

130 FERC ¶ 61,254
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

March 30, 2010

In Reply Refer To:
Medical Area Total Energy Plant, Inc.
and New MATEP, Inc.
Docket No. QF83-334-001

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Dear Mr. Goroff:

1. On December 29, 2009,¹ you submitted, on behalf of Medical Area Total Energy Plant, Inc. (MATEP) and New MATEP, Inc. (New MATEP) (collectively Applicants) an application for recertification of the MATEP cogeneration facility (Facility) as a qualifying facility (QF)² and a request for expedited action.³ The Commission grants recertification of the qualifying status of the Facility, as more fully discussed below.
2. The Applicants state that the MATEP Facility is a 87.8 MW gross capacity (and 77.8 MW net capacity), topping-cycle cogeneration facility located in the Longwood Medical and Academic Area of Boston, MA, consisting of ten electric generators, four exhaust recovery heat boilers and three dual-fuel direct fired boilers. In addition, the plant has six electric drive chillers and two steam drive chillers for the production of

¹ The application was supplemented on January 6, 2010 to provide clarifying technical information about the Facility.

² The Facility was originally self-certificated as a qualifying cogeneration facility in Docket No. QF83-334-000 on June 30, 1983.

³ Companion applications were filed in Docket No(s). EC10-32-000, ER98-1922-006, and EL10-34-000.

chilled water. The Facility provides steam, chilled water and electric energy throughout the six hospital, biomedical and pharmaceutical research centers, and multiple Harvard Medical School teaching institutions that occupy the Longwood Medical and Academic Area.

3. Applicants state that MATEP is authorized to sell power under a market-based rate schedule, but that most of the Facility's electric and thermal energy is sold to its institutional hosts. Applicants state that the aggregate electric and thermal output available for commercial and institutional customers is 70.80 percent of the total energy output of the Facility. Also, Applicants assert electric output of the Facility in excess of the needs of the hospital and medical customers is sold to the ISO New England, Inc. (ISO-NE).

4. Notice of the filing was issued on January 4, 2010 in Docket No. QF10-229-000, with interventions and protests due on or before January 19, 2010. Subsequently, an errata notice was issued on January 22, 2010 to cancel Docket No. QF10-229-000 and correctly docket the proceeding as Docket No. QF83-334-001.

5. A timely motion to intervene and adverse comments were filed by Harvard Medical Collaborative, Inc. (HMC). Applicants filed an answer to HMC's comments on January 19, 2010. HMC filed a reply to Applicants' answer on February 2, 2010.

6. In its comments, HMC claims that the MATEP Facility should not be recertificated, but should be considered a "new" cogeneration facility pursuant to section 292.205(d) of the Commission's regulations,⁴ and additionally objects to Applicants' request for Commission action on an expedited basis. HMC contends that expansions and ownership changes implemented by MATEP since its original certification are substantial,⁵ and that MATEP failed to timely report these material changes to the Commission. For these reasons, HMC claims that a new certification for QF status needs to be filed with the Commission.

⁴ 18 C.F.R. § 292.205(d) (2009).

⁵ HMC states that when the Facility was built in 1980, MATEP was owned by the Presidents and Fellows of Harvard University (Harvard), and that AES subsequently purchased MATEP and its interest in the MATEP Facility from Harvard on June 1, 1998.

HMC argues that since 1983 the gross electric output of the Facility grew from 62 MW to 87.8 MW, and that MATEP has increased the number of generators from six to ten, added four exhaust recovery heat boilers, three dual fuel direct fired boilers, and six electric drive chillers, and changed the fuel source from No. 6 fuel oil to natural gas.

7. HMC also argues that instead of making necessary improvements to the local electric distribution infrastructure, that MATEP chose to expand its Facility. HMC alleges that MATEP's customers are captive customers, and therefore have been defraying the costs of the MATEP's substantial investment.

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answers unless otherwise ordered by the decisional authority. We are not persuaded to accept the Applicants answer and HMC's reply to the Applicants answer.

9. Under section 292.203(b) of the Commission's regulations,⁶ a facility is a QF if it meets the applicable operating and efficiency standards specified in section 292.205 of the regulations⁷ and has previously filed with the Commission a notice of self-certification of QF status or an application for Commission certification of QF status that has been granted. By definition, a cogeneration facility also must produce "forms of useful thermal output." *See* 18 C.F.R. § 292.202(c) (2009). As discussed below, we find that the MATEP Facility, notwithstanding HMC's objections, satisfies the requirements for QF status.

10. HMC argues that application constitutes a "new" cogeneration facility due to the material changes proposed in the application. The Commission disagrees. The Commission has found, in similar circumstances, that "the failure of an owner or operator of a facility to file a notice of self-recertification or an application for Commission recertification in connection with a change in facts relating to the facility does not, 'in and of itself,' affect the continuing status of the facility as a QF."⁸ The Commission stated that the basis for this conclusion is the Commission's regulation (18 C.F.R. § 292.207) stating that a facility is a QF if it meets the criteria in the regulations at 18 C.F.R. § 292.203, i.e., that the facility meets the applicable technical criteria for QF status, and that it has previously filed a notice of self-certification or application for Commission certification that has been granted. The Facility, as discussed below, meets the applicable technical criteria and has filed a notice of self-certification. The recertification requirements that HMC refers to, in fact, make clear that the Facility may

⁶ 18 C.F.R. § 292.203(b) (2009).

⁷ 18 C.F.R. § 292.205 (2009).

⁸ *See Mesquite Lake Associates, Ltd.*, 63 FERC ¶ 61,351 (1993) (*Mesquite Lake*).

continue to be a QF if circumstances change. Recertification provides the added benefit of assurance, but is not a prerequisite for QF status in the circumstances present here.⁹ Thus, HMC's argument has no merit.¹⁰

11. The Commission also finds that HMC's comments about captive customers defraying expansion costs are not relevant to whether the QF is a "new" facility as defined under the requirements of section 292.205(d) of the regulations.

12. According to Applicants, all of the electricity produced by the plant contributes to the sequential production of useful thermal output¹¹ in the form of steam which is sold to the plant's institutions and commercial customers and which produces chilled water which is also sold to the plant's institutions and commercial customers. The Commission finds that the Facility meets the requirements of section 292.202(c)¹² of the regulations for the use of thermal output.

⁹ As the Commission explained in *Mesquite Lake*, "[w]ithout invoking one of these two procedures [self-recertification or application for Commission recertification], the owner or operator of a cogeneration or small power production facility, as well as its lenders and customers, incurs uncertainty and needless risk of a Commission determination that the facility has not operated as a QF for some past period."

¹⁰ Moreover, while we have found that the Facility is not a "new" cogeneration facility that must satisfy the criteria for "new" cogeneration facilities, the Facility in fact satisfies those criteria, and HMC does not argue that it does not. The criteria for new cogeneration facilities are contained in 18 C.F.R. § 292.205(d) (2009). Pursuant to those criteria, a "new" cogeneration facility must show that the thermal energy output of the cogeneration facility is used in a productive and beneficial manner, and that the electrical, thermal, chemical and mechanical output of the cogeneration facility is used fundamentally for industrial, commercial, residential or institutional purposes and is not intended fundamentally for sale to an electric utility. The steam and chilled water delivered to the hospital and medical customers are used in a productive and beneficial manner. That 70 percent of the total energy output of the cogeneration facility is delivered to the hospital and medical customers demonstrates that the electrical, thermal, chemical and mechanical output of the cogeneration facility is used fundamentally for industrial, commercial, residential or institutional purposes and is not intended fundamentally for sale to an electric utility. We would thus recertify the facility were it subject to the "new" cogeneration facility criteria.

¹¹ 18 C.F.R. § 292.202(h) (2009).

¹² 18 C.F.R. § 292.202(c) (2009).

13. Based on the information provided by Applicants, the Commission finds the MATEP facility continues to satisfy the operating and efficiency standards established in section 292.205¹³ of the Commission's regulations.

14. Based on the demonstrations made that MATEP Facility meets the requirements for QF status, the Commission grants recertification of the qualifying status of the Facility, provided that it is operated in the manner described in this order and in the Application.¹⁴ To the extent that the QF fails to conform to any material facts or representations which form the basis of this order, this order may no longer be relied upon.¹⁵

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹³ 18 C.F.R. § 292.205 (2009).

¹⁴ Certification as a QF serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations. 18 C.F.R. Part 292 (2009). It does not relieve a facility of any other requirements of local, state or federal law, including those regarding siting, construction, operation, licensing, and pollution abatement. Certification does not establish any property rights, resolve competing claims for a site, or authorize construction.

¹⁵ 18 C.F.R. § 292.207(d) (2009).