

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Calpine Newark, LLC

Docket Nos. EL03-211-000
and QF86-891-005

ORDER GRANTING LIMITED WAIVER OF OPERATING AND EFFICIENCY
STANDARDS

(Issued October 23, 2003)

1. This order addresses a request by Calpine Newark, L.L.C (Calpine or Applicant) for a limited waiver of the Commission's operating and efficiency standards¹ applicable to the cogeneration facility for calendar years 2003 and 2004. Calpine's request for a limited waiver of the qualifying facility (QF) operating and efficiency standards is triggered by the loss of its thermal host. As a result, the Steam Agreement between Applicant and its steam host has been terminated. Applicant states that it expects to be in

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 Corporation*, 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) (2002). 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.

compliance with the Commission's regulations by the end of 2004. As discussed below, the Commission will grant Calpine's request.

Background

Factual Background

2. The 60 MW base load cogeneration facility (Facility) is located in Newark, New Jersey. The facility consists of a combustion turbine generator, a waste heat recovery steam generator, and an extraction/condensing steam turbine generator.² The Facility sells its electric power output to Jersey Central Power & Light Company (Jersey Central) under a Power Purchase Agreement (PPA).

Request for Waiver

3. On July 11, 2003, Calpine filed an application requesting that the Commission waive the operating and efficiency standards for calendar years 2003 and 2004, to enable it to establish an alternative thermal host. The Facility began commercial operation in 1990 and since then has met the Commission's operating and efficiency standards. Calpine states that, on June 4, 2003, it received written notice that its thermal host, the Newark Boxboard Company's paper mill, was going to shut down within the next 30 to 90 days. As a result of the closure of the paper mill, the steam agreement between Calpine and Newark Boxboard will terminate. Calpine states that when the paper mill shuts down it will not have a steam host.

4. Calpine states, however, that it has begun the process of finding a new thermal host to replace Newark Boxboard and is optimistic that it will be successful in doing so. Calpine states that it has had discussions with Graver Technologies (Graver), a company located adjacent to its facility, and that Graver has expressed strong interest in purchasing distilled water, process steam, and heating steam from the facility in sufficient quantities that Calpine will be able to satisfy the Commission's operating and efficiency standards. Calpine states that Graver produces ion exchange resins and would use distilled water and process steam in its manufacturing process and would use heating steam to heat its facilities. Calpine states that, to serve this thermal host, it will need to install water distillation equipment and three pipelines from its facility to Graver (one for water, one for steam, and one for condensate return).

² The facility was certified as a QF in 1986. O'Brien Energy Systems, Inc., 37 FERC ¶ 62,031 (1986). Notices of self-certifications were filed on June 20, 1988, April 29, 1996, July 9, 1999, and December 16, 2002.

5. Calpine seeks a limited waiver, to allow sufficient time for it to: (1) finalize the contractual arrangements with Graver; and (2) to install and start up the necessary equipment and piping to allow for the production and delivery of distilled water, process steam, and heating steam to Graver. Calpine anticipates being able to achieve this by the end of 2004, thereby remedying the unexpected events that were outside its control.

Notice, Interventions and Protests

6. Notice of the Applicant's filing was published in the Federal Register, 68 Fed. Reg. 44,071 (2003), with comments, protests, and interventions due on or before August 11, 2003. On August 11, 2003, Jersey Central Power & Light Company (Jersey Central) filed a motion to intervene and protest. Jersey Central states that its power purchase agreement with Calpine will not terminate until the year 2016 and Calpine is required to maintain its QF status during this period. Jersey Central states that it is concerned that Calpine has not sufficiently supported its request for waiver. For example, Jersey Central points out that Calpine has not provided any support in the form of memoranda, letters or other communications with the proposed new thermal host, Graver. Jersey Central also expresses concern that Calpine's petition is silent with respect to any back-up plans it might have in the event Graver does not become the facility's thermal host. Jersey Central asks that "due consideration be given to the concerns that Jersey Central has raised with respect to [Calpine's] waiver request."

Discussion

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, the timely, unopposed motion to intervene serves to make Jersey Central 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 any calendar year period." 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."³ 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 the goal of the Public Utility Regulatory Policies Act of

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

1978 (PURPA) of encouraging cogeneration and the development of alternative generation technologies.⁴

9. Balancing the relevant factors, we will grant Calpine's request for waiver. The need for waiver is the result of events outside of Calpine's control, *i.e.*, the expected loss of Calpine's current thermal host and the resulting need for a new thermal host. From Calpine's petition, it appears that Calpine will be able to replace its thermal host by the end of 2004. Calpine's request was timely because it sought waiver as soon as it knew that its current thermal host was planning to shut down, and well before the end of the calendar year in which it may first be needed. While Calpine may fail to meet the Commission's operating and efficiency standards for a short period, the many years during which it has, and intends to again, 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. Therefore, we will grant waiver for a limited period of time, for calendar years 2003 and 2004, in order to give Calpine the opportunity to remedy the circumstances which have led to its failure to meet the operating and efficiency standards.

10. Jersey Central expresses concern that Calpine's efforts to replace the prior thermal host with Graver may not come to fruition. Jersey Central's concerns are speculative. If, however, Calpine is unable to replace its thermal host and achieve compliance with the Commission's operating and efficiency standards following the waiver period, we will address that circumstance at that time.

The Commission orders:

Calpine's request for temporary waiver of the operating and efficiency standards for calendar years 2003 and 2004, 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)

Linda Mitry,
Acting Secretary.

⁴ See, e.g., Oildale Energy LLC, 103 FERC ¶ 61,060 (2003); Lake Cogen, Ltd., 101 FERC ¶ 61,138 (2002); Kamine/Besicorp 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.