

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Pasco Cogen, Ltd.

Docket Nos. QF92-156-006
EL04-140-000

ORDER GRANTING LIMITED WAIVER OF OPERATING STANDARD

(Issued November 19, 2004)

1. This order addresses a request by Pasco Cogen, Ltd. (Pasco) for a limited waiver of the Commission's qualifying facility (QF) operating standard¹ for its 109-MW cogeneration facility in Dade City, Florida. This request is being made for calendar years 2004 and 2005. Pasco's request results from the temporary loss of its steam host, Pasco Beverage Company (Pasco Beverage), a producer of fruit juice and coffee products. The steam host has sold this business and will cease all production operations by December 2004. Pasco is actively engaged in negotiations with alternative steam hosts, and anticipates that these efforts will result in Pasco satisfying the Commission's QF standards by 2006. As discussed below, the Commission will grant Pasco's request.

¹ The operating and efficiency standards are contained in section 292.205 of the Commission's regulations. *See* 18 C. F. R. § 292.205 (2004). 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).

Background

Factual Background

2. Pasco's 109 MW cogeneration facility is located in Dade City, Florida. The facility consists of two combustion turbine generators, two supplementally-fired heat recovery boilers and an extraction/condensing steam turbine generator.

3. According to Pasco, the facility began operations in 1993 and thereafter operated as a QF continuously, meeting the operating and efficiency standards of the Public Utility Regulatory Policies Act of 1978 (PURPA) through calendar year 2003.² During this time, Pasco provided steam to the Pasco Beverage Company, or its predecessor, for the production and packaging of chilled and frozen fruit juice products for the retail and foodservice market, and frozen coffee products for the foodservice market.

Request for Waiver

4. On September 30, 2004, Pasco filed an application requesting that the Commission waive the operating standard for calendar years 2004 and 2005. Pasco states that in November 2003 it learned that Pasco Beverage, its steam host, would be curtailing its food processing operations. Pasco immediately began seeking a replacement host in order to avoid the need for a waiver of the Commission's efficiency standards. At the same time, the steam host continued to consume enough energy to meet Commission operating standards for the first two quarters of 2004. However, by the third quarter of 2004 and continuing into the fourth quarter of this year, the steam host's consumption of energy has fallen behind the Commission's operating and efficiency standards.

5. Pasco states that it did not file an application for waiver of the operating standard until now because it believed its negotiations with potential substitute steam hosts would make a waiver unnecessary. During the first half of 2004, Pasco began supplying two small thermal hosts with a limited amount of steam, but neither of these new steam hosts utilizes enough energy to replace the amount of steam consumed by Pasco Beverage. By the third quarter of 2004, Pasco began negotiating with Florida Southwestern Environmental, a water recovery and wastewater treatment business. This company intends to treat leachate from ash piles at solid waste incinerators owned and operated by Polk and Lake Counties in Florida. Pasco had anticipated providing energy to this steam host by the middle of 2004, which would have met the efficiency standards for the year.

² The facility was certified in 1992 as a qualifying facility, and recertified in 1995 and 1997. Pasco filed notices of self-recertification in 1999 and 2004. *Pasco Cogen, Ltd.*, 60 FERC ¶ 62, 247 (1992); *Pasco Cogen Ltd.*, 80 FERC ¶ 62, 292 (1997).

These plans were disrupted by recent hurricanes which caused damage in these two Florida Counties. Pasco anticipates providing energy to this steam host at the end of this calendar year. Finally, Pasco has begun the process of constructing a water distillation facility. It expects to award a construction contract by November 2004, and to have a fully operational water distillation plant by the second quarter of 2005. Pasco is presently engaged in negotiations with potential purchasers of this distilled water.

Notice, Interventions and Protests

6. Notice of Pasco's filing was published in the *Federal Register*, 69 Fed. Reg. 60,848 (2004), with comments, protests and interventions due on or before October 21, 2004. None was filed.

Discussion

7. The Commission's regulations³ 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."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; whether non-compliance was caused by the temporary loss of the steam host; 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

³ See n.1 *supra*.

⁴ 18 C.F.R. § 292.205 (c) (2004); *see also City of Fremont v. FERC*, 336 F.3d 910, 916-17 (9th Cir. 2003).

⁵ *See, e.g., Calpine King City Cogen, LLC*, 108 FERC ¶ 61,149 (2004); *Gaylord Container Corp.*, 107 FERC ¶ 61,203 (2004); *Oildale Energy LLC*, 103 FERC ¶ 61,060 (2003); *Kamine/Besicorp Alegany 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 ¶61,790-91 & n.7 (1995), and the cases cited therein.

8. Balancing the relevant factors, we will grant Pasco's request for waiver. The need for waiver is the result of events outside of Pasco's control, *i.e.*, an unforeseeable cessation of the steam host's business and, secondarily, the inability of Pasco to immediately secure a substitute steam host. While Pasco did not apply for a waiver at the end of 2003, when it first learned of its steam host's plans to sell its products packaging business, it anticipated finding other steam hosts within sufficient time to continue meeting the Commission's 2004 standards. During the first two quarters of 2004, it began supplying two new and smaller steam hosts with energy even while its original steam host was still operating.

9. During the second half of 2004, its original steam host's business continued to decline, and its two new steam hosts energy needs were not sufficient to meet the required standards. Pasco anticipated that a third steam host, a waste water treatment facility, would consume enough energy to meet the Commission's operating standard for calendar year 2004, but this potential steam host's business activities were interrupted by hurricane damage. Pasco anticipated that the thermal consumption by the waste water treatment facility alone would not be adequate to meet the operating standard for calendar year 2005 and beyond. Therefore, Pasco is now actively engaged in building a water distillation plant that is expected to be completed by mid-2005. Pasco expects that the combination of the steam hosts will be taking enough steam by the end of 2005 that the facility will satisfy the operating standard for calendar year 2006 and thereafter. While Pasco's facility may fail to comply with the Commission's operating standard for a short period, Pasco has operated in compliance with the technical criteria for QF status for over 10 years producing reliable energy at substantial savings. After a short waiver, Pasco will continue to meet the Commission's operating standard once the new steam hosts are able to purchase sufficient steam from Pasco. A grant of limited waiver is thus consistent with the PURPA goal of encouraging cogeneration and alternative generation technologies.

The Commission orders:

Pasco's request for temporary waiver of the operating standard is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.

