mesa* that the extraction and transportation of the facility's geothermal brine are a "necessary and integral" part of the power production process.

6. On May 17, 2004, Geothermal Energy Association (GEA) filed a motion to intervene out-of-time and request for rehearing.

² 55 FERC ¶ 61,255 (1991) (*Geo Mesa*).

Discussion

Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), we will deny the motion to intervene out-of-time filed by GEA. When late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and burden upon the Commission of granting the late intervention may be substantial. Thus, movants bear a higher burden to demonstrate good cause for granting such late intervention.³ GEA has not met this higher burden of justifying its late intervention.

8. In light of our decision to deny GEA's late motion to intervene, we will dismiss GEA's request for rehearing. Because GEA is not a party to this proceeding, it lacks standing to seek rehearing of the April Order under the Federal Power Act and the Commission's regulations.⁴

Analysis

A. Sales in Excess of Net Output

9. SCE argues that the Commission effectively adopted a new policy in the April Order by stating that Ormesa may sell power in excess of the facility's net output without jeopardizing its QF status, where the output consists solely of power purchased from other cogeneration or small power production facilities. SCE contends that this new policy is based entirely on *dicta* from *Connecticut Valley Electric Company, Inc. v. Wheelabrator Claremont Company, L.P., et al.*⁵ and *Turner Falls Limited Partnership*⁶ that has never been considered in any factual context, including this proceeding. It argues that the Commission's finding undermines the Public Utility Regulatory Policies Act of 1978's⁷ requirement that only QF generation is subject to mandatory purchase by

³ See, e.g., *Midwest Independent Transmission System Operator, Inc.*, 102 FERC ¶ 61,250 at P 7 (2003).

⁴ 16 U.S.C. § 8251(a) (2000); 18 C.F.R. § 385.713(b) (2004).

⁵ 82 FERC ¶ 61,116 at 61,418 & n.17, *order on reh'g*, 83 FERC ¶ 61,136 at 61,612 (1998) (*Connecticut Valley*).

⁶ 55 FERC ¶ 61,487 at 62,667 (1991) (*Turner Falls*).

⁷ 16 U.S.C. § 824a-1 (2000).

utilities, because neither a purchasing utility nor the Commission have effective means to verify that the additional power was purchased from a source that meets all of a QF's status requirements. The problem is further compounded, SCE argues, by the fact that the Commission's finding does not appear to limit the QF to supplemental purchases or transfers from only a single other QF.

10. We disagree with SCE that the April Order announced a new policy. In the April Order, we cited *Connecticut Valley* in which the Commission stated that a QF would lose its QF status if it sold power in excess of its net output unless the incremental sale consisted of power solely from cogeneration or small power production facilities. Thus, in the April Order, we found that Ormesa would be permitted to sell an additional 1.35 MW from its facility without losing its QF status if that additional 1.35 MW were purchased from another QF. Contrary to SCE's assertions, the statements taken from *Connecticut Valley* were not merely *dicta*. As the discussion in *Connecticut Valley* indicates,⁸ the prohibition against a QF's selling in excess of its net output derives from the definitions in the statute, which provide that a qualifying facility be "owned by a person not primarily engaged in the generation or sale of electric power (*other than electric power solely from cogeneration facilities or small power production facilities*)."⁹ Accordingly, we will deny rehearing of this issue.

B. Auxiliary Load

11. SCE argues that the Commission erred by finding that the electrical power used to extract brine is not part of station use, consistent with its prior determination in *Geo Mesa*. Instead, SCE contends, the Commission should have overturned *Geo Mesa* and should find that the extraction load is an auxiliary load of the facility. SCE contends that, in *Geo Mesa*, the Commission erred in equating brine with consumable fuel and concluding that the extraction of brine was not essential to the geothermal power production activity.

12. We will deny rehearing of this issue. SCE raises no new arguments on rehearing and the Commission has already fully responded to SCE's arguments in the April Order.¹⁰

⁸ *Connecticut Valley*, 82 FERC at 61,418 & n.17, discussing *Turner Falls*, 55 FERC at 62,667.

⁹ 16 U.S.C. §§ 796 (17)(C)(ii), 18(B)(ii) (2000) (emphasis added).

¹⁰ See April Order, 107 FERC ¶ 61,043 at P 18-20.

13. Ormesa argues that the Commission should reverse the April Order and find that the electric power used to *reinject* brine is not necessary and integral to the power production process and, thus, is not part of the Ormesa facility's auxiliary load. According to Ormesa, reinjection pumping is equivalent to extraction and transportation pumping. Therefore, it argues, the rationale in *Geo Mesa* that pumping energy used for extraction and transportation is not a "necessary and integral" part of the production process applies equally to reinjection pumping.

14. We disagree. As we stated in the April Order, following the removal of heat from the brine (to heat the isopentane), the brine is no longer fuel, but is effectively spent fuel which must be disposed of, and here is disposed of by reinjection. The disposition of the spent fuel is a "necessary and integral" part of the power production process and thus, part of station use not available for sale.

C. Answers to Protests

15. Ormesa argues that the Commission erred in rejecting its answer, which, it argues, provided evidence to show, in response to arguments raised by SCE, that the geothermal brine is not a working fluid.

16. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), provides that an answer may not be made to a protest unless otherwise ordered by the decisional authority. The Commission exercised its discretion and determined not to accept Ormesa's answer.¹¹ Ormesa did not persuade us to do otherwise earlier, and has not persuaded us to do otherwise now.

The Commission orders:

Ormesa's and SCE's requests for rehearing of the April Order are hereby denied.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

¹¹ See *Power Company of America, L.P. v. FERC*, 245 F.3d 839 (D.C. Cir. 2001) (court gave deference to Commission's application of its own procedural rule).