

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Santa Rosa Energy LLC

Docket Nos. EL03-206-000  
and QF97-138-003

ORDER GRANTING LIMITED WAIVER OF OPERATING AND EFFICIENCY  
STANDARDS

(Issued October 24, 2003)

1. This order addresses a request by Santa Rosa Energy LLC (Santa Rosa or Applicant) for a limited waiver of the Commission's operating and efficiency standards<sup>1</sup> applicable to the cogeneration facility from April 2, 2002 through December 31, 2003. Santa Rosa's request for a limited waiver of the qualifying facility (QF) operating and efficiency standards is triggered by operational difficulties during start-up and testing of

---

<sup>1</sup> 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. Id.

the facility and the loss of its current thermal host due to its bankruptcy. Applicant expects to be in compliance with the Commission's regulations from year 2004 onward. As discussed below, the Commission will grant Santa Rosa's request.

## **Background**

### **Factual Background**

2. The 250 MW topping-cycle natural gas-fired facility is located in Pace, Florida, and will consist of one combustion turbine generating unit, one separately-fired heat recovery boiler and one extraction/condensing steam turbine generating unit.<sup>2</sup> According to Santa Rosa, the facility has not yet begun commercial operations, but is in its start-up and testing stages.

### **Request for Waiver**

3. On June 24, 2003, Santa Rosa filed an application requesting that the Commission grant it waiver of the operating and efficiency standards from April 2, 2002 through December 31, 2003. Santa Rosa states that during the facility's start-up and testing stages it has encountered two problems which have prevented it from satisfying the Commission's operating and efficiency standards. The first is that the facility's steam turbine failed to meet its minimum performance requirements during testing and is being repaired. The second is that the facility's steam host, Sterling Fibers, Inc. (Sterling Fibers) filed for bankruptcy protection and the service agreement for steam between Santa Rosa and Sterling Fibers was terminated by the bankruptcy court.

4. Santa Rosa states that it is implementing plans to enable it to meet the Commission's operating and efficiency standards. Applicant seeks a limited waiver, to allow it time: (1) to repair or replace the equipment supplier's defective product that was discovered during testing; and (2) to finalize arrangements with a new steam host to replace the initial steam host that was forced to terminate its purchase obligation due to financial difficulties. Applicant anticipates achieving both goals by the end of 2003, thereby remedying the circumstances that have led to its failure to meet the Commission's operating and efficiency standards.

---

<sup>2</sup> The facility was first self-certified as a qualifying cogeneration facility (QF) on August 29, 1997, in Docket No. QF97-138-000. The facility was then certified on April 5, 2000, see Santa Rosa Energy LLC, 91 FERC ¶ 62,008 (2000), and self-recertified on November 8, 2000, in Docket No. QF97-138-002.

### **Notice, Interventions and Protests**

5. Notice of the Applicant's filing was published in the Federal Register, 68 Fed. Reg. 40,653 (2003), with comments, protests, and interventions due on or before July 24, 2003. None was filed.

### **Discussion**

6. 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."<sup>3</sup> 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.<sup>4</sup>

7. Balancing the relevant factors, we will grant Santa Rosa's request for waiver. The non-compliance with the Commission's operating and efficiency standards occurred during the restart-up and testing phase of Santa Rosa's facility. Santa Rosa's generator was first fired on a simple cycle basis in April 2002, and first tested in a combined cycle mode (cogeneration mode) in June 2002. Unacceptable vibration levels were detected during the June 9 test. The manufacturer, General Electric Corporation, attempted to repair the facility. However, problems with the steam turbine generator continued. Santa Rosa believes that the problems will be remedied, either by repair or replacement of the generator, or through dispute resolution with General Electric Corporation, in time for the facility to meet the Commission's operating and efficiency standards for 2004. In addition, Santa Rosa's original thermal host filed for bankruptcy and curtailed its operations. The bankruptcy court approved rejection of the thermal agreement between the thermal host and Santa Rosa, terminating the steam host's obligation to purchase steam from Santa Rosa. New owners have acquired the property of the steam host, and Santa Rosa has negotiated a new contract with the new owners. The need for waiver is

---

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

<sup>4</sup> See, e.g., Oildale Energy LLC, 103 FERC ¶ 61,060 (2003); 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.

thus the result of events outside of Santa Rosa's control, i.e., problems with the steam turbine and the loss of the original thermal host. Santa Rosa's request for waiver was timely. During calendar year 2002, only minimal amounts of energy were produced by the facility during testing. Santa Rosa filed its request for waiver in 2003 as soon as it became apparent that the problems noted above would prevent the facility from meeting the operating and efficiency standards in calendar year 2003. A grant of limited waiver is also consistent with the goal of the Public Utility Regulatory Policies Act of 1978 (PURPA) of encouraging cogeneration and alternative generation technologies. Finally, there is no opposition to the request for waiver. We, therefore, will grant waiver for a limited period of time, for calendar years 2002 and 2003 in order to give Santa Rosa the opportunity to remedy the circumstances which have led to the failure to meet the operating and efficiency standards.<sup>5</sup>

The Commission orders:

Santa Rosa's request for temporary waiver of the operating and efficiency standards, 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.

---

<sup>5</sup> While Santa Rosa has requested waiver from April 2, 2002 to December 31, 2003, we will grant waiver for the calendar years 2002 and 2003, because compliance with the operating and efficiency standard regulations is measured on a calendar year basis.