

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

PowerSmith Cogeneration Project Limited Partnership

Docket Nos. EL07-17-000
QF86-36-003

ORDER GRANTING LIMITED WAIVER OF OPERATING AND EFFICIENCY
STANDARDS

(Issued January 18, 2007)

1. This order addresses a request by PowerSmith Cogeneration Project Limited Partnership (PowerSmith) for a limited waiver of the Commission's Qualifying Facility (QF) operating and efficiency standards¹ for its 110 MW cogeneration facility. This request is being made for calendar years 2007 and 2008. PowerSmith's request results from the loss of its current steam host, Bridgestone/Firestone North American Tire, LLC (Bridgestone). The steam host will close its plant by December 2006. PowerSmith is actively engaged in negotiations with alternative steam hosts, and anticipates that these efforts will result in PowerSmith satisfying the Commission's QF standards by the middle or end of the year 2008. As discussed below, the Commission will grant PowerSmith's waiver request.

I. Background

A. Factual Background

2. PowerSmith owns and operates a 110 MW topping-cycle cogeneration facility (Facility) located in Oklahoma City, Oklahoma. The Facility was certified by the

¹ The operating and efficiency standards are contained in section 292.205 of the Commission's regulations. See 18 C.F.R. § 292.205 (2006). 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 efficiency standard requires that the useful power output of the facility plus one-half the useful thermal energy output must, during the applicable period, be no less than 42.5 percent of the total energy input of natural gas and oil to the facility or no less than 45 percent if the useful thermal energy output is less than 15 percent of the facility's total energy output.

Commission on December 30, 1985 as a qualifying cogeneration facility² and became operational in 1989.

3. Since becoming operational the Facility has provided useful thermal output in the form of steam to Bridgestone, an unaffiliated entity, pursuant to a long-term Steam Supply Agreement. Bridgestone uses the steam provided by PowerSmith in the manufacture of tires at its Dayton Tire Plant.

B. Request for Waiver

4. On November 16, 2006, PowerSmith filed a petition for limited waiver of the Commission's operation and efficiency standards set forth in 18 CFR § 292.205(a) for the calendar years 2007 and 2008. PowerSmith states that waiver is necessary due to the imminent loss of its thermal host, Bridgestone. PowerSmith states that Bridgestone, its thermal host since 1989, announced on July 13, 2006, that it would wind down operations of its Dayton Tire Plant during the fall of 2006 and close by December 31, 2006, as a result of financial difficulties associated with low-priced foreign competition and shrinking markets for its products. PowerSmith adds that, consequently, its Steam Supply Agreement with Bridgestone will terminate, leaving PowerSmith without a thermal host and unable to meet the Commission's QF operating and efficiency standards.

5. PowerSmith states that it has had preliminary discussions with a food processing company that indicates interest in purchasing steam for use in food processing, cleaning and sterilization of its food preparation areas, and cooling. PowerSmith states that preliminary negotiations indicate the amount of steam needed well exceeds the minimum necessary for PowerSmith to meet the Commission's QF operating and efficiency values. PowerSmith further states that it has begun negotiating the engineering design for delivery of steam and the right-of-way for the installation of a pipeline to deliver steam to the food processing company's plant.

6. PowerSmith states that, concurrently, it is conducting discussion with two other existing unaffiliated steam users and is exploring the possibility of adding them as additional thermal hosts or, alternatively, as the principal thermal hosts in the event that discussions with the food processing plant fail.

7. PowerSmith estimates that finalization of a steam agreement and other contractual arrangements, such as the right-of-way for a delivery pipeline, will last through summer of 2007. PowerSmith notes that once the agreements are finalized, the installation of the pipeline for steam delivery will take between six and twelve months. PowerSmith states

² *Firestone Cogeneration Joint Venture*, 33 FERC ¶ 62,481 (1985). The Commission recertified the Facility as a qualifying facility on February 18, 1988. *PowerSmith Cogeneration Project, L.P.*, 42 FERC ¶ 62, 121 (1988).

that, given this timeline, it anticipates being able to start delivery to the new host of the amounts of steam necessary to meet QF standards by the middle or end of year 2008. PowerSmith adds that, in the meantime, it will not be able to deliver steam and thus will be unable to meet the operating and efficiency standards for years 2007 and 2008.

8. PowerSmith argues that waiver of the operating and efficiency standards is warranted because the request is: (a) compelled by an event not within PowerSmith's control; (b) made at the earliest time possible; (c) only for a limited waiver; (d) consistent with the goals of the [Public Utility Regulatory Policies Act of 1978](#) (PURPA); (e) consistent with the Commission's requirement that the facility provide significant energy savings, and (f) in the public interest.

9. PowerSmith argues that a two-year waiver is reasonable given the need to conclude negotiations with potential thermal host(s), finalize the applicable contractual arrangements, and install the necessary facilities for delivery of the steam to the new host(s). PowerSmith notes that installation of the facilities, alone, is expected to take up to a year.

II. Notice and Interventions

10. Notice of this filing was published in the *Federal Register*, 71 Fed. Reg. 69,207 (2006) with interventions, protests, or comments due on or before December 18, 2006. Oklahoma Gas and Electric Company (OG&E) filed a motion to intervene but did not object to the requested waiver and raised no issues.

III. Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the timely, unopposed motion to intervene serves to make OG&E a party to this proceeding.

B. Request for Waiver

12. The Commission's regulations 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

³ 18 C.F.R. § 292.205(c) (2006); *see also* 16 U.S.C. § 825g (2000) (general authority to waive regulations as the Commission "may find necessary or appropriate").

in a number of cases based on a balancing of 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 submission of the waiver request; whether non-compliance was the result of an unexpected and one time operational event outside the applicant's control; 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.⁴

13. Taking into account all the relevant factors, we will grant PowerSmith's request for waiver. First, the need for waiver of the Commission's operating and efficiency standards is caused by unexpected events outside of PowerSmith's control – the unexpected loss of its thermal host Bridgestone due to Bridgestone's financial difficulties.

14. The waiver is for a limited amount of time, two calendar years, which is reasonable given the time required to conduct negotiations, finalize a contract, and install and start-up equipment for delivery of steam to the new host. PowerSmith has indicated that it is actively engaged in negotiations with potential new thermal hosts. While the Commission has refused requests for waivers that would last for three calendar years,⁵ it has granted waivers for a two year period where, as in this case, the generator is actively seeking a substitute host.⁶

15. PowerSmith has not received an earlier waiver and this waiver request is unopposed and timely. The filing was made prior to losing the host and in advance of the period for which the waiver is needed. Finally, while PowerSmith may fail to meet the Commission's operating and efficiency standards for a short period, the many years during which it has operated and the years it 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.

⁴ 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); *Gordonville Energy, L.P.*, 72 FERC ¶ 61,160 at 61,790–91 & n.7 (1995), and the cases cited therein.

⁵ *Pittsfield Generating Company, L.P.*, 91 FERC ¶ 61,064 at 61,122 (2000).

⁶ *Decatur Energy Center, LLC*, 110 FERC ¶ 61,045. at 61,177 (2005); *Pasco Cogen, Ltd.*, 109 FERC ¶ 61,171, at 61,840–41(2004); *Calpine Newark, LLC*, 105 FERC ¶ 61,104 at 61,612–13 (2003).

16. Accordingly, we will grant PowerSmith's waiver for a limited period of time (calendar years 2007 and 2008).

The Commission orders:

PowerSmith's request for limited waiver of the operating and efficiency standards for calendar years 2007 and 2008, 18 C.F.R. § 292.205 (a) (2006), is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.