

130 FERC ¶ 61,119
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

Glenns Ferry Cogeneration Partners, Ltd.

Docket Nos. EL10-21-000
QF93-159-008

ORDER GRANTING RECERTIFICATION AS QUALIFYING COGENERATION
FACILITY AND LIMITED WAIVER OF OPERATING AND EFFICIENCY
STANDARDS

(Issued February 18, 2010)

1. In this order, the Commission grants Glenns Ferry Cogeneration Partners, Ltd. (Glenns Ferry) a recertification of its Glenns Ferry, Idaho facility as a qualifying cogeneration facility, as well as a limited waiver of the Commission's operating and efficiency standards¹ applicable to the cogeneration facility for the calendar year 2009.

I. Background

2. On December 1, 2009, Glenns Ferry filed an application for Commission recertification of its cogeneration facility as a qualifying facility (QF) eligible for benefits under section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA)² and a request for waiver of the operating and efficiency standards in section 292.205 of the Commission's regulations for 2009 due to its inability to locate a thermal host.

3. Glenns Ferry is a 10 MW natural gas-fired combined topping-cycle cogeneration QF located in Glenns Ferry, Idaho consisting of one combustion turbine generator, a heat

¹ The operating and efficiency standards are contained in section 292.205 of the Commission's regulations. *See* 18 C.F.R. § 292.205 (2009). 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 efficiency standard requires that the useful power output of the facility plus one-half the useful thermal energy output must, during the applicable period, be no less than 42.5 percent of the total energy input of natural gas and oil to the facility or no less than 45 percent if the useful thermal energy output is less than 15 percent of the facility's total energy output.

² 16 U.S.C. § 824a-3 (2006).

recovery steam generator and a steam turbine generator. Until late 2007, it provided heat to a heat recovery steam generator that produced steam for Idaho Fresh-Pak, a potato processor that was located on the adjacent property. Glens Ferry sells its electric output to Idaho Power Company (Idaho Power). Glens Ferry was initially self-certified in 1993, and has subsequently filed several self-recertifications.³

4. Glens Ferry has been without a thermal host since November 2007 when Idaho Fresh-Pak ceased production. Glens Ferry states that it satisfied the Commission's operating and efficiency standards for 2007, and that it received a limited waiver of the QF operating and efficiency standards for calendar year 2008.⁴ Glens Ferry explains that the current economic downturn has affected its ability to obtain a new thermal host and to meet the operating and efficiency standards for 2009. Glens Ferry notes it recently entered into a written expression of mutual interest – which is neither an offer nor a binding contract – with Idaho Sustainable Energy, LLC (ISE).⁵ In addition, Glens Ferry also contends that it has had good faith discussions with other entities interested in procuring thermal energy for manufacturing, food processing, or other uses.⁶

5. Accordingly, Glens Ferry requests a temporary, limited waiver of the QF operating and efficiency standards for 2009. Glens Ferry states that it is seeking a replacement thermal host and expects to find a replacement in 2010.⁷ Glens Ferry asserts that the waiver request is both timely and that circumstances are beyond its control. Glens Ferry contends that it is a reliable and efficient cogeneration facility capable of supplying electric generation and converting waste heat to useful thermal energy providing energy savings, and that the waiver will allow it to remain economically viable so it can continue to provide the significant benefits of cogeneration to the public in the future.

³ Glens Ferry was originally self-certified on September 3, 1993 in Docket No. QF93-159-000 and self-recertified on December 21, 1995 in Docket No. QF93-159-001; June 18, 1998 in Docket No. QF93-159-002; July 7, 2000 in Docket No. QF93-159-003; July 1, 2002 in Docket No. QF93-159-004; July 19, 2004 in Docket No. QF93-159-005; January 26, 2007 in Docket No. QF93-159-006; and December 15, 2008 in Docket No. QF93-159-007.

⁴ *Glens Ferry Cogeneration Partners, Ltd.*, 126 FERC ¶ 61,218 (2009) (granting waiver of the operating and efficiency standards for calendar year 2008 and recertification of the facility as a QF).

⁵ Glens Ferry Filing at 2, 7 and Attachment A at 3.

⁶ *Id.* at 5.

⁷ *Id.* at 2.

II. Notice and Intervention

6. Notice of this filing was published in the *Federal Register*, 74 Fed Reg. 66128 (Dec. 14, 2009), with interventions and protests due on or before January 4, 2010. Idaho Power filed a timely motion to intervene and protest. Glens Ferry filed a response to Idaho Power's protest on January 19, 2010.

III. Discussion

A. Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), Idaho Power's unopposed motion to intervene serves to make it a party to this proceeding.

8. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213 (a)(2) (2009), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answer filed by Glens Ferry because it provided information that assisted us in our decision-making process.

B. Protest and Answer

9. Idaho Power states that it purchases power from Glens Ferry pursuant to a Firm Energy Sales Agreement with a 20-year term.⁸ Idaho Power argues that Glens Ferry has been without a thermal host for over two years and therefore has failed to maintain its QF status in breach of the agreement.⁹ Further, Idaho Power states that Glens Ferry has provided no substantive evidence that it will be able to find a replacement thermal host. Idaho Power also alleges that granting another waiver to Glens Ferry does not satisfy the PURPA goal of encouraging cogeneration because the Glens Ferry facility is not reliable or efficient and is detrimental to Idaho Power's consumers, *e.g.*, when Glens Ferry was generating power, Idaho Power states it was forced to buy energy surplus to its needs and then charge higher prices for electricity to consumers.¹⁰

10. In its response to the Idaho Power protest, Glens Ferry says that it is in negotiations with ISE and understands that ISE's project has the backing of multiple investors, Idaho's governor, several members of Idaho's Congressional delegation, and other public officials. For these reasons, Glens Ferry argues that it is optimistic that ISE

⁸ Idaho Power at 3.

⁹ *Id.* at 4

¹⁰ *Id.* at 11.

will be its replacement thermal host.¹¹ Glenss Ferry also argues that its facility is a combined-cycle generating facility (not simple-cycle), and during 2009 did provide efficient energy to Idaho Power in comparison to the less efficient simple-cycle generating facilities available to supply Idaho Power.¹²

11. Glenss Ferry disagrees with Idaho Power's contention about the high cost of the Glenss Ferry energy¹³ because Idaho Power does not explain whether it could have used the energy supplied it by Glenss Ferry to displace energy produced by higher-cost resources in Idaho Power's resource stack, rather than sell the Glenss Ferry energy as surplus,¹⁴ and whether Idaho Power avoided capacity costs as a result of the energy Glenss Ferry supplied to Idaho Power during 2009. Glenss Ferry states that it does not charge Idaho Power for capacity, but Idaho Power's own resources during 2009 presumably include resources that include capacity charges.¹⁵ Therefore, Glenss Ferry argues Idaho Power has given an incomplete and inaccurate picture of the cost of energy supplied by Glenss Ferry as compared to Idaho Power's self-supplied energy.

C. Commission Determination

12. The Commission's regulations provide that a QF must satisfy applicable operating and efficiency requirements during the 12-month period beginning with the date the facility first produces electric energy and any calendar year subsequent to the year in which the facility first produces electric energy.¹⁶ The regulations also provide that the Commission may waive any of its operating and efficiency standards "upon a showing that the facility will produce significant energy savings."¹⁷ The Commission has exercised its 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 non-compliance was the result of an unexpected and one-time operations event outside the applicant's control; whether the request was intended to remedy specific problems

¹¹ Glenss Ferry Answer at 3.

¹² *Id.* at 3-4.

¹³ *Id.* at 5.

¹⁴ *Id.*

¹⁵ *Id.* at 5-6.

¹⁶ 18 C.F.R. § 292.205(a) (2009).

¹⁷ 18 C.F.R. § 292.205(c) (2009).

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.¹⁸

13. Taking into account all relevant factors, we will grant Glenss Ferry's request for a waiver for calendar year 2009. The need for waiver of the Commission's operating and efficiency standards is caused by unexpected events outside of Glenss Ferry's control – the unexpected loss of its thermal host, Idaho Fresh-Pak.

14. The Commission is aware that Glenss Ferry already has received a limited one-year waiver for calendar year 2008. Nonetheless, it is still true that while Glenss Ferry may fail to meet the Commission's operating and efficiency standards for a short period, it has for many years operated in compliance with the operating and efficiency standards, and it intends to again operate in compliance with those standards; and the years of operation as a qualifying cogeneration facility resulted in considerable energy savings.¹⁹ A grant of limited waiver is thus consistent with the PURPA goal of encouraging cogeneration and alternative generation technologies.

15. Idaho Power argues that Glenss Ferry is unable to guarantee that the grant of a waiver for 2009 will result in Glenss Ferry's satisfying the operating and efficiency standards in the future. Idaho Power is correct that there is no guarantee that Glenss Ferry will be able to satisfy the operating and efficiency standards in the next year or future years. However, Glenss Ferry has provided the Commission proof of good faith negotiations with a possible replacement thermal energy host that may result in a replacement thermal host in the near future. A two-year waiver of the operating and efficiency standards is consistent with our precedent.²⁰ . In granting this limited waiver,

¹⁸ See, e.g., *Ripon Cogeneration LLC*, 120 FERC ¶ 61,167 (2007); *PowerSmith Cogeneration Project Limited Partnership*, 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); *Gordonville Energy, L.P.*, 72 FERC ¶ 61,160, at 61,790-91 & n.7 (1995), and the cases cited therein.

¹⁹ We note Glenss Ferry has been in operation as a QF since 1993. While Idaho Power argues that Glenss Ferry operations are not as efficient as its own operations, and that Idaho Power is paying too much for Glenss Ferry's energy, we are unable to make such a finding on the record before us.

²⁰ *Pittsfield Generating Company*, 91 FERC ¶ 61,064 (2000) (The Commission granted a two-year request for waiver on the ground that the failure to satisfy the operating and efficiency standards was caused by factors outside the control of the QF, but denied the waiver for a third year saying a third year grant of waiver would require a showing of substantial progress towards coming into compliance with the operating and efficiency standards; the Commission stated it would consider a further request for waiver, but would grant such request only if substantial progress towards remedying the

(continued...)

we acknowledge Glens Ferry's having made progress toward obtaining a thermal host and indicating that it will "continue its good faith efforts to obtain a thermal host and regain full compliance with FERC's QF standards in 2010 and beyond."²¹ Under the circumstances presented in this proceeding, we will grant this second limited waiver to Glens Ferry.

16. The requirements for QF status state that a topping-cycle cogeneration facility must either comply with the operating and efficiency requirements²² or obtain a waiver of such requirements.²³ By virtue of the waiver granted to Glens Ferry for calendar year 2009, compliance with the Commission's requirements for QF status is established for calendar year 2009. Accordingly, the Commission will grant Glens Ferry's application for recertification of QF status for calendar year 2009. Reliance on this recertification of QF status for calendar years 2010 and beyond will require that Glens Ferry either satisfy the operating and efficiency standards for calendar year 2010, or be granted an additional waiver.

The Commission orders:

Glens Ferry's application for recertification for calendar year 2009 and its request for waiver of the operating and efficiency standards is hereby granted for calendar year 2009, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

compliance issue was shown); *Pittsfield Generating Company, L.P.*, 101 FERC ¶ 61,229 at 61,996-61,997 (2002), *order denying rehearing*, 103 FERC ¶ 61,045 (2003) (The Commission denied waiver of the operating and efficiency standards for a third year finding that Pittsfield's non-compliance to be of indefinite duration because Pittsfield had not shown that it had made substantial progress towards coming into compliance with the operating and efficiency standards).

²¹ Glens Ferry Answer at 3.

²² 18 C.F.R. § 292.205(a) (2009).

²³ 18 C.F.R. § 292.205(c) (2009).