
FEDERAL ENERGY REGULATORY COMMISSION



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NEWS RELEASE

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COMMISSION FINALIZES COGENERATION FACILITIES RULEMAKING; OWNERSHIP LIMITS ELIMINATED, EFFICIENCY UNDERSCORED

The Federal Energy Regulatory Commission today finalized revised regulations for cogeneration and small power production facilities. The rule eliminates ownership restrictions for both new and existing facilities and ensures that the thermal output of cogeneration facilities is used in a productive and beneficial manner.

The final rule implements section 1253 of the Energy Policy Act of 2005, which amended section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA). Today's rulemaking amends Commission regulations to ensure that new qualifying cogeneration facilities (QFs) use thermal output in a productive and beneficial manner, and that the electrical, thermal, chemical and mechanical output of new cogeneration QFs is used fundamentally for industrial, commercial and institutional purposes. The final rule thus supports development of new cogeneration facilities that truly conserve energy.

"The Energy Policy Act provisions relating to qualifying facility thermal efficiency reflect a concern about past abuse in PURPA with respect to sham transactions and PURPA 'machines'. Our new rules should limit the potential for abuse under PURPA, curtail sham transactions, and prevent PURPA machines," Chairman Joseph T. Kelliher said.

Cogeneration facilities produce electricity and another form of useful thermal energy, such as heat or steam, for industrial and commercial heating or cooling purposes.

When PURPA was enacted in 1978, ownership of QFs was limited to persons not primarily engaged in the generation or sale of electric power. As a result of today's regulatory changes, a QF may now be largely or wholly owned by traditional utilities.

The Commission received more than 60 comments or requests for clarification on its proposed rule issued October 11, 2005. Today's rule adopts some of that proposal as

well as many of the recommendations received in comments on the proposal.

Today's final rule finds the "productive and beneficial" standard was intended to require the Commission to take a closer look at the use of thermal output from new cogeneration facilities and to weed out those uses of thermal output that are essentially "shams." The Commission will accordingly no longer consider the "presumptively useful" standard to be irrebuttable. In determining whether the thermal output is used in a "productive and beneficial manner," the Commission will consider factors such as whether the product produced by the thermal energy is needed and whether there is a market for the product.

The new rule applies a rebuttable presumption that new cogeneration facilities of 5 megawatts capacity or smaller satisfy the requirement that the thermal output of the new cogeneration facility is used in a productive and beneficial manner.

Today's final rule adopts a case-by-case approach for determining that the output of new QFs is used "fundamentally" for industrial, commercial or institutional purposes. This will provide for the "flexibility required to appropriately address various facilities and circumstances," the Commission said. At the same time, the Commission established a safe harbor within which certain facilities will be presumed to comply with the regulatory requirements.

Similarly, if a thermal host existed prior to the development of a new cogeneration facility, whose thermal output will supplement the thermal source previously used by the thermal host, the thermal output will be presumed to meet the new statutory standard.

The final rule also applies a rebuttable presumption that new cogeneration facilities of 5 megawatts capacity or smaller satisfy the requirement that the output is used fundamentally for industrial, commercial or institutional purposes.

Applicants for QF status for facilities that will sell their electrical output must demonstrate that at least 50 percent of the aggregated annual energy output of the facility will be used for industrial commercial, institutional or residential purposes, and not sold to a utility, in order to qualify under the safe harbor provisions.

The final rule also:

- Retains the option for new cogeneration facilities to self-certify as QFs;
- Partially eliminates the exemption from the rate filing provisions of the Federal Power Act previously granted QFs for sales from facilities larger than 20 megawatts capacity that are not made pursuant to a state regulatory authority's implementation of PURPA;

- Retains the ownership disclosure required on the FERC Form 556; and
- Clarifies that there is a rebuttable presumption that an existing QF does not become a “new” cogeneration facility when it files an application for recertification reflecting a change in ownership or operation.

Existing operating and efficiency standards for new oil and gas cogeneration facilities will be retained, the Commission said, while new efficiency standards for new coal-burning facilities will not be imposed at this time.

Answering concerns raised by some parties that QF self-certification may avoid the standards of the new rule, the Commission said that notices of self-certification or self-recertification will now be published in the Federal Register, which will “enhance the visibility of self-certification for interested parties.”

Section 1253 of the Energy Policy Act also amends PURPA by terminating the mandatory purchase and sale obligations in certain circumstances. The Commission proposed a January 19, 2006, rule on this section of EPAAct (Docket No. RM06-10).

Today’s final rule, *Revised Regulations Governing Small Power Production and Cogeneration Facilities*, takes effect 30 days after the rule’s publication in the *Federal Register* (www.gpoaccess.gov).

R-06-10