

168 FERC ¶ 61,183
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

EF Kenilworth, LLC

Docket Nos. EL19-72-000
QF90-73-010

ORDER GRANTING PARTIAL WAIVER

(Issued September 19, 2019)

1. On May 6, 2019, pursuant to the Public Utility Regulatory Policies Act of 1978 (PURPA),¹ EF Kenilworth LLC (Kenilworth) submitted a request for temporary waiver of the qualifying facility (QF) operating and efficiency standards set forth in sections 292.205(a)(1) and (2) of the Commission's regulations² for calendar years 2018, 2019, and 2020 with respect to Kenilworth's cogeneration facility (Kenilworth Facility). As discussed below, we grant the request for waiver for calendar years 2018 and 2019 and dismiss the request for waiver for calendar year 2020.

2. The Kenilworth Facility is a dual-fueled topping-cycle cogeneration QF located at the Merck Sharp & Dohme Corp. (Merck) international headquarters and corporate campus in Kenilworth, New Jersey and interconnected with the PJM Interconnection, L.L.C. (PJM) system. Kenilworth self-certified the Kenilworth Facility as a QF in 1990. Kenilworth states that it has supplied electricity and steam to Merck (and Merck's predecessor) under a series of energy service agreements beginning in 1989. According to Kenilworth, the current energy service agreement expires on September 30, 2020, with a possible extension through 2021. Kenilworth states that it sells any excess power into the PJM market.³

¹ 16 U.S.C. § 824a-3 (2018).

² 18 C.F.R. § 292.205(a)(1)-(2) (2019).

³ Petition at 4.

3. In 2017, in Docket Nos. EL17-74-000 and QF90-73-009, Kenilworth requested waiver of the QF operating and efficiency standards for the calendar years 2016, 2017, and 2018. In that proceeding, Kenilworth stated that, in 2016, Merck converted its property from a manufacturing and processing facility to a corporate campus, which reduced the need for steam. Kenilworth also stated that mechanical degradation of the steam turbine lowered the efficiency of the Kenilworth Facility. Kenilworth argued that waiver was appropriate because the need for waiver was due to events outside of its control, the request was for a limited duration, and further waivers would be unnecessary.⁴

4. On November 16, 2017, the Commission granted the waiver request for 2016 and 2017 and dismissed without prejudice the waiver request for 2018.⁵ The Commission found that it was unclear whether waiver was necessary for 2018 because Kenilworth acknowledged that a turbine overhaul, due to be completed in June 2017, could allow it to meet the QF operating and efficiency standards in 2018. The Commission noted that, if in the future Kenilworth determined that it would be unable to meet the QF operating and efficiency standards for 2018, it may request waiver at that time.⁶

Petition

5. In the instant filing, Kenilworth requests waiver of the QF operating and efficiency standards for calendar years 2018, 2019, and 2020. Kenilworth again argues that Merck's converting the property from a manufacturing facility to a corporate campus has reduced the need for steam. Kenilworth adds that, although Merck no longer uses the property for manufacturing, Merck is expected to increase its load and steam use by adding an additional 200-300 employees over the next two years and by occupying now-vacant buildings.⁷

6. Kenilworth also states that, in March 2018, it sent its combustion turbine to Auckland, New Zealand for a major overhaul and that the combustion turbine returned to service in September 2018. Kenilworth states that, although the maintenance performed on the combustion turbine resulted in a 3.75 percent efficiency increase to 41.9 percent, the increased efficiency was still insufficient to meet the Commission's minimum QF

⁴ EF Kenilworth, LLC Petition for Declaratory Order, Docket Nos. EL17-74-000 and QF90-73-009, at 4-11 (filed May 12, 2017).

⁵ *EF Kenilworth LLC*, 161 FERC ¶ 61,185 (2017).

⁶ *Id.* P 10.

⁷ Petition at 1-2.

efficiency standard of 42.5 percent. Kenilworth explains that Merck's reduction in load and steam use forces the equipment from its optimal base load operating point to a part load operational mode, which requires more fuel to produce power and useful thermal output, thereby raising the heat rate and lowering the Kenilworth Facility's operating level.⁸

7. Kenilworth contends that, by continuing to improve the underlying energy conversion through repairs to the combustion and steam turbines and increasing Merck's onsite load, it will eventually be in full compliance with the Commission's QF operating and efficiency standards. Kenilworth also states that, at the time of filing, the efficiency of the Kenilworth Facility is 42.8 percent, 0.3 percent above the Commission's minimum QF efficiency standard of 42.5 percent.⁹

8. Kenilworth presents similar justifications for its proposed waiver as it did in its previous waiver request: the unexpected change in its steam host's load, the degradation of its equipment, its investment in improving its efficiency and cooperation with Merck, the limited duration of the waiver and the timeliness of its request, and the energy savings that result from its continued operation.¹⁰ Kenilworth reiterates that it has operated continuously since 1989 and continues to provide steam to Merck.¹¹ Kenilworth states that it has made significant investments in upgrading the Kenilworth Facility¹² and that it continues to work with Merck during the transition to a corporate campus. Kenilworth adds that Merck supports this waiver request.¹³

Notice of Filing

9. Notice of Kenilworth's application was published in the *Federal Register*, 84 Fed. Reg. 21,766 (2019), with interventions and protests due on or before June 5, 2019. None was filed.

⁸ *Id.* at 4-5.

⁹ *Id.* at 4-6.

¹⁰ *Id.* at 7-11.

¹¹ *Id.* at 6.

¹² Kenilworth overhauled its steam turbine in 2016 and overhauled its combustion turbine in 2018. *Id.* at 2.

¹³ *Id.* at 10.

Commission Discussion

10. 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 5 percent of the total energy output" for the first 12 months of operation and any subsequent calendar year.¹⁴ Under the Commission's efficiency standard in section 292.205(a)(2)(A), the useful power output plus one-half of the useful thermal energy output of the QF must be "no less than 42.5 percent of the total energy input of natural gas and oil."¹⁵ Section 292.205(c) provides that the Commission may waive any of its QF operating and efficiency standards "upon a showing that the facility will produce significant energy savings."¹⁶

11. 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 opposition, if any; and whether granting waiver would fulfill PURPA's goal of encouraging cogeneration and the development of alternative technologies.¹⁷

12. In balancing the relevant factors given the facts of this proceeding, we grant waiver of the Commission's QF operating and efficiency standards under section 292.205(c) of the Commission's regulations for calendar years 2018 and 2019.¹⁸ We find that the conversion of Merck's property from a manufacturing facility to a corporate campus is outside of Kenilworth's control and is the cause of Kenilworth's non-compliance for 2018 and 2019. In addition, recent investments in the Kenilworth

¹⁴ 18 C.F.R. § 292.205(a)(1).

¹⁵ 18 C.F.R. § 292.205(a)(2)(A).

¹⁶ 18 C.F.R. § 292.205(c).

¹⁷ *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)).

¹⁸ 18 C.F.R. § 292.205(c).

Facility have demonstrably increased its efficiency,¹⁹ which will produce significant energy savings. Further, granting the waiver for 2018 and 2019 supports PURPA's goal of encouraging cogeneration. Finally, Merck has indicated its support for the waiver request.

13. However, we dismiss the request for waiver of those standards for 2020. The record indicates that the combustion turbine overhaul is complete and, as a result of Kenilworth's investments, the Kenilworth Facility is operating above the minimum QF efficiency standard of 42.5 percent. Further, Kenilworth expects Merck to increase its load and steam use over the next two years, which should further increase the efficiency of the Kenilworth Facility. Accordingly, we find that Kenilworth has not demonstrated that a waiver of the QF efficiency standard is necessary for 2020.²⁰

The Commission orders:

(A) Kenilworth's waiver request for calendar years 2018 and 2019 is hereby granted, as discussed in the body of this order.

(B) Kenilworth's waiver request for calendar year 2020 is hereby dismissed, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁹ See *supra* PP 6-7.

²⁰ If, in the future, Kenilworth files another request for waiver, the Commission will take into account Kenilworth's previous requests for waiver and its statements made therein. We note, for example, that Kenilworth previously stated that further waiver would not be necessary beyond 2018. See *supra* P 3.