

171 FERC ¶ 61,111
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick, Bernard L. McNamee,
and James P. Danly.

LSP-Whitewater Limited Partnership

Docket Nos. EL20-22-000
QF94-155-012

ORDER GRANTING PARTIAL WAIVER

(Issued May 12, 2020)

1. On February 13, 2020, pursuant to section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA),¹ LSP-Whitewater Limited Partnership (Whitewater) submitted a request for temporary waiver of the qualifying facility (QF) operating standard set forth in section 292.205(a)(1) of the Commission's regulations² for calendar years 2019 and 2020 with respect to Whitewater's cogeneration facility (Whitewater Facility).³ As discussed below, we grant the request for waiver for calendar year 2019 and dismiss without prejudice the request for waiver for calendar year 2020.

2. The Whitewater Facility is a 283.5 MW dual fuel combined-cycle cogeneration plant located in Whitewater, Wisconsin. On November 14, 1994, Whitewater's facility (Whitewater Facility) was certified as a qualifying cogeneration facility.⁴ Whitewater explains that, since commencing commercial operation in 1997, the Whitewater Facility's electrical output has been sold to WE Energies under a long-term power purchase agreement and its useful thermal output, in the form of steam, has been sold to the State of Wisconsin Department of Administration pursuant to a steam supply agreement, which

¹ 16 U.S.C. § 824a-3 (2018).

² 18 C.F.R. § 292.205(a)(1) (2019).

³ Whitewater states that the Whitewater Facility met the Commission's efficiency standard set forth in section 292.205(a)(2)(i)(B) of the Commission's regulations, 18 C.F.R. § 292.205(a)(2)(i)(B), for calendar year 2019 and that therefore Whitewater is only requesting waiver of the Commission's operating standard. Petition at 1, 9.

⁴ *LSP-Whitewater Ltd. P'ship*, 69 FERC ¶ 62,129 (1994).

expires on June 30, 2021.⁵ Whitewater states that the steam supply agreement requires Whitewater to supply all of the University of Wisconsin, Whitewater's (UWW) steam requirements for its campus steam piping system.

Petition

3. In the instant filing, Whitewater requests waiver of the QF operating standard for the Whitewater Facility for calendar years 2019 and 2020. Whitewater explains that, in 2019, the Whitewater Facility's useful thermal energy was 4.59% of its total energy output or 0.41% below the minimum requirement.⁶ Whitewater explains that this shortfall was due to unexpected circumstances beyond its control. First, Whitewater states that the thermal host, UWW, installed electric chillers in late 2018 and early 2019 that replaced certain steam absorption chillers that had used steam provided by the Whitewater Facility for over 20 years. Whitewater explains that the installation of the electric chillers reduced UWW's steam demand in the summer months but had little to no effect on UWW's steam requirements during other months of the year when the electric chillers are generally not in use.

4. Second, Whitewater states that the Whitewater Facility experienced over 300 hours of unexpected and unplanned forced outages in 2019.⁷ Whitewater explains that over 200 of these forced outage hours occurred during the months of January through March and October through December, which are the coolest months of the year when UWW's steam requirements have typically been at their highest levels. Third, Whitewater states that, in October 2019, the Whitewater Facility was offline for required maintenance to inspect a combustion turbine combustor. Whitewater claims that, in order to adhere to the maintenance schedule, it could not delay the outage to spring of 2020.

5. Whitewater states that it is taking steps to satisfy the operating standard through the remaining term of the steam supply agreement.⁸ However, Whitewater states that, given its limited experience with UWW's operation of the electric chillers and ongoing efforts to optimize the Whitewater Facility's performance and operating profile, its ability to satisfy the Commission's operating standard in 2020 remains uncertain. Therefore, out

⁵ Petition at 3-4.

⁶ *Id.* at 4.

⁷ *Id.* at 5.

⁸ *Id.* at 5-6.

of an abundance of caution, Whitewater also seeks a limited waiver for the Commission's operating standard for 2020.

6. Whitewater presents several justifications for its proposed waiver request: (1) the unforeseen and unexpected events beyond Whitewater's control that prevented the Whitewater Facility from satisfying the Commission's operating standards by 0.41%; (2) the waiver's consistency with PURPA's goal of conserving electric energy, increasing efficiency in facilities and resources used by utility companies, and conserving natural gas; (3) the significant energy savings produced by the Whitewater Facility for over 20 years that it will continue to produce; (4) the limited duration of the waiver; and (5) the timeliness of its request.⁹

Notice of Filing

7. Notice of Whitewater's request for waiver was published in the *Federal Register*, 85 Fed. Reg. 11,065 (Feb. 26, 2020), with interventions and protests due on or before March 16, 2020. None was filed.

Commission Discussion

8. Under the Commission's operating standard in section 292.205(a)(1) of the Commission's regulations, the QF's "useful thermal energy output of the facility must be no less than five percent of the total energy output" for the first 12 months of operation and for any subsequent calendar year.¹⁰ Section 292.205(c) provides that the Commission may waive its QF operating standard "upon a showing that the facility will produce significant energy savings."¹¹

9. The Commission has exercised this waiver authority 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 the 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

⁹ *Id.* at 6-9.

¹⁰ 18 C.F.R. § 292.205(a)(1).

¹¹ 18 C.F.R. § 292.205(c).

opposition, if any; and whether granting waiver would fulfill PURPA's goal of encouraging cogeneration and the development of alternative technologies.¹²

10. We find that several factors weigh in favor of granting waiver for calendar year 2019. Specifically, we find that UWW's decision to replace its existing steam absorption chillers with electric chillers, thereby reducing UWW's steam consumption during the summer of 2019, was outside of Whitewater's control. In addition, the Whitewater Facility has provided energy savings since it began operation in 1997 and will continue to provide steam to UWW. Finally, the forced outages that adversely affected operations during the cooler months, and that no party has protested Whitewater's request for waiver, are both factors that weigh in favor of granting waiver for calendar year 2019. Contrary to Whitewater's arguments, however, we are not persuaded that the need for Whitewater to conduct scheduled maintenance was necessarily unexpected. We find that, on balance, waiver of the QF operating standard for 2019 is warranted, and thus we grant the requested waiver, pursuant to section 292.205(c) of the Commission's regulations.¹³

11. Given the facts present here, we dismiss without prejudice Whitewater's requested waiver for calendar year 2020. Whitewater may be able to meet the Commission's operating standard in 2020. However, if, in the future, Whitewater determines that it will be unable to meet the operating standard for 2020, it may request waiver at that time, upon a showing consistent with the factors outlined above and in the Commission's previous cases.¹⁴

¹² *Ripon Cogeneration LLC*, 120 FERC ¶ 61,167, at P 18 (2007) (citing *PowerSmith Cogeneration Project Ltd. P'ship*, 118 FERC ¶ 61,021 (2007); *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)).

¹³ 18 C.F.R. § 292.205(c).

¹⁴ *See supra* note 12.

The Commission orders:

(A) Whitewater's waiver request for calendar year 2019 is hereby granted, as discussed in the body of this order.

(B) Whitewater's waiver request for calendar year 2020 is hereby dismissed without prejudice, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.