

170 FERC ¶ 61,025
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Golden Valley Electric Association, Inc.
Eco Green Generation LLC

Docket Nos. EL19-53-001
QF19-855-002

ORDER DENYING REHEARING AND WAIVER

(Issued January 23, 2020)

1. On June 5, 2019, the Commission issued a declaratory order,¹ which found that Eco Green Generation LLC's (Eco Green) facility, self-certified in Docket No. QF19-855-000, does not meet the requirements for qualifying facility (QF) status under the Public Utility Regulatory Policies Act of 1978 (PURPA).² Eco Green filed a timely request for rehearing of the June 5 Order and waiver of certain Commission's regulations governing criteria for small power production and cogeneration QFs. In this order, we deny rehearing and waiver.

I. Background

2. Eco Green is a QF developer whose facility would interconnect with Golden Valley Electric Association, Inc. (Golden Valley), a consumer-owned, electric utility located in Fairbanks, Alaska. On February 21, 2019, Eco Green filed a Form No. 556 with the Commission.³ Item 1k of Eco Green's Form No. 556 designated the facility as a cogeneration QF. However, as further described in the Form No. 556, Eco Green described its proposed facility as a "hybrid power project" that was both a small power

¹ *Golden Valley Elec. Assoc., Inc.*, 167 FERC ¶ 61,208 (2019) (June 5 Order).

² 16 U.S.C. §§ 796(17)-(18), 824a-3 (2018).

³ Eco Green, Form No. 556, Docket No. QF19-855-000 (filed Feb. 21, 2019) (Eco Green Form No. 556).

production QF and a cogeneration QF.⁴ Eco Green thus self-certified its hybrid facility as a single facility, consisting of a 37.8 MW wind farm that “has its power ‘firmed’ by the integration of 100 MW of cogen[eration] power produced by 20 separate 5 MW reciprocating engines that are dual fueled from 3 [percent] renewable diesel and 97 [percent] propane.”⁵ Eco Green listed fossil fuel as the project’s primary fuel source.⁶ Eco Green stated that the 20 separate reciprocating engine cogeneration units (cogeneration units) produce 50 percent electricity and 50 percent heat. Eco Green explained that the cogeneration units produce hot water, which provides district heating and heat converted into chilled water for refrigeration. Eco Green stated that the cogeneration units would be “co-located at schools, government buildings, grocery stores, retailers, hospital, rec centers, sports arena, pool, and waste/wastewater sites.”⁷

3. Eco Green’s proposed facility is located in and around Fairbanks, Alaska. Eco Green noted that the Fairbanks grid is small and lacks flexible generation and the addition of intermittent wind is a challenge. Eco Green stated that, as a result, its proposed cogeneration units would be used to “firm” the proposed wind generation to accommodate the wind farm’s intermittent electrical production, while also producing heat to eliminate the need for each host site to produce its own space heating or refrigeration.⁸ Eco Green stated that “[t]he net result is 100 MW of firm electricity is always generated for the [Golden Valley] grid.”⁹

4. On March 5, 2019, Golden Valley filed a petition for declaratory order that challenged Eco Green’s self-certified QF status. Golden Valley asserted that Eco Green’s facility did not qualify for QF status as defined by PURPA.¹⁰ Specifically, Golden Valley argued that Eco Green’s hybrid facility (1) fails to meet the requirements

⁴ *Id.* at 19. Eco Green states that the Form No. 556 did not allow it to designate the project as both types of facilities. *Id.* at 9 line 7h; Eco Green March 18, 2019 Answer at 3, 19; Eco Green April 15, 2019 Answer at 1.

⁵ Eco Green Form No. 556 at 9 line 7h.

⁶ *Id.* at 8 line 6a.

⁷ *Id.* at 19.

⁸ *Id.* at 14 line 12b.

⁹ *Id.* at 9 line 7h.

¹⁰ June 5 Order, 167 FERC ¶ 61,208 at P 4.

of a cogeneration QF under the Commission's regulations;¹¹ (2) does not satisfy the requirements of a small power production QF because it relies on fossil fuels and exceeds the 80 MW limit in 18 C.F.R. § 292.204(a)(1); (3) is not a single QF because it consists of 20 geographically distinct wind and cogeneration projects; and (4) cannot be self-certified because its certification is incomplete and inconsistent with the Commission's regulations.¹²

5. In the June 5 Order, the Commission granted Golden Valley's petition for declaratory order and revoked the Eco Green facility's self-certified QF status, finding that Eco Green's hybrid facility does not qualify as either a small power production QF or a cogeneration QF.¹³

6. The Commission found that Eco Green's proposed hybrid facility is not a small power production QF.¹⁴ To qualify as a small power production QF, the facility must: (1) not exceed 80 MW in size; and (2) meet the fuel use criteria, including that its primary energy source be biomass, waste, renewable resources (such as wind or solar), geothermal resources, or any combination thereof; and (3) 75 percent or more of the total energy input must be from these sources.¹⁵ In the June 5 Order, the Commission found that the proposed hybrid facility is at least 100 MW,¹⁶ which exceeds the 80 MW limitation for a small power production QF. The Commission also found that the proposed hybrid facility's 20 cogeneration units will burn 97 percent propane, thus not meeting the fuel use requirement that 75 percent or more of its energy input be from

¹¹ 18 C.F.R. §§ 292.205(d)(2)-(3), 292.205(d)(1), 292.205(a) (2019).

¹² June 5 Order, 167 FERC ¶ 61,208 at P 5 (citing Golden Valley Petition at 9).

¹³ *Id.* PP 1, 27, 29.

¹⁴ *Id.* P 32.

¹⁵ *Id.* (citing 18 C.F.R. § 292.204).

¹⁶ The numerical fields in Eco Green's Form No. 556 listed the gross power production capacity as 5.5 MW and the net power production capacity as 4.95 MW, both of which are based on a single cogeneration unit. However, the descriptive fields in its Form No. 556 indicated that the hybrid project consists of 37.8 MW of wind generation and 100 MW of cogeneration produced by 20 separate 5 MW reciprocating engines, for a total of 137.8 MW. Eco Green Form No. 556, Items 7a, 7g, and 7h. Eco Green stated that its hybrid facility is "self-limited" to 100 MW. Eco Green April 15, 2019 Answer at 4, 5.

renewable sources.¹⁷ Thus, the Commission determined that Eco Green's proposed hybrid facility does not qualify as a small power production QF.¹⁸

7. Next, the Commission found that Eco Green's proposed hybrid facility does not qualify as a cogeneration QF.¹⁹ To qualify as a new cogeneration QF, the facility must: (1) meet the definition of a "cogeneration facility" (i.e., "equipment used to produce electric energy and forms of useful thermal energy (such as heat or steam), used for industrial, commercial, heating, or cooling purposes, through the sequential use of energy");²⁰ (2) meet certain operating and efficiency standards;²¹ (3) demonstrate that its thermal output is used in a productive and beneficial manner;²² and (4) demonstrate that its electrical and thermal output is used fundamentally for industrial, commercial, residential, or institutional purposes and is not intended fundamentally for sale to an electric utility.²³ To determine whether facilities meet this fourth requirement, the Commission has created a safe harbor, referred to as "the fundamental use test," which provides that, if at least 50 percent of a cogeneration QF's output is used for industrial, commercial, residential, or institutional purposes, the total energy output will be considered fundamentally used for those purposes.²⁴ The Commission also has created a rebuttable presumption that a new cogeneration QF of 5 MW or smaller satisfies both the

¹⁷ June 5 Order, 167 FERC ¶ 61,208 at P 32 (citing Eco Green Form No. 556 at 9 line 7h). Propane is a by-product of natural gas processing and petroleum refining and thus is a fossil fuel.

¹⁸ *Id.*

¹⁹ *Id.* P 34.

²⁰ *Id.* P 33 (citing 18 C.F.R. § 292.202(c)).

²¹ *Id.* (citing 18 C.F.R. § 292.205(a)-(b)).

²² *Id.* (citing 18 C.F.R. § 292.205(d)(1)).

²³ *Id.* (citing 18 C.F.R. § 292.205(d)(2)).

²⁴ *Id.* (citing 18 C.F.R. § 292.205(d)(3)); see *Chugach Elec. Assoc.*, 121 FERC ¶ 61,287, at P 42 (2007) (*Chugach*).

productive and beneficial use test and the fundamental use test.²⁵ The Commission stated that Eco Green's hybrid project, at 100 MW, does not qualify for the rebuttable presumption and does not meet the four criteria of a cogeneration QF.²⁶

8. First, the Commission found that Eco Green's hybrid facility described in the Form No. 556 (i.e., self-certified as a single hybrid facility) does not satisfy the definition of a "cogeneration facility" because it does not constitute "equipment used to produce electric energy and forms of useful thermal energy (such as heat or steam), used for industrial, commercial, heating, or cooling purposes, through the sequential use of energy."²⁷ The June 5 Order explained that, although the cogeneration components of the hybrid facility would arguably produce thermal output through the sequential use of energy to serve heating load, the wind turbine portion of the hybrid facility will not be part of a sequential use of energy.²⁸

9. Second, the Commission found that Eco Green's Form No. 556 did not contain enough information to demonstrate that the hybrid facility would satisfy the operating and efficiency standards in 18 C.F.R. § 292.205(a)-(b).²⁹

10. Third, the Commission found that Eco Green did not provide sufficient information for the Commission to determine that the hybrid project's thermal output would be used in a productive and beneficial manner.³⁰ The Commission explained that Eco Green did not secure any thermal hosts or identify any actual thermal demand; thus,

²⁵ June 5 Order, 167 FERC ¶ 61,208 at P 34 (citing 18 C.F.R. § 292.205(d)(4)); *see Revised Regulations Governing Small Power Production and Cogeneration Facilities*, Order No. 671, 114 FERC ¶ 61,102, at PP 26, 60, 121, *order on reh'g*, Order No. 671-A, 115 FERC ¶ 61,225 (2006); FERC Form No. 556, 1.11f, <https://www.ferc.gov/docs-filing/forms/form-556/form-556.pdf>.

²⁶ *Id.* PP 34-44.

²⁷ *Id.* P 35 (citing 18 C.F.R. § 292.202(c)).

²⁸ *Id.* The Commission explains that, for a cogeneration QF, there must be a *sequence* of electric power and useful thermal energy production. The wind turbines of Eco Green's hybrid facility produce only electric power and no useful thermal energy, and thus there is no "sequential use of energy." *Id.* n.73.

²⁹ *Id.* P 36; 18 C.F.R. § 292.202(a)-(b).

³⁰ June 5 Order, 167 FERC ¶ 61,208 at PP 37-40.

the Commission determined that the thermal usage of the hybrid facility is too speculative to be productive and beneficial.³¹

11. Fourth, the Commission determined that, based on Eco Green's own description of the hybrid project, the energy output of Eco Green's hybrid project is fundamentally for sale to an electric utility.³² The Commission explained that the principal purpose of the cogeneration QF, according to Eco Green, is "to 'firm' the wind generation and accommodate a large amount of new wind"³³ for sale to an electric utility.³⁴ The Commission also found that Eco Green does not meet the fundamental use test.³⁵ The Commission explained that, because Eco Green has not secured thermal hosts or identified a source of thermal demand, the thermal output of the facilities is too speculative to justify a finding that at least 50 percent of the total output of the facilities will be used fundamentally for industrial, commercial, residential, or institutional purposes.³⁶

12. Finally, the Commission denied Eco Green's request that the Commission grant waiver of unspecified regulations for good cause shown, namely assertions regarding air pollution in Fairbanks, to allow Eco Green to retain QF status.³⁷ The Commission found that Eco Green did not specify which particular regulations it requested the Commission to waive nor did Eco Green provide a sufficient explanation why the Commission should waive such regulations.³⁸ In addition, Eco Green did not cite to any prior instance in which the Commission found that a facility was not a QF but then granted waiver to allow that facility to be a QF nonetheless.³⁹

³¹ *Id.* P 39.

³² *Id.* P 41.

³³ *Id.* P 42 (quoting Eco Green Form No. 556 at 19).

³⁴ *Id.* P 35 (citing Eco Green Form No. 556 at 9 line 7h; Eco Green March 18, 2019 Answer at 1-2).

³⁵ *Id.* P 44.

³⁶ *Id.*

³⁷ June 5 Order, 167 FERC ¶ 61,208 at P 47 (citing Eco Green March 18, 2019 Answer at 2-3, 11-16; Eco Green April 15, 2019 Answer at 5).

³⁸ *Id.*

³⁹ *Id.*

13. In its rehearing request, Eco Green raises several procedural issues with the June 5 Order. Specifically, Eco Green: (1) argues that, under section 292.207(b)(3) of the Commission's regulations,⁴⁰ its QF status was deemed granted by the Commission because the Commission did not act on Golden Valley's petition for a declaratory order within 90 days;⁴¹ (2) requests waiver of the criteria for qualifying as a small power production QF in 18 C.F.R. § 292.204, the operating and efficiency standards for topping cycle cogeneration facilities in 18 C.F.R. § 292.205(a), and the criteria for a new cogeneration QF in 18 C.F.R. § 292.205(d)(1)-(3);⁴² (3) requests that the Commission impose sanctions on Golden Valley for representations it made to the Regulatory Commission of Alaska;⁴³ and (4) requests confirmation that Golden Valley paid the Commission a filing fee for a petition for a declaratory order.⁴⁴

14. Substantively, Eco Green argues that: (1) the Commission erred by evaluating Eco Green's self-certified hybrid project as one facility;⁴⁵ and (2) the Commission erred by finding that the 20 separate cogeneration units are not exempt from the cogeneration QF productive and beneficial use test and fundamental use test. In addition, Eco Green argues that the 20 cogeneration units should be certified as cogeneration QFs due to unique technological, efficiency, and economic benefits.⁴⁶

⁴⁰ 18 C.F.R. § 292.207(b)(3).

⁴¹ Eco Green Request for Rehearing at 6-7.

⁴² *Id.* at 12.

⁴³ *Id.* at 25.

⁴⁴ *Id.* at 7.

⁴⁵ *Id.* at 8-12.

⁴⁶ *Id.* at 9-10.

II. Discussion

A. Procedural Issues

1. Eco Green's QF Status Was Not Deemed Granted

15. We disagree with Eco Green's argument that, under section 292.207(b)(3) of the Commission's regulations,⁴⁷ its QF status was deemed granted by the Commission because the Commission did not act on Golden Valley's petition for a declaratory order within 90 days.⁴⁸ Eco Green attempts to apply the Commission's 90-day deadline for action on an application for Commission certification of QF status, i.e., the deadline for action on an application to be granted QF status filed pursuant to 18 C.F.R. § 292.207(b), to Golden Valley's petition for a declaratory order to revoke QF status. Golden Valley filed a petition for declaratory order seeking revocation of QF status under Rule 207 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.207, which does not set any deadline for Commission action.⁴⁹ Accordingly, we deny Eco Green's assertion that certification of its facility's QF status was deemed granted by the Commission for failure to act on Golden Valley's petition seeking revocation of QF status within 90 days.⁵⁰

⁴⁷ 18 C.F.R. § 292.207(b)(3) (requiring Commission action on an application for Commission certification of QF status within ninety (90) days of completion of such application. If the Commission does not act within ninety (90) days, the application is deemed to have been granted by the Commission.).

⁴⁸ Eco Green Request for Rehearing at 6-7 (stating that the Commission should have acted on Golden Valley's petition for declaratory order within ninety (90) days (by June 3, 2019), rather than ninety-two (92) days (by June 5, 2019)).

⁴⁹ 18 C.F.R. § 385.207(a)(1).

⁵⁰ Further, Eco Green confuses the Commission's regulations for self-certification of QF status with an application for Commission certification of QF status. The Commission's regulations provide that the Commission must act on an application for Commission certification of QF status within ninety (90) days. 18 C.F.R. § 292.207(b)(3) (action may include issuing a deficiency letter or granting or denying the application). If the Commission fails to act on such an application within that time, the application is deemed granted by the Commission. *Id.* § 292.207(b)(3). Eco Green did not apply to the Commission for certification of QF status for its facility; rather, it submitted a Form No. 556 for self-certification. The Commission's regulations governing QF self-certification do not require Commission action. *See id.* § 292.207(a), (c)-(d).

2. Request for Waiver

16. As noted above, in its request for rehearing, Eco Green requests waiver of: (1) the criteria for qualifying as a small power production QF in 18 C.F.R. § 292.204; (2) the operating and efficiency standards for topping cycle cogeneration QF in 18 C.F.R. § 292.205(a); and (3) the criteria for a new cogeneration QF in 18 C.F.R. § 292.205(d)(1)-(3).⁵¹ Eco Green states that good cause exists for granting waiver because its proposed hybrid facility will reduce health impacts caused by air pollution; provide economic savings by permitting Golden Valley to avoid emissions upgrades to its power plants; and increase diversity of supply during earthquakes.⁵² Eco Green has not shown good cause why it cannot satisfy the regulations and has failed to identify any prior instance in which the Commission certified a facility as having QF status for the reasons that Eco Green presented.⁵³ Thus, we deny Eco Green's request for waiver.

3. Request for Sanctions

17. Regarding Eco Green's request that the Commission impose sanctions on Golden Valley for representations Golden Valley made in a motion to the Regulatory Commission of Alaska,⁵⁴ we find Eco Green's request to be outside the scope of this proceeding. To the extent that Eco Green believes that Golden Valley made misrepresentations to the Regulatory Commission of Alaska, that commission is the proper forum for that complaint.

4. Filing Fee Payment

18. Regarding Eco Green's claim that, in the June 5 Order, the Commission did not confirm whether Golden Valley paid the Commission a filing fee for a petition for a declaratory order,⁵⁵ we note that Golden Valley paid the required fee.

⁵¹ Eco Green Request for Rehearing at 12.

⁵² *Id.* at 13-25.

⁵³ *StarMark Energy Systems, Inc.*, 41 FERC ¶ 61,175 (1987) (denying applicant's request for waiver of the cogeneration QF criteria's sequential use requirement).

⁵⁴ Eco Green Request for Rehearing at 25.

⁵⁵ *Id.* at 7.

B. Substantive Issues

1. Eco Green Filed Self-Certification of QF Status for One Facility

19. Eco Green states that the Commission erred by evaluating its Form No. 556 as one self-certification for QF status of one facility and asks that the Commission reevaluate its Form No. 556 as two self-certifications, covering separate facilities: (1) a small power production QF, containing the 37.8 MW wind farm and (2) a cogeneration QF, containing 20 individual 5-MW reciprocating engines.⁵⁶ Eco Green argues that, under the Commission's small power production QF analysis, the Commission should have excluded the 20 separate cogeneration sites.⁵⁷ Eco Green explains that the wind farm and the cogeneration sites are located over 90 miles apart and each cogeneration site operates independently in a unique geographic location.⁵⁸ Likewise, under the Commission's cogeneration QF analysis, Eco Green asserts that the Commission should have considered each of its 20 cogeneration sites as a separate, self-certified QF facility and should not have included the wind farm as part of the cogenerating units' sequential use of energy.⁵⁹ Therefore, Eco Green contends that it was nonsensical for the Commission to consider the 21 sites as one facility for the purposes of its analysis under the regulations.⁶⁰

20. We disagree with Eco Green's arguments. Eco Green filed a single Form No. 556 that described its facility as a "hybrid power project," consisting of a 37.8 MW wind farm that "has its power 'firmed' by the integration of 100 MW of cogen[eration] power produced by 20 separate 5 MW reciprocating engines"⁶¹ Eco Green's Form No. 556 states that "a total of 21 sites make up this hybrid power project."⁶² Eco Green did not

⁵⁶ *Id.* at 8, 10.

⁵⁷ *Id.* at 8.

⁵⁸ *Id.* at 10. Eco Green also asserts that its hybrid facility is distinct from Roseburg Forest Product's self-certified QF in Docket No. QF06-242-000. *Id.* However, Eco Green does not explain how Roseburg Forest Products self-certification affects the outcome here. Eco Green is obligated to "set forth the ground or grounds upon which" its request for rehearing is based. 16 U.S.C. § 313(a) (2018). Thus, we are not persuaded by Eco Green's argument.

⁵⁹ Eco Green Request for Rehearing at 9-10.

⁶⁰ *Id.* at 8.

⁶¹ Eco Green Form No. 556 at 9 line 7h.

⁶² *Id.* at 19.

seek to individually self-certify each cogeneration unit or adequately support why each such unit should be treated as a separate facility; rather, Eco Green self-certified all the wind and cogeneration units together as a single hybrid QF facility. Eco Green's Form No. 556 self-certified its hybrid facility as *both* a small power production QF and a cogeneration QF.⁶³ Thus, the Commission evaluated whether Eco Green's "facility *as a whole*" met the requirements for either a self-certified small power production QF or a cogeneration QF.⁶⁴

21. Eco Green also seems to argue that the Commission's "one-mile" rule should not apply in this proceeding because the facilities are located over 90 miles apart.⁶⁵ Section 292.204(a)(2) of the Commission's regulations states that an applicant's small power production facilities located within one mile of other such facilities owned by or affiliated with the applicant are considered located at the same site. Normally the one-mile rule is only relevant where an entity self-certifies multiple facilities as separate QFs through multiple Form No. 556s. But here Eco Green presented a different circumstance; it submitted one self-certification for a single, self-described hybrid facility made up of equipment located at multiple locations and asserted both small power production QF status and cogeneration QF status. Accordingly, the Commission evaluated whether the wind farm and the cogeneration units, as one facility per Eco Green's own submission, satisfied the criteria for small power production QF and for cogeneration QF. The one-mile rule was not relevant to that determination because Eco Green chose to self-certify the various generators as a single qualifying facility.

22. Further, we disagree with Eco Green's contention that the term "facility" is unclear in the Commission's regulations.⁶⁶ Eco Green does not dispute how the Commission defines "small power production facility" or "cogeneration facility"; rather, it argues that the Commission should have treated each cogeneration unit as a separate facility as though it held its own separate self-certification of QF status.⁶⁷ In this case, however, Eco Green chose to self-certify its facility as a single hybrid facility with a firm output of 100 MW, and repeatedly described how the cogeneration components of the facility would be used to firm the output of the wind components of the facility to achieve

⁶³ *Id.*

⁶⁴ June 5 Order, 167 FERC ¶ 61,208 at P 29; Golden Valley Petition at 1-3, 5; Eco Green Form No. 556 at 19.

⁶⁵ Eco Green Request for Rehearing at 10.

⁶⁶ Eco Green Request for Rehearing at 8.

⁶⁷ *Id.*

that output level.⁶⁸ Therefore, Eco Green's new assertion that these components should nevertheless be treated as separate facilities for purposes of QF status does not square with its own original description of how the proposed hybrid facility would operate. Thus, we find that the Commission properly evaluated Eco Green's Form No. 556, as originally submitted, as one facility.⁶⁹

2. Eco Green's Facility Does Not Satisfy the Productive and Beneficial Use Test or the Fundamental Use Test

23. Eco Green argues that, because its 20 individual cogeneration sites are each less than 5 MW, the Commission should have exempted the sites from providing proof of compliance with the productive and beneficial use test and the fundamental use test under the cogeneration QF regulations.⁷⁰ However, if the Commission does not exempt the hybrid facility from the cogeneration QF regulations, Eco Green asserts that the Commission's regulations allow Eco Green to present evidence of unique technological, efficiency, and economic benefits that provide evidence for certification.⁷¹ As evidence, Eco Green states that its hybrid facility produces more heat than electricity; has an efficient heat rate; uses hot water to provide domestic heating, which reduces the use of heating oil and wood in Fairbanks, Alaska; and contributes to a reduction in air pollution.⁷²

⁶⁸ See, e.g., Eco Green Form No. 556 at 9, 19; Eco Green March 18, 2019 Answer at 1-2, 6; Eco Green April 12, 2019 Second Answer at 4.

⁶⁹ The June 5 Order revoked Eco Green's self-certification of QF status without prejudice; therefore, Eco Green can, and did, submit new Form No. 556 self-certifications. See Eco Green Form No. 556s in Docket Nos. QF20-9-000, QF20-10-000, QF20-11-000, QF20-12-000, QF20-28-000, QF20-29-000, QF20-45-000, QF20-46-000, QF20-56-000, QF20-57-000, QF20-169-000, QF20-170-000, QF20-181-000, QF20-182-000, QF20-201-000, QF20-202-000.

⁷⁰ Eco Green Request for Rehearing at 9. See 18 C.F.R. § 292.205(d)(4) (A new cogeneration QF of 5 MW or smaller is presumed to satisfy the productive and beneficial use test and the fundamental use test); Order No. 671, 114 FERC ¶ 61,102 at PP 26, 60, 121; Form No. 556, 1.11f, <https://www.ferc.gov/docs-filing/forms/form-556/form-556.pdf>.

⁷¹ Eco Green Request for Rehearing at 9 (citing 18 C.F.R. § 292.205(d)(3)).

⁷² *Id.*

24. As explained above, Eco Green's hybrid project is not exempt from the Commission's cogeneration QF regulations.⁷³ As a 100 MW facility as originally proposed in its Form No. 556, Eco Green's hybrid project far exceeds the 5 MW limit required to invoke the rebuttable presumption that a facility satisfies the productive and beneficial use test and the fundamental use test.⁷⁴ Therefore, Eco Green is required to show that it satisfied the QF criteria. Eco Green has not shown that the thermal output of its hybrid facility will be used in a productive and beneficial manner, nor provided any evidence to demonstrate why it cannot meet the fundamental use test, nor persuasively explained why it should receive certification based on its newly claimed unique technological, efficiency, economic, and variable thermal energy requirements.

25. First, to demonstrate that the facility's thermal output is used in a beneficial manner, a new cogeneration QF must provide sufficiently detailed information, such as the need and market for thermal product and product-specific information, including the geographic location of the proposed QF.⁷⁵ We continue to find that, on the record before us, Eco Green has not secured any thermal hosts or identified any actual thermal demand.⁷⁶ Eco Green thus has not provided sufficient information for the Commission to find compliance with the productive and beneficial use standard.⁷⁷ The thermal usage of the Eco Green facility is, in short, too speculative at this time for us to find it productive and beneficial.⁷⁸

26. Second, Eco Green has not demonstrated that the fundamental use of the facility is for industrial, commercial, residential, or institutional purposes and is not intended fundamentally for sale to an electric utility.⁷⁹ Eco Green states that the principal purpose

⁷³ *Supra* P 7; June 5 Order, 167 FERC ¶ 61,208 at PP 34-44.

⁷⁴ In any event, the 5 MW limitation *rebuttably presumes* that the facility would satisfy the productive and beneficial use test and the fundamental use test; Golden Valley's petition for declaratory order rebutted the presumption that the facility satisfies those tests. Golden Valley Petition at 12.

⁷⁵ *Chugach*, 121 FERC ¶ 61,287 at P 39 (citing Order No. 671, 114 FERC ¶ 61,102 at P 17).

⁷⁶ June 5 Order, 167 FERC ¶ 61,208 at P 39; Eco Green Request for Rehearing at 3.

⁷⁷ *See* Eco Green Request for Rehearing at 3.

⁷⁸ June 5 Order, 167 FERC ¶ 61,208 at P 39.

⁷⁹ *Id.* P 41.

of its cogeneration facilities (100 MW of the total 137.8 MW hybrid facility) is “to ‘firm’ the wind generation and accommodate a large amount of new wind.”⁸⁰ According to Eco Green, the purpose of “firming” the wind generation is to allow Eco Green to sell its output to the electric utility.⁸¹ Moreover, as discussed above, Eco Green has not secured, nor identified, any thermal hosts or thermal demand; therefore, the thermal uses of the output of the facilities, at this time, are too speculative to justify finding that at least 50 percent of the total output of the cogeneration QF will be used fundamentally for industrial, commercial, residential, or institutional purposes.⁸²

27. Finally, Eco Green asserts that its proposed hybrid facility has unique technological, efficiency, economic, and variable thermal energy requirements such that, even if it fails the safe harbor for the fundamental use test, it should nonetheless be certified as a QF. The Commission’s regulations provide that, in determining whether a new cogeneration QF’s energy output is used fundamentally for industrial, commercial, residential, or institutional purposes and is not intended fundamentally for sale to an electric utility, the Commission must also take “into account technological, efficiency, economic, and variable thermal energy requirements, as well as state laws applicable to sales of electric energy from a qualifying facility to its host facility,” adding that a “finding that one of those factors exists may warrant a finding that facilities that do not meet the fundamental use test nevertheless comply with PURPA section 210(n)(1)(A)(ii).”⁸³

28. Eco Green states that its proposed hybrid facility is unique because each site produces more heat than electricity; the facility will reduce the amount of heating oil and wood used in Fairbanks, Alaska; and the facility will reduce air pollution, which will provide health benefits. Eco Green’s arguments miss the mark. Eco Green fails to provide support for why the Commission should determine that the proposed hybrid facility otherwise meets the requirements of PURPA section 201(n)(1)(A)(ii), taking into

⁸⁰ *Id.* P 42 (Eco Green Form No. 556 at 19).

⁸¹ *Id.* (Eco Green Form No. 556 at 9 line 7h); Eco Green March 18, 2019 Answer at 1-2.

⁸² *Id.* P 44.

⁸³ Order No. 671, 114 FERC ¶ 61,102 at P 50; *see* 16 U.S.C. § 824a-3(n) (requiring the Commission to amend its regulations to ensure that a new cogeneration QF seeking to sell electric energy (1) use the thermal output of the facility in a productive and beneficial manner and (2) use the electrical, thermal, and chemical output of the cogeneration facility fundamentally for industrial, commercial, or institutional purposes and not fundamentally for sale to an electric utility); 18 C.F.R. § 292.205(d)(3).

account technological, efficiency, economic, and variable thermal energy requirements.⁸⁴ Eco Green lists claimed public benefits of the project but does not support its assertions with evidence or otherwise demonstrate that the claimed benefits warrant a finding that, although the facility does not meet the safe harbor, it nonetheless falls within the meaning of PURPA section 201(n)(1)(A)(ii).⁸⁵ Because Eco Green's project is intended to primarily serve an electric utility and its thermal demand is too speculative, we find that Eco Green has not provided sufficient evidence to justify an exercise of our discretion to find that unique technological, efficiency, economic, and variable thermal energy requirements of the proposed hybrid facility warrant certification.

The Commission orders:

Eco Green Generation LLC's requests for rehearing and waiver are hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁸⁴ Order No. 671, 114 FERC ¶ 61,102 at P 51.

⁸⁵ *Id.* P 50.

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