

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

Golden Valley Electric Association, Inc.

Docket No. QF19-855-000

**PETITION FOR DECLARATORY ORDER**

**I. INTRODUCTION AND SUMMARY OF REQUESTED DECLARATIONS**

Pursuant to Rule 207 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or the “Commission”) and 18 C.F.R. § 292.207(d)(iii),<sup>1</sup> Golden Valley Electric Association, Inc. (“GVEA”) hereby submits this petition for declaratory order challenging the status of a self-certified Qualifying Facility (“QF”). GVEA asks the Commission to find that the 147.8 MW hybrid power project proposed by Eco Green Generation LLC (“EGG”) in its Form 556 filed in Docket QF19-855-000 is not a QF as defined by section 210 of the Public Utility Regulatory Policies Act of 1978, as amended (“PURPA”),<sup>2</sup> and 18 C.F.R. § 292.201 *et seq.*

GVEA is a consumer-owned electric utility located in Fairbanks, Alaska, with an average system load of roughly 150 MW. EGG has proposed a so-called “hybrid”

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<sup>1</sup> 18 C.F.R. § 385.207; *see also Chugach Elec. Assoc., Inc., Matanuska Elec. Assoc., Inc.*, 121 FERC 61,287 at P6 (Dec. 21, 2007) (“Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 C.F.R. § 292.207(d)(iii).”).

<sup>2</sup> 16 U.S.C. § 824a-3.

wind-cogenerator QF that will use 20 reciprocating engines with a capacity of 110 MW to firm the variable generation from a 37.8 MW wind project. EGG's "project" will stretch over 170 miles and have a total nameplate capacity of 147.8 MW—roughly equal to GVEA's average system load and well above GVEA's average summer load.

EGG self-certified its project and has demanded that GVEA interconnect its project and provide project-specific pricing. GVEA's good faith review of EGG's self-certification, however, has revealed that not only is the self-certification incomplete and inaccurate, it is internally contradictory and, even taken at face value, provides conclusive evidence that EGG's project cannot meet FERC's requirements for QF certification.

To obtain QF certification, EGG must show that its QF's output is *not* intended fundamentally for sale to a utility. But EGG admits that its cogeneration facilities are intended, first and foremost, to generate electricity to sell to GVEA to firm and shape the generation from its wind turbines. As if this concession were not enough, the sheer size of EGG's project leaves no doubt that its electrical output is intended fundamentally for sale to GVEA. On these facts alone, EGG's project cannot certify as a QF.

But EGG's project has even more deficiencies. EGG failed to demonstrate that it actually has customers to buy the thermal output of its purported cogeneration facilities—meaning there is no evidence that the thermal energy has a productive and beneficial use. The lack of thermal demand also bolsters the fact that EGG's project is not designed for thermal energy sales—it is designed to sell electricity.

EGG's self-certification also fails to reconcile its reliance on both wind and

fossil-fuel generation and therefore misrepresents that its project meets the size and fuel use requirements for certification as a small power production facility even though its 147.8 MW capacity is nearly twice the 80 MW limit for small power production facilities and the 110 MW of fossil-fuel burning reciprocating engines violate FERC's fuel usage requirements.

Because EGG cannot meet the requirements for either a small power production or a cogeneration QF, GVEA requests that FERC issue an order declaring that EGG's project is not a QF. GVEA further requests that FERC issue an order requiring that any future EGG projects obtain FERC certification in accordance with 18 C.F.R. § 292.207(b). The present project is the second from EGG in the last three months and GVEA is concerned that even if FERC rules that the current configuration is not a QF, EGG will simply attempt to modify its proposal and GVEA will be forced to expend additional customer resources challenging more facially inadequate self-certifications. Requiring EGG to obtain formal certification under 18 C.F.R. § 292.207(b) for future projects ensures that EGG, not GVEA's members, bears the costs to demonstrate that its own project is eligible for QF status.

**A. Factual Background**

GVEA is an electric cooperative utility owned by approximately 35,000 members and headquartered in Fairbanks, Alaska. GVEA serves more than 45,000 meters in Fairbanks, Delta Junction, Nenana, Healy, and Cantwell with a system peak load of approximately 200 MW in the winter and 120 MW in the summer. GVEA's system average load is roughly 150 MW and its minimum load is roughly 90 MW.

## **B. EGG's First Request for Pricing and Interconnection**

On December 28, 2018, EGG sent GVEA a letter requesting interconnection and avoided cost pricing for a “hybrid power generation project” to consist of “6 wind turbines with a total nameplate capacity of 25.2 [MW] with 4.4 MW of battery storage, and 11 5 MW reciprocating engine cogenerator sites capable of flexible load following.”<sup>3</sup> EGG stated that its proposed QF would provide a combined output of 55 MW of Firm Power to GVEA.<sup>4</sup> EGG also requested interconnection for “up to 9 separate connection points to the GVEA power grid within the city of Fairbanks and 2 connections in North Pole” for the cogenerator sites and interconnection of the wind facilities at GVEA’s Jarvis Creek Substation.<sup>5</sup> EGG’s letter request included a copy of a self-certification FERC Form 556 that EGG had filed with the Regulatory Commission of Alaska (“RCA”) and that EGG implied had been filed at FERC.<sup>6</sup>

After receiving EGG’s letter, GVEA expended substantial resources preparing the requested project-specific pricing and interconnection studies. However, during the course of its due diligence efforts, GVEA learned that FERC had no record of a FERC Form 556 being filed for EGG’s proposed project. Upon learning that EGG had failed to self-certify its project, on February 6, 2019, GVEA informed EGG via email and letter that it was no longer processing its interconnection request and GVEA immediately suspended all work.<sup>7</sup> EGG never responded to GVEA’s February 6<sup>th</sup> email. Although GVEA used the address on EGG’s FERC Form 556, GVEA’s letter was returned as “not deliverable.”

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<sup>3</sup> Letter from EGG to GVEA re Interconnection Request at 1 (Dec. 26, 2018) (“EGG Letter”), attached as Exhibit A.

<sup>4</sup> EGG Letter at 1.

<sup>5</sup> EGG Letter at 1.

<sup>6</sup> EGG’s Dec. 26, 2018 FERC Form 556 (“Dec. FERC Form 556”), attached as Exhibit B.

<sup>7</sup> See Letter from GVEA to William Rhodes of EGG (Feb. 6, 2019), attached as Exhibit C.

### C. EGG's Second Request for Pricing and Interconnection

Then, on February 20, 2019, EGG sent GVEA a second FERC Form 556 for a revised “hybrid power project,” this time increasing the total nameplate capacity of its purported QF from 85.7 MW to 147.8 MW,<sup>8</sup> while committing to provide “100 MW of firm electricity [that] is always generated for the GVEA grid.”<sup>9</sup> This revised proposal continues to include separate wind and cogeneration components, with the wind project’s output increased from 25.2 MW to 37.8 MW, and the total number of cogeneration facilities has nearly doubled—from eleven to twenty.<sup>10</sup> Together, these various facilities are located across four different communities: Delta Junction, North Pole, Fairbanks, and Anderson.<sup>11</sup> Delta Junction, where one reciprocating engine and the wind farm are to be located, is over 90 miles east of Fairbanks, where fourteen of the twenty reciprocating engines are proposed to be located. North Pole, the proposed location of three other reciprocating engines, is located 13 miles from Fairbanks, between Delta Junction and Fairbanks. Anderson (Clear Air Force Station) where two other reciprocating engines are proposed to be located, is another 80 miles west of Fairbanks. Based on the geographic coordinates of the proposed project components, the total project appears to extend some 170 miles—longer than the north-south span of Pennsylvania.

During GVEA’s development of a project-specific tariff (required by RCA regulations<sup>12</sup>) GVEA became concerned that EGG’s proposed QF was actually a system of separate facilities rather than a single QF facility. Moreover, EGG appears to have admitted that the output of the

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<sup>8</sup> EGG’s Feb. 19, 2019 FERC Form 556 at 9, line 7a (“FERC Form 556”) (stating that the gross power production capacity of the individual generators is 5,500 kW); *see also id.* at 19 (stating that the wind farm is 37.8 MW). EGG included a different address in this filing.

<sup>9</sup> FERC Form 556 at 9, line 7h.

<sup>10</sup> Feb. 19, 2019 FERC Form 556 at 9-All, line 7h. Battery storage appears to have been omitted from the revised application.

<sup>11</sup> Dec. 28, 2018 FERC Form 556 at 6-All Facilities, line 3c.

<sup>12</sup> *See* 3 AAC 50.790(a).

proposed cogeneration facilities is “intended fundamentally for sale to an electric utility”<sup>13</sup> by stating that the cogeneration facilities are intended to “firm the wind generation”<sup>14</sup>—as opposed to fundamentally serving industrial, commercial, residential or institutional customers, as required by 18 C.F.R. § 292.205(d)(2). Understanding whether these facilities are QFs is essential because of EGG’s continued insistence that GVEA provide project-specific pricing in preparation for purchasing EGG’s consolidated output under PURPA. Therefore, GVEA seeks clarification from FERC that EGG’s proposal does not constitute a QF and thus GVEA has no obligation to purchase EGG’s output.

## II. SERVICE AND COMMUNICATIONS

Pursuant to 18 C.F.R. § 385.203, all correspondence and communications regarding this Petition should be addressed to the following individuals:<sup>15</sup>

Kirk Gibson  
Adam Lowney  
McDowell Rackner Gibson PC  
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## III. REQUESTED DECLARATIONS

In light of FERC’s sole authority to determine a facility’s QF status,<sup>16</sup> GVEA asks FERC to act, consistent with 18 C.F.R. § 385.207(a)(2), to declare that (1) EGG’s project fails to meet

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<sup>13</sup> 18 C.F.R. § 292.205(d)(2).

<sup>14</sup> FERC Form 556 at 9, 19.

<sup>15</sup> GVEA requests waiver of Rule 203(b)(3) to permit more than two persons to be included on the official service list on its behalf in this proceeding. Failing that, please include Adam Lowney and John Burns, listed above.

<sup>16</sup> *Indep. Energy Producers Ass’n v. Cal. Pub. Utils. Comm’n*, 36 F3d 848, 856 (9th Cir 1994) (“The state’s authority to implement section 210 is admittedly broad, but nothing in the language of this section indicates that such authority includes the authority to make QF status determinations.”); *see also Power Res. Group, Inc. v. Pub. Util. Comm’n of Tex.*, 422 F.3d 231, 236 n.2 (5th Cir. 2005) (“Therefore, FERC alone must determine which

the requirements for a cogeneration facility because it has the primary purpose of selling electric power to a utility rather than serving its purported industrial and commercial customers, it does not demonstrate compliance with the operating and efficiency rules, and it provides insufficient evidence that heat purchasers exist; (2) EGG's project fails to meet the requirements for a small power production facility because of its excessive fossil fuel usage and size; (3) EGG's project does not meet the requirements for QF status under PURPA because it is actually comprised of many different facilities, some of which provide variable energy delivery and others that are intended to provide load following service to smooth and firm the delivery of the variable energy;<sup>17</sup> and (4) EGG's self-certification is facially inadequate to establish EGG as a QF because it is incomplete and internally inconsistent.

**A. Declaration 1: EGG's Proposed QF Fails to Meet the Requirements for Cogeneration Facilities.**

To certify as a qualifying cogeneration facility, a QF must (1) pass the "fundamental use" test, (2) demonstrate that the thermal energy output is "used in a productive and beneficial manner," and (3) meet certain operating and efficiency standards. EGG's proposal fails to demonstrate either that the QF's fundamental use is to provide heat or that its thermal output is used in a productive and beneficial manner. And GVEA has no ability to understand whether EGG's project meets the operating and efficiency standards from the information provided by EGG.

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facilities are QFs."); 18 C.F.R. § 292.207(d) (governing procedures for revocation of QF status before FERC); *see also Indep. Energy Prods. Ass'n*, 36 F.3d at 853-54 ("The structure of PURPA and the Commission's regulations, reflect Congress's express intent that the Commission exercise exclusive authority over QF status determinations.").<sup>17</sup> FERC Form 556 at 9, line 7h (describing the reciprocating engines as offering "flexible load following production to compensate for the wind farm's intermittent electrical production").

**1. EGG’s Proposed QF Fails to Meet the Fundamental Use Test.**

A cogeneration facility must use its electrical and thermal output “fundamentally for industrial, commercial, residential or institutional purposes,” as opposed to being “intended fundamentally for sale to an electric utility.”<sup>18</sup> A QF will be presumed to meet the fundamental use test if its net output is less than or equal to 5 MW,<sup>19</sup> or where at least 50 percent of the facility’s aggregate annual output is used for industrial, commercial, residential, or institutional purposes, and is not sold to a utility.<sup>20</sup> Here, EGG’s Form 556 fails to demonstrate that it is entitled to either presumption and therefore EGG cannot demonstrate that its proposed QF passes the fundamental use test.

**a. EGG concedes that its facility is intended primarily to sell electricity to GVEA.**

EGG admits—repeatedly—that the central purpose of its cogenerating facilities is to generate electricity to replace GVEA’s existing power plants and to firm the generation from its proposed wind turbines—not to primarily serve industrial or commercial customers with heat or power.<sup>21</sup> Thus, by EGG’s own account, the primary purpose of the QF is for the production of “firm electricity [that] is always generated for the GVEA grid.”<sup>22</sup>

Moreover, the sheer size of EGG’s proposed QF confirms that the project is intended primarily to sell electricity. In *Chugach Electric Association*, the petitioning utilities (Chugach and Matanuska) argued that two QFs could not meet the fundamental use test because it was

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<sup>18</sup> 18 C.F.R. § 292.205(d)(2).

<sup>19</sup> 18 C.F.R. § 292.205(d)(4).

<sup>20</sup> 18 C.F.R. § 292.205(d)(3). The fundamental use test is subject to the same 5-MW exception as the productive and beneficial use test. 18 C.F.R. § 292.205(d)(4). As discussed above, while EGG claims that its proposed QF is only 5 MW for purposes of meeting this exception, EGG’s proposed QF is 84.3 MW. See FERC Form at 12, line 11f.

<sup>21</sup> FERC Form 556 at 19 (states proposed QF will replace “stationary power plants” used by GVEA); FERC Form 556 at 9, line 7h.

<sup>22</sup> FERC Form 556 at 9, line 7h.

clear that their primary purpose was to sell power to the electric utilities.<sup>23</sup> The utilities argued, in part, that “the size of the facilities has changed to reflect the projected power needs” of the utilities—suggesting that the projects’ output was intended “fundamentally for sale to electric utilities.”<sup>24</sup> The utilities also noted that the proposed sales would displace much of the utilities’ peak, further suggesting that the primary purpose of the projects was to sell power to electric utilities.<sup>25</sup> Of Chugach’s 479 MW peak load, which included wholesale sales to Matanuska, the proposed QFs would inject 220 MW—close to half of the peak, and displacing “virtually all of Chugach’s planned new base load generation.”<sup>26</sup> Based, in part, on these facts, FERC found it “impossible to conclude that the generation projects have been designed other than to produce electric energy to sell to the electric utilities.”<sup>27</sup> Thus, FERC determined that the “electrical, thermal, chemical, and mechanical output of the cogeneration facilities is intended fundamentally for sale to an electric utility.”<sup>28</sup>

Here, the increased size of EGG’s newly proposed project represents an even larger proportion of GVEA’s load. If built, EGG’s 147.8 MW project would become GVEA’s largest single generating resource (measured by nameplate capacity), and its nameplate capacity would be roughly equal to GVEA’s average system load and greater than GVEA’s average summer load. EGG claims that its project will provide 100 MW of firm generation year-round, meaning it would serve roughly 70 percent of GVEA’s average system load and would provide more capacity than GVEA’s minimum system load. As in *Chugach*, these facts make it “impossible to

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<sup>23</sup> *Chugach*, 121 FERC 61,287 at P.32-37.

<sup>24</sup> *Chugach*, 121 FERC 61,287 at P.44.

<sup>25</sup> *Chugach*, 121 FERC 61,287 at P.7.

<sup>26</sup> *Chugach*, 121 FERC 61,287 at P.7.

<sup>27</sup> *Chugach*, 121 FERC 61,287 at P.46.

<sup>28</sup> *Chugach*, 121 FERC 61,287 at P.46.

conclude” that EGG’s QF has “been designed other than to produce electric energy to sell to the electric utilities.”<sup>29</sup>

**b. EGG’s purported thermal customers are too speculative to demonstrate that any of its thermal output will actually be sold.**

EGG further fails to meet the fundamental use test because its anticipated thermal customers are “simply too speculative” under FERC’s ruling in *Chugach*.<sup>30</sup> In that case, discussed above, the utilities also argued that the QFs could not meet the fundamental use test because the projects’ thermal output was too speculative, pointing to the “high percentages of the thermal energy . . . listed as going to unidentified customers at unknown locations for unknown purposes.”<sup>31</sup> FERC agreed, concluding that “the thermal uses of the output of the facilities are simply too speculative, given the geographic area within which they operate, to justify finding that fifty percent of the total output of the facilities will be used fundamentally for industrial, commercial, residential, or institutional purposes, and not be intended fundamentally for sale to an electric utility.”<sup>32</sup>

Here, like in *Chugach*, the thermal output from EGG’s proposed QF is far too speculative. EGG has failed to identify any purchasers of its thermal output with any specificity, and appears to have simply assumed identical demand for each of its unidentified customers.<sup>33</sup> As noted above, EGG also appears to acknowledge that the central purpose of its cogenerating facilities is not to serve industrial or commercial customers with heat or power, but to “firm” the power generated by the wind farm component of the proposed project.<sup>34</sup>

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<sup>29</sup> *Chugach*, 121 FERC 61,287 at P.46.

<sup>30</sup> *Chugach*, 121 FERC 61,287 at P.46.

<sup>31</sup> *Chugach*, 121 FERC 61,287 at P.34.

<sup>32</sup> *Chugach*, 121 FERC 61,287 at P.46.

<sup>33</sup> FERC Form 556 ay 14, line 12a.

<sup>34</sup> FERC Form 556 at 19.

**c. EGG is not entitled to the 5 MW rebuttal presumption that it meets the fundamental use test.**

EGG further distorts the capacity of its QF in an apparent attempt to take advantage of the rebuttal presumption that cogeneration facilities with a net power production capacity of 5 MW or less meet the requirements of the fundamental use test.<sup>35</sup> EGG claims that it meets the 5 MW threshold because the net production capacity of each individual reciprocating engine is 4.95 MW. But this again refers to a discrete component of EGG's QF, not to the capacity of EGG's proposed "hybrid" QF as a whole.<sup>36</sup> Even looking at only EGG's twenty reciprocating engines (and setting aside the wind generation), EGG's facility has a net capacity of 99 MW—meaning that EGG cannot take advantage of the rebuttal presumption that its project meets the fundamental use test.<sup>37</sup>

**d. EGG fails to demonstrate that it will sell less than 50 percent of its project's annual energy output to a utility.**

FERC adopted a safe harbor for demonstrating compliance with the fundamental use test whereby if at least 50 percent of the facility's aggregate annual output is used for industrial, commercial, residential, or institutional purposes—and not sold to a utility—then the cogeneration facility meets the fundamental use test.<sup>38</sup> EGG claims that precisely 50 percent of the facility's output will be used as heat for commercial or industrial purposes, but this claim is unsupported and inconsistent with other representations made in the Form 556.<sup>39</sup>

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<sup>35</sup>; FERC Form 556 at 12, line 11f.

<sup>36</sup> FERC Form 556 at 12, line 11g.

<sup>37</sup> See FERC Form 556 at 9, line 7g.

<sup>38</sup> 18 C.F.R. § 292.205(d)(3).

<sup>39</sup> FERC Form 556 at 9, line 7h. Note, unlike in EGG's Dec. 26 FERC Form 556, EGG's revised form failed to complete lines 11g-11i that would attempt to specifically demonstrate compliance with the fundamental use test. FERC Form 556 at 13, lines 11g-11i (left blank). Nonetheless, this analysis addresses those claims of 50 percent thermal production contained elsewhere in the FERC Form 556.

First, because EGG incorrectly claimed that its cogeneration facility is less than 5 MW, it did not complete lines 11g to 11j, which are required to demonstrate that at least 50 percent of the annual energy output of the proposed QF will not be sold to a utility. Without the information that should have been provided on these lines, EGG cannot reasonably claim that 50 percent of its output will be used for commercial, industrial, or residential purposes.

Second, information provided elsewhere in EGG's Form 556 indicates that the EGG project plans to sell substantially more than 50 percent of its annual energy output to a utility. EGG represents that its QF will provide "100 MW of firm electricity" that will be "always generated for the GVEA grid."<sup>40</sup> Taking this representation at face value means that EGG will sell 876,000 MWh of electrical energy to GVEA each year.<sup>41</sup> EGG also represents in its Form 556 its reciprocating engines will have 5 percent unrecovered heat,<sup>42</sup> an 83 percent capacity factor,<sup>43</sup> and a heat rate of 6,980 Btu per hour,<sup>44</sup> which means that the annual thermal energy output will be approximately 685,948 MWh per year.<sup>45</sup> Based on these two figures, EGG will sell roughly 56 percent of its QF's output to GVEA as electricity.<sup>46</sup> Thus, EGG's own representations reveal that it will sell more than 50 percent of its output to a utility.

Third, EGG's mass balance diagram appears to indicate that only 45 percent of each reciprocating engine's 5,500 kW output is recovered for use as heat, which is then purportedly

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<sup>40</sup> FERC Form 556 at 9, line 7h.

<sup>41</sup> FERC Form 556 at 13, line 11h. 100 MW multiplied by 8,760 hours equals 876,000 MWh annually.

<sup>42</sup> EGG's Mass Balance Diagram.

<sup>43</sup> FERC Form 556 at 20 ("Average hours of annual operation is estimated at 83%[.]").

<sup>44</sup> FERC Form 556 at 20.

<sup>45</sup> FERC Form 556 at 13, line 11g. Total BTU per year required to generate 727,080 MWh per year at a heat rate of 6980 BTU/kWh year was reduced by 5% to account for thermal losses, then the BTU equivalent of 727,080 MWh at the energy equivalent of 3412 BTU/kWh (representing the electrical energy sold to the utility) was subtracted from the total useful energy. This value of BTU was then converted to back to MWh to represent the energy "not used for industrial, commercial, residential or institutional purposes and not sold to an electric utility".

<sup>46</sup> EGG represents that each reciprocating engine will have a heat rate of 6,980 Bth/hour, that its reciprocating engines will have a capacity factor of 83 percent, and that there will be 5 percent unrecovered heat.

available to serve unnamed commercial customers.<sup>47</sup> Yet of this 45 percent, EGG fails to specify how much of the output will actually provide service, describing the range as “500 to 3000 kW,” and the customers as “District Heat Demand TBD.”<sup>48</sup> Based on the mass balance diagram, EGG has failed to demonstrate that even the cogeneration component of its QF will provide 50 percent of its output for commercial or industrial purposes.

Fourth, EGG has not demonstrated that it has any actual customers for its thermal output or what those purported customers’ thermal demand will be, as discussed above. Therefore, even if its facilities could provide 50 percent thermal output, there is no evidence that this thermal energy has a market. It is highly unlikely that all of EGG’s proposed cogeneration sites have the same needs for thermal output as EGG has represented.

In sum, the massive scale of this proposed QF—both in output and in geographic reach—demonstrates that EGG’s proposed “hybrid power project” is not a QF with the primary purpose of producing heat and power for non-utility sales. Indeed, EGG appears to be attempting to establish a comprehensive new grid system to largely supplant the existing utility. Thus, the available evidence clearly suggests that the fundamental purpose of the claimed QF is not to serve industrial or commercial customers, but to sell power to GVEA. As a result, the proposed QF fails the fundamental use test and must be rejected.

**2. EGG Fails to Show that the Proposed QF’s Thermal Output Is Used in a Productive and Beneficial Manner Because There Is Insufficient Evidence That Heat Purchasers Exist.**

A QF must demonstrate that the thermal output from its proposed cogeneration facility “is used in a productive and beneficial manner.”<sup>49</sup> A cogeneration facility is presumed to be

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<sup>47</sup> EGG’s Mass Balance Diagram.

<sup>48</sup> EGG’s Mass Balance Diagram.

<sup>49</sup> 18 C.F.R. § 292.205(d)(1).

used in a productive and beneficial manner (1) “where a thermal host existed prior to the development of a new cogeneration facility whose thermal output will supplant the thermal source previously in use by the thermal host,”<sup>50</sup> or (2) where a cogeneration facility is “5 MW or smaller.”<sup>51</sup>

FERC requires a QF’s Form 556 to include “sufficiently detailed information for [FERC] to determine compliance” with the productive and beneficial use requirement.<sup>52</sup> As FERC explained in *Chugach*, a proposed QF cannot satisfy the beneficial use test where the “necessary end-users of the proposed output do not appear to currently exist” and the “record indicates that the infrastructure needed for getting the proposed thermal output to the market would be significant and expensive and does not currently exist.”<sup>53</sup> Based on these findings, FERC concluded that the proposed QF had not “provided sufficient basis for the Commission to conclude that the thermal uses on which its self-certifications are based will materialize.”<sup>54</sup>

Here, EGG certifies that its QF will satisfy the productive and beneficial use test because its cogeneration facilities “will be co-located at schools, government buildings, grocery stores, retailers, [a] hospital, rec centers, [a] sports arena, pools and water/wastewater sites.”<sup>55</sup> EGG thus proposes to insert its cogenerating facilities “where a thermal host existed prior to the development of a new cogeneration facility.”<sup>56</sup> However, the information provided in Form 556 to support this claimed thermal use is insufficient to demonstrate compliance under *Chugach*.

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<sup>50</sup> 18 C.F.R. § 292.205(d)(5).

<sup>51</sup> 18 C.F.R. § 292.205(d)(4).

<sup>52</sup> *Chugach*, 121 FERC 61,287 at P.39.

<sup>53</sup> *Chugach*, 121 FERC 61,287 at P.39.

<sup>54</sup> *Chugach*, 121 FERC 61,287 at P.39.

<sup>55</sup> FERC Form 556 at 19.

<sup>56</sup> 18 C.F.R. § 292.205(d)(5).

EGG's Form 556 is deficient in both the identity of the thermal output purchasers and the amount of thermal energy to be sold. EGG does not identify all of the parties that would be purchasing its reciprocating engines' heat output, and those it does reference are described in vague terms—referring to each by site number and indirectly, in the accompanying exposition, by classification (e.g., “schools” and “retailers”).<sup>57</sup> The accompanying geographic locations for all twenty-one of the various facility sites (including the wind farm facility) allows some additional cross-referencing, but remains imprecise and unnecessarily vague.<sup>58</sup> The form is arguably even less revealing with respect to the thermal output attributable to each host, improbably listing each as taking identical total thermal outputs.<sup>59</sup> Thus, as found by FERC in *Chugach*, there is little if any evidence to show that EGG's vaguely-described thermal uses will actually materialize or that its described purchasers are anything more than theoretical.

EGG also cannot qualify for the presumption of productive and beneficial use based on the 5 MW safe-harbor principles. While EGG claims that its cogeneration facility is less than 5 MW because each unit's net output is 4.95 MW,<sup>60</sup> EGG has aggregated its various projects into a single QF by filing a single Form 556 labeling its QF a hybrid project. Therefore, EGG's proposed QF has a nameplate capacity of 147.8 MW (and even the cogeneration component of the QF has a nameplate capacity of 110 MW, with a stated project net output of 99 MW).<sup>61</sup> As a result, the safe harbor for 5 MW QFs does not apply to EGG's proposed QF. In sum, EGG fails to demonstrate that the thermal output from its cogeneration facilities will be used in a productive and beneficial manner.

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<sup>57</sup> FERC Form 556 at 14, line 12a.

<sup>58</sup> FERC Form 556 at 19.

<sup>59</sup> FERC Form 556 at 14, line 12a; *see also id.* at 20.

<sup>60</sup> FERC Form 556 at 12, line 11f.

<sup>61</sup> FERC Form 556 at 10-All, line 7g.

### 3. EGG Fails to Show that the Proposed QF Meets Required Operating and Efficiency Standards.

Cogeneration facilities' useful thermal output must be at least 5 percent of the total energy output in a calendar year.<sup>62</sup> Topping-cycling cogeneration facilities<sup>63</sup> must show that they meet certain efficiency standards, as codified in 18 C.F.R. § 292.205(a)(2). Here, the lines in Form 556 that should demonstrate compliance with both these standards appear to be inaccurately completed.<sup>64</sup> For instance, line 13a states that the annual net average rate of useful thermal output is 122.8 *billion* Btu/h<sup>65</sup>—an amount dramatically inconsistent with the size of the project and the mass-balance diagrams that accompany the FERC Form 556. EGG appears to be listing all the output made available during the year, not the average annual *rate*. Line 13b contains a similar error. The line states that the annual average rate of net electricity energy output is 35.99 GW, which is inconsistent with the capacity of the project stated elsewhere in the form. It appears that EGG has again incorrectly used the annual net energy (not rate) produced by a single reciprocating engine.<sup>66</sup> So not only is the figure incorrect, it does not represent the characteristics of the entire project. Line 13g also includes a figure for the annual average rate of energy input from natural gas and oil that appears inconsistent with similar figures identified elsewhere in the form.<sup>67</sup>

Because the figures listed on lines 13a, 13b, and 13g are incorrect and/or inconsistent with other representations made by EGG, it is unclear if the proposed QF complies with the operating and efficiency standards required for certification.

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<sup>62</sup> 18 C.F.R. § 292.205(a)(1).

<sup>63</sup> EGG's proposed QF is a topping-cycling cogeneration facility. Form 556 at 11, line 10a.

<sup>64</sup> FERC Form 556 at 15.

<sup>65</sup> FERC Form 556 at 15, line 13a.

<sup>66</sup> FERC Form 556 at 20 ("Gross electric output of each engine is 4950 kWh with annual hours of 7,271 resulting in 35,991,450 kWh.").

<sup>67</sup> See FERC Form 556 at 9, line 6c

**B. Declaration 2: EGG’s Proposed QF Fails to Meet the Requirements for Small Power Production Facilities Because It Substantially Relies on Fossil Fuels and It Exceeds the 80 MW Maximum Facility Size.**

EGG’s certifies its project as a small power production facility, but its project fails to meet the necessary requirements due to its excessive use of fossil fuels and its massive size. A small power production facility can use small amounts of fossil fuels in “the minimum amounts” necessary for “ignition, startup, testing, flame stabilization, and control uses,” so as to prevent outages and emergencies.<sup>68</sup> The primary generating source for 110 MW of the proposed 147.8 MW facility—representing the QF’s reciprocating engines component—is a fossil fuel source, which EGG variously describes as either liquified natural gas (“LNG”), propane, or diesel.<sup>69</sup> EGG’s project capacity is roughly 75 percent higher than the 80 MW maximum allowed for small power production facilities.<sup>70</sup>

EGG attempts to satisfy the fossil fuel usage and size requirements by treating the wind facility as a separate QF from the reciprocating engines for small power production facility compliance purposes only, asserting that the QF “will use fossil fuels *exclusively*” for the ignition and emergency-related purposes enumerated in 18 C.F.R. § 292.204(b).<sup>71</sup> By certifying that the QF will not use significant amounts of fossil fuels, EGG ignores the fossil fuel used by its twenty cogeneration facilities—while simultaneously claiming that these are part of its single QF and are necessary to firm the QF’s wind energy.<sup>72</sup> Similarly, EGG represents that its facility meets the small power production size requirement by simply ignoring the vast majority of the generation associated with its twenty reciprocating engines. This bifurcated and inconsistent

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<sup>68</sup> 18 C.F.R. § 292.204(b)(2).

<sup>69</sup> EGG’s Mass Balance diagram lists all three fuels, while the FERC Form 556 refers to renewable diesel and propane on page 9, line 7h.

<sup>70</sup> 18 C.F.R. § 292.204(a)(1).

<sup>71</sup> FERC Form 556 at 10-Small Power Production, line 9a.

<sup>72</sup> FERC Form 556 at 19.

approach reaffirms that the wind and cogeneration facilities are, in fact, separate facilities. And if one accepts EGG’s claim that its project constitutes a single QF, then its project’s substantial fossil fuel use fails to meet the limit on fossil fuels required for small power production QFs and the project’s consolidated nameplate capacity far exceeds the 80 MW maximum. Thus, EGG seeks to camouflage the facilities as separate QFs for compliance purposes, but as a single QF for pricing purposes—thereby inappropriately avoiding critical integration and regulation costs that would apply to a variable QF requesting interconnection to GVEA’s electric system.

**C. Declaration 3: EGG’s Proposed Project Is Not a Single QF Because it Consists of Over Twenty Geographically Distinct Wind and Cogeneration Facilities.**

FERC’s regulations describe two basic types of QF: small power production facilities and cogeneration facilities,<sup>73</sup> each of which entails discrete size, fuel use, and operational requirements.<sup>74</sup> Here, EGG filed a single Form 556 for what it describes as a “hybrid power project consisting of a 37.8 wind farm that . . . has its power ‘firmed’ by the integration of 100 MW of cogen[eration] power produced by 20 separate [5.5] MW reciprocating engines.”<sup>75</sup> This proposal does not constitute a single QF for two basic reasons.

First, it does not logically follow that a single “qualifying facility” (singular) could be comprised of over twenty different facilities (plural) in four different communities spanning over 170 miles. Indeed, EGG describes its project as including “both a qualified small power facility . . . *and* a qualified co-generation facility,”—not a single qualifying facility.<sup>76</sup> With more than twenty different sites totaling 147.8 MW of nameplate capacity for a claimed 100 MW of

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<sup>73</sup> 18 C.F.R. § 292.203 (further describing hydroelectric small power facilities).

<sup>74</sup> 18 C.F.R. § 292.204 governs small power production facilities while 18 C.F.R. § 292.205 governs cogeneration facilities.

<sup>75</sup> FERC Form 556 at 9, line 7h. Note in the interest of clarity, nameplate capacity is used where possible. EGG refers to its cogeneration facilities as “5 MW,” apparently rounding up from 4950 kW of *net* output. However, the projects are listed as 5.5 MW. FERC Form 556 at 9, line 7a.

<sup>76</sup> FERC Form 556 at 19 (emphasis added).

firm, constant output, EGG appears to be attempting to certify a qualifying *system* rather than a qualifying *facility*.<sup>77</sup>

Second, the central fuel and operational requirements of a small power production facility and a cogeneration facility are incompatible. For instance, a cogeneration facility is specifically authorized to use fossil fuels that are precluded for significant use by small power production facilities.<sup>78</sup> EGG's proposed project exemplifies this inconsistency, and unsuccessfully attempts to mitigate the issue and evade the requirement by treating its subsidiary components as separate facilities for compliance purposes—merely reinforcing the fact that its constitute parts are truly separate facilities.

The illogic of EGG's proposal is reinforced by the fact that it appears to be unprecedented. GVEA has been unable to locate a single instance in which a QF was comprised of *both* a small power production facility *and* a cogeneration facility—let alone a small power production facility and twenty cogeneration facilities spread across a distance of 170 miles. EGG's self-certification should thus be rejected.

**D. Declaration 4: EGG's Attempt to Self-Certify as a QF is Facially Inadequate Because it is Incomplete and Internally Inconsistent.**

FERC should find that EGG has not met the requirements for QF status because its self-certification (Form 556) is incomplete and internally inconsistent. FERC's Form 556 states that “[i]ncomplete . . . forms . . . will be rejected.”<sup>79</sup> Given that FERC “does not formally review the self-certification” of a QF, a QF's self-certification depends on the self-attested accuracy and completeness of FERC Form 556.<sup>80</sup>

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<sup>77</sup> FERC Form 556 at 9, line 7h (stating that the project's “net result is 100 MW of firm electricity [that] is always generated for the GVEA grid”).

<sup>78</sup> See FERC Form 556 at 10, lines 9a-9b, and 8, line 6c.

<sup>79</sup> FERC Form 556 at 1.

<sup>80</sup> *Chugach*, 121 FERC 61,287 at P18.

Here, EGG’s Form 556 is incomplete because it fails to adequately specify the recipients of the cogeneration facilities’ thermal output.<sup>81</sup> Form 556 requires a self-certifying QF to “[n]ame” the entities that will be taking thermal output, to describe the thermal host’s relationship to the proposed QF, and to specify the annual amount of thermal output each host will take.<sup>82</sup> Here, EGG merely provides the number of sites and lists identical total consumption amounts for each of the 20 thermal hosts—either in the form of heat alone, or in combined heat and “chilled water.”<sup>83</sup> Elsewhere in Form 556, EGG provides geographic coordinates for its twenty-one total sites (including the proposed wind farm), twenty of which would presumably correspond with the cogeneration facilities’ thermal hosts.<sup>84</sup> These sites purport to correspond to “schools, government buildings, grocery stores, retailers, [a] hospital, rec centers, [a] sports arena, pools and water/wastewater sites.”<sup>85</sup> A recitation of potential host categories is insufficient to meet the FERC requirement to specify who, precisely, will be purchasing the project’s substantial proposed heat output, nor is a uniform value of consumption across all of these purchasers probable or even reasonable.<sup>86</sup> This incompleteness has substantially interfered with GVEA’s own review of EGG’s claimed QF status.

EGG’s Form 556 is also internally inconsistent, stating that the “net power production capacity” of the cogeneration facility is less than or equal to 5 MW,<sup>87</sup> but elsewhere stating that the QF includes twenty reciprocating engines, each with a net capacity of 4.95 MW, resulting in

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<sup>81</sup> FERC Form 556 at 14.

<sup>82</sup> FERC Form 556 at 14, line 12a.

<sup>83</sup> FERC Form 556 at 14, line 12a; *see also id.* at 19 (listing further values).

<sup>84</sup> FERC Form 556 at 19.

<sup>85</sup> FERC Form 556 at 19.

<sup>86</sup> *See Chugach*, at P. 28 (noting “legitimate concerns regarding whether, once operational, the [QFs] will satisfy the operating and efficiency standards,” in part, because the Form 556 did not identify the buyers of the thermal output).

<sup>87</sup> FERC Form 556 at 12, line 11f.

a total net capacity for the cogeneration facilities of 99 MW—well in excess of 5 MW.<sup>88</sup> This fact is central to how FERC determines if the project meets the “fundamental use” test required for cogeneration facilities (discussed below). Moreover, as a cogeneration “facility” far exceeding the 5 MW threshold for establishing a rebuttable presumption of fundamental use,<sup>89</sup> EGG was required to complete the details regarding plant losses, total amounts of output sold to an electric utility, and the percentage of total output sold to other commercial, residential, and industrial users.<sup>90</sup> These values are absent.

Given that EGG’s QF status depends on the completeness and accuracy of its Form 556, FERC should conclude that these combined omissions and inconsistencies render EGG’s self-certification facially inadequate to establish EGG as a QF.

#### **IV. CONCLUSION**

For the reasons articulated above, FERC should find that (1) EGG’s project fails to meet the requirements for a cogeneration facility because it has the primary purpose of selling electric power to a utility rather than serving its purported industrial and commercial customers, it does not demonstrate compliance with the operating and efficiency rules, and it provides insufficient evidence that heat purchasers exist; (2) EGG’s project fails to meet the requirements for a small power production facility because of its excessive fossil fuel usage and size; (3) EGG’s project does not meet the requirements for QF status under PURPA because it is actually comprised of many different facilities, some of which provide variable energy delivery and others that are intended to provide load following service to smooth and firm the delivery of the variable

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<sup>88</sup> FERC Form 556 at 19. To the extent that EGG attempts to treat its cogenerating facilities as a single QF for some purposes, but as discrete facilities for other purposes, this inconsistency merely supports the fact that EGG’s “hybrid” project is actually many separate facilities. FERC Form 556 at 19.

<sup>89</sup> FERC Form 556 at 12, line 11f.

<sup>90</sup> FERC Form 556 at 13, lines 11g-11i.

energy; and (4) EGG's self-certification is facially inadequate to establish EGG as a QF because it is incomplete and internally inconsistent.

WHEREFORE, GVEA respectfully requests that FERC issue an order:

1. Declaring that the EGG project is not a QF;
2. Requiring EGG to obtain FERC certification for all future QF projects requesting interconnection with GVEA; and
3. For any additional relief that FERC deems appropriate under the circumstances.

Respectfully submitted this 5<sup>th</sup> day of March, 2019.

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## **V. EXHIBITS**

Exhibit A — Letter from EGG to GVEA re Interconnection Request at 1 (Dec. 26, 2018)

Exhibit B — EGG's Dec. 26, 2018 FERC Form 556

Exhibit C — Letter from GVEA to William Rhodes of EGG (Feb. 6, 2019)

## CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing document on all parties in Docket No. QF19-855-000 by email addressed to said person(s) at his or her last-known address(es) indicated below.

William F. Rhodes  
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6547 North Academy Blvd. #1022  
Colorado Springs, CO 80918  
rhodesbill@yahoo.com

DATED: March 5, 2019

*/Adam Lowney/*

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