UNITED STATES OF AMERICA 93 FERC ¶ 61,238
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: James J. Hoecker, Chairman;
William L. Massey, Linda Breathitt,
and Curt Hébert, Jr.

San Diego Gas & Electric Company,
Complainant,
v.
Sellers of Energy and Ancillary Services
Into Markets Operated by the California
Independent System Operator and the
California Power Exchange,
Respondents.

Docket Nos. EL00-95-000

Investigation of Practices of the California
Independent System Operator and the
California Power Exchange

Docket Nos. EL00-98-000

ORDER GRANTING EMERGENCY WAIVER OF QF REGULATIONS

(Issued December 8, 2000)

On November 1, 2000, the Commission issued an order in this proceeding proposing measures to remedy flaws in the market structure and market rules for wholesale sales of electric energy in California. [1] The Commission found that these flaws, in conjunction with an imbalance of supply and demand in California, had caused and continued to have the potential to cause unjust and unreasonable rates for short-term energy under certain conditions. The Commission sought comments from interested persons on the proposed remedies.

Ridgewood Power LLC (Ridgewood) filed comments suggesting that the shortage of supply could be remedied in part by relaxing the operating efficiency and other regulatory requirements pertaining to Qualifying Facilities (QFs). Ridgewood states that the total power production capacity of QFs in California is approximately 9,000 MWs, of which, between 4,000 and 5,500 MW are from qualifying cogeneration facilities (Cogeneration QFs) and the remainder from small power production facilities (Small Power QFs). Ridgewood states that the Cogeneration segment of the industry is

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[1] San Diego Gas & Electric Company, et al., 93 FERC ¶ 61,121 (2000), reh'g pending (November 1 Order).

underutilized because of operating efficiency and other QF requirements. [2] With a limited waiver or other equivalent relief, Ridgewood states that these underutilized resources could help relieve current shortages during both peak and off-peak periods. Ridgewood estimates that as much as 1,000 MWs would be immediately available by allowing QFs to sell to the purchasing utility or into the competitive market their "above-baseline" output for a limited time period. [3] Ridgewood suggests that any such sal would be made at market-based rates and would not be subject to the operating and efficiency standards. Rigdewood cites Fresno Cogeneration Partners, L.P., 92 FERC ¶ 61,230 (2000) (Fresno Cogen), stating that the Commission has granted waivers to Cogeneration QFs that entered into restructuring arrangements with their purchasing utilities and should allow the same flexibility to all Cogeneration QFs in the California market.

Ridgewood also states that similar efficiencies could be gained from relaxing the restrictions on Small Power QFs in California. The use of oil, natural gas, or coal by any Small Power QF is limited under Public Utility Regulatory Policies Act [4] unless waiver is granted. Ridgewood suggests that such waiver, along with action on the Cogeneration QF efficiency standards, would provide the largest benefit to California consumers.

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". [5] However, the Commission has exercised its waiver authority in a number of cases based on factors such as the limited durations of the requested waiver, whether further waivers would be necessary, whether the request was intended to remedy specific problems associated with an innovative technology, and whether granting waiver would fulfill PURPA's goals. [6] We find that many of these
same factors are present here. Consistent with the goals of PURPA, we find that

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[2]These requirements contain formulas that tie any increases in the total energy output and total power input of a facility to corresponding increases in the thermal energy output. 18 C.F.R. § 292.205 (2000).

[3]Ridgewood suggests that the baseline output for each facility be calculated using the seasonal averages of output over two to three years of recent operating history. Ridgewood at 9.

[4]18 C.F.R. § 292.204(b) (2000) (PURPA).

[5]18 C.F.R. §292.205(c) (2000); *see also* 16 U.S.C. §825h (1994) (general authority to waive regulations as the Commission "may find necessary or appropriate").

[6]See, e.g. Praxair, Inc., 92 FERC ¶ 61,141 (2000); Kamine/Besicorp Syracuse L.P. and Kamine/Besicorp Beaver Falls L.P., 78 FERC ¶ 61,356 (1997), and the cases cited therein.

granting such waiver in this circumstance will provide for increased efficiency in the use of the Cogeneration facilities and improved reliability of electric service through increasing the availability of needed capacity. [7] Therefore, we will grant temporary waiver of the operating and efficiency standards to Cogeneration QFs for sales into California, effective as of the date of this order. We will terminate the waiver effective January 1, 2001.

In Fresno Cogen, we granted waiver to a Cogeneration QF in order to allow a negotiated agreement between the QF and a load serving entity where the QF could contribute to the newly restructured electric market at a time when its thermal production was substantially reduced. Here we are relaxing the thermal efficiency and operating requirements to encourage the same type of agreemen We will waive the operating and efficiency requirements to allow Cogenerators to sell their output above the level at which they have historically supplied this output to the purchasing utility. A facility' seasonal average output during the two most recent years of operation will define their historical outpu We require that all additional output from the Cogenerators be sold exclusively through a negotiated bilateral agreement. This arrangement will benefit both parties and help serve load and reserves in California at a time when generation resources in California are inadequate.

The November 1 Order describes the severe problem of inadequate supply in the California market and the resulting impacts on prices and reliability. In fact, the California market continues to experience reliability problems as demonstrated in recent weeks by the continuing Stage 2 emergencies some during off-peak periods. Therefore, we will also grant a waiver to the Small Power QFs in California as to their fuel use requirements on the finding that the situation in California presents evidence of "emergencies, directly affecting the public health, safety, or welfare, which would result from electric power outages". [8] In granting this temporary waiver, we place the same restriction as detailed above and require that the Small Power QFs sell their excess production only to load located within California through negotiated bilateral contracts for the same limited time period.

The Commission orders:

We hereby grant waiver of 18 C.F.R. §§ 292.204 and 292.205, as discussed in the body of this order.

By the Commission.

(S E A L)

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[7] 16 U.S.C. § 2601 (199)

[8] 18 C.F.R. 292.204(b)(2) (2000).

David P. Boergers,
Secretary.