

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

KES Kingsburg, L.P.

Docket Nos. EL04-33-000
QF86-155-004

ORDER GRANTING LIMITED WAIVER OF EFFICIENCY STANDARD

(Issued March 3, 2004)

1. This order addresses a request by KES Kingsburg, L.P. (Kingsburg) for a limited waiver of the Commission's efficiency standard¹ applicable to the cogeneration facility (Facility) for calendar year 2003. Kingsburg's request for a limited waiver of the qualifying facility (QF) efficiency standard is triggered by a mechanical failure in Applicant's steam turbine. As a result, the continued use of the partially repaired steam turbine at reduced electrical output and the necessary outages to make repairs will reduce the Facility's efficiency. Applicant states that it expects to be unable to achieve compliance with the efficiency standard during calendar year 2003. Applicant states that

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 Corp.*, 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) (2003). 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.

it expects to be in compliance with the Commission's regulations for calendar year 2004. As discussed below, we will grant Kingsburg's request.

Background

Factual Background

2. The 34.5 MW topping/combined-cycle cogeneration facility is leased by Kingsburg and located in Kingsburg, California. The facility consists of a combustion turbine generating unit, a waste heat recovery steam generator, and an extraction-condensing steam turbine generating unit.² Kingsburg sells the electric output of the facility to Pacific Gas & Electric Company (PG&E). The facility sells its thermal output to Sun-Maid Growers of California (Sun-Maid) for use in Sun-Maid's raisin production business.

Request for Waiver

3. On December 8, 2003, Kingsburg filed an application requesting that the Commission waive the efficiency standard for calendar year 2003. Kingsburg states that on April 23, 2003 the facility's steam turbine experienced extremely high vibrations. Upon investigation, Kingsburg discovered that several blades in the turbine were broken and that the turbine rotor would also require significant repair. Applicant was informed by the manufacturer that the new blades could not be delivered for 10 to 12 weeks and that the necessary repairs would require the turbine to be out of service for approximately three months. In May 2003, Kingsburg made interim repairs to the turbine to return the facility to service in time for Northern California's peak demand season. Applicant shut down the facility for full repairs on September 26, 2003, with the goal of returning the Facility to full-operational service by November 15, 2003. However, on November 14, 2003, one day after the Facility was returned to service, one of the newly installed blades failed. Kingsburg plans to shut down the Facility to complete repairs of the turbine in Spring of 2004.

4. Kingsburg seeks a limited waiver of one year to give it time to make needed repairs and return to full pre-failure operational status. Despite the necessary outages that will be needed to make repairs, Applicant anticipates satisfying the Commission's

² The facility was certified as a QF in 1986. Kingsburg Cogen, 34 FERC ¶ 62,229 (1986). On January 2, 1990, Kingsburg submitted a notice of self-recertification to reflect an increase in the Facility's maximum net electric power production capacity to 34.5 MW and the transfer of ownership from Kingsburg Cogen to Kingsburg. GE Capital filed a notice of self-recertification on behalf of Kingsburg on December 21, 1990.

efficiency standard for calendar year 2004. Kingsburg asserts that the mechanical failures within Kingsburg's steam turbine were events outside of its control.

5. On January 30, 2004, Kingsburg filed a more detailed description of the events that lead to the mechanical failures within its steam turbine.

Notice, Interventions and Protests

6. Notice of the Applicant's filing and the supplemental information were published in the Federal Register, 68 Fed. Reg. 74,231 (2003) and 69 Fed. Reg. 6960 (2004), with comments, protests, and interventions due on or before February 13, 2004. A timely motion to intervene raising no substantive issues was filed by PG&E.

Discussion

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the timely, unopposed motion to intervene serves to make PG&E 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 PURPA's goal of encouraging cogeneration and the development of alternative generation technologies.⁴

9. Balancing the relevant factors, we will grant Kingsburg's request for waiver. The need for waiver is the result of events outside of Kingsburg's control, *i.e.*, an unforeseeable mechanical failure that occurred despite Kingsburg's monitoring and

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).

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

maintenance of the steam turbine that appears to be consistent with prudent utility practices. Kingsburg's request is timely because Kingsburg sought waiver promptly upon determining that it would likely fail to comply with the efficiency standard for 2003. While Kingsburg 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 year 2003, in order to give Kingsburg time to recover from the circumstances which have led to its failure to meet the operating and efficiency standards.

The Commission orders:

Kingsburg's request for temporary waiver of the efficiency standard, 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.