taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–20047 Filed 8–6–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–317–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Proposed Changes in FERC Gas Tariff

August 1, 1996.

Take notice that on July 29, 1996, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective September 1, 1996:

Third Revised Sheet No. 6
Second Revised Sheet No. 9
Second Revised Sheet No. 53
First Revised Sheet No. 54
Second Revised Sheet No. 59
Original Sheet No. 59A
Second Revised Sheet No. 60

Great Lakes also tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the following tariff sheets to become effective September 1, 1996:

Sixth Revised Sheet No. 3–A
Fourth Revised Sheet No. 224
Fifth Revised Sheet No. 246
Sixth Revised Sheet No. 270
Sixth Revised Sheet No. 295
Third Revised Sheet No. 615

Great Lakes states that the proposed revised tariff sheets are being filed to reflect a revision to the methodology for allocating system fuel and other use gas, and the corresponding determination of Transporter's Use percentages, to reflect more distance sensitivity. Great Lakes further states that the proposed revised tariff sheets are being filed to revise the mechanics of its Transporter's Use mechanism so as to conform with the standards required by the Federal Energy Regulatory Commission's Order No. 587 issued July 17, 1996.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.214 and Section 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Commission's Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–20045 Filed 8–6–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. EL94–45–001 and QF88–84–006]

LG&E-Westmoreland Southampton; Order Granting Rehearing in Part and Denying Rehearing in Part, and Announcing Policy Concerning Non-Compliance With the Commission's QF Regulations

Issued July 31, 1996.

On August 9, 1994, LG&E-Westmoreland Southampton (Southampton) filed a request for rehearing of the Commission's order issued in this proceeding on July 7, 1994. *LG&E-Westmoreland Southampton*, 68 FERC ¶ 61,034 (1994). In that order, the Commission denied the request by Southampton, the owner of a topping-cycle cogeneration facility, for waiver of the Commission's operating standard applicable to qualifying cogeneration facilities, *see* 18 CFR § 292.205 (1995), for calendar year 1992.

We will deny rehearing to the extent Southampton asks us to upset our decision to deny its request for waiver of section 205 of the Federal Power Act (FPA) to excuse its non-compliance during calendar year 1992 with the Commission's requirements for qualifying facility (QF) status. We will grant rehearing to the extent Southampton asks us to allow it to remain exempt during that year from the other requirements of the FPA, as well as certain other federal and state regulation. Because this is just one of several pending cases that present the Commission with the question of how to regulate previously certificated (or self-certificated) QFs that have been found to be in non-compliance with the Commission's QF regulations during some past period of operation, and in order to encourage respect for and compliance with those regulations, we take this opportunity to announce a policy of general application concerning the consequences of failing to retain QF status.

Background

We discuss the background of this proceeding in detail in the previous order. In brief, Southampton owns a 62.6 MW topping-cycle cogeneration facility located in Franklin, Virginia that failed to meet the Commission's operating standard for qualifying cogeneration facilities during calendar years 1991 and 1992. Southampton previously was granted limited waiver to excuse non-compliance for calendar year 1991. In this proceeding, Southampton requested an additional waiver to excuse non-compliance for calendar year 1992. Southampton sought to justify a second waiver on the fact that, among other things, the facility was engaged in start-up and testing operations during a portion of 1992, and that the third-party plant operator mistakenly delivered (without Southampton's knowledge) steam produced in a non-sequential manner to the thermal host.

The Commission, after balancing all relevant considerations, found this explanation to be insufficient to justify a second waiver of its QF requirements. The Commission found particularly troubling the fact that Southampton, in justifying waiver for calendar year 1991, previously represented to the Commission that it expected to comply with all applicable QF requirements during calendar year 1992 and later years. The Commission also found that the circumstances leading to Southampton's second waiver request were not entirely outside of its control: ''We believe that the Commission should not, through its waiver authority, insulate a QF from the risks of non-performance due to operator error or poor management.'' 68 FERC at 61,113.

Finally, the Commission noted that Southampton may have operated as a public utility within the meaning of the Federal Power Act (FPA) during the period of time in which it failed to comply with the Commission's operating standard. For this reason, the Commission directed Southampton to ''show cause why it should not be required to file appropriate rate schedules with the Commission reflecting sales for resale'' to its utility-purchaser. 68 FERC at 61,113 n.9.

Request for Rehearing and Responses

On rehearing, Southampton argues that the Commission should have granted waiver for calendar year 1992.[1]

[1] Also on August 9, 1994, when it filed its rehearing request, Southampton filed a motion to treat its request for rehearing as if it had been filed on time, *i.e.*, on August 8, 1994. Southampton

Continued

In support, Southampton states that the Commission may have misunderstood the circumstances of its failure to satisfy the Commission's operating standard for QF status. Southampton explains that its non-compliance was due not to the actions of any of its own employees, but rather those of an entirely separate corporate entity, UC Operating Services. Southampton states that the third-party operator of its facility during the time in question was an experienced operator of generating facilities. For this reason, Southampton argues that it was entitled to rely on UC Operating Services to operate the QF in compliance with the Commission's technical requirements.

Southampton argues that in the past the Commission has granted waiver of its technical QF requirements *except* where there has been a willful or knowing violation of the Commission's QF standards. Southampton argues that here there was no such willful or knowing violation. Southampton also points out that both the Commission and Virginia Power would have remained unaware of the failure to comply with the operating standard absent Southampton's application for waiver; Southampton argues that this fact should have been considered in its favor.

In the alternative, Southampton asks the Commission to grant it a conditional waiver. Specifically, Southampton asks that it be allowed to refund to Virginia Power the difference between the avoided cost rates it charged during the period of non-compliance and the cost-based rates which otherwise would have been permitted under the FPA. Southampton argues that such a refund represents an appropriate remedy for its non-compliance and that there is no compelling reason to compound its ''punishment'' by also withholding the regulatory exemptions—from most sections of the FPA, from the Public Utility Holding Company Act (PUHCA) and from certain state laws and regulations (pertaining to electric utility rates and financial and organizational regulation)—otherwise available to QFs under the Commission's regulations, *see* 18 CFR §§ 292.601, 292.602 (1995). Southampton expresses particular concern with the possible loss of its PUHCA exemption, explaining that such a loss may undermine the ability of affiliates of its owners to remain in compliance with the QF ownership requirements, *see* 18 CFR § 292.206 (1995).

On August 24, 1994, Virginia Power filed a response to Southampton's request for rehearing, as well as a motion for leave to respond to the request for rehearing. Virginia Power argues, among other things, that the Commission did not apply a new policy in denying Southampton's request for waiver. Virginia Power also argues that the requested ''conditional'' waiver is based on speculative claims as to the dire consequences of an outright denial of waiver, and should not be granted to the economic detriment of Virginia Power's ratepayers.

On September 8, 1994, Westmoreland Coal Company, Westmoreland Energy, Inc. and Westmoreland-Franklin, Inc. (together, the Westmoreland Companies) filed a pleading in support of Southampton's request for rehearing or conditional waiver. The three Westmoreland entities state that they have an indirect partnership interest in Southampton and, accordingly, could be subjected to a host of federal and state regulations and liabilities for a past period of non-compliance if waiver is denied.

On October 18, 1994 and on October 24, 1994, respectively, the Electric Generation Association (EGA) and the National Independent Energy Producers (NIEP) filed letters in this proceeding in support of the alternative request for conditional waiver.

On November 7, 1994, the California Public Utilities Commission (California Commission) filed a letter in response to the letters of EGA and NIEP. The California Commission argues, among other things, that the only remedy for QF non-compliance that would fairly protect ratepayers is to require the non-complying QF to refund with interest the difference between the avoided cost rate paid by the utility to the non-complying QF and the market rate that the utility would have paid for the energy had it not been required to purchase power from the QF during the period of the QF's non-compliance. The California Commission states that a cost-based rate for the period of non-compliance that exceeds what the utility would have paid had it been able to respond to competitive market opportunities would not be reasonable to utility ratepayers.

Finally, on December 21, 1995, Southampton filed a motion for settlement conference. Southampton states that it believes that the arguments set forth in its request for rehearing are compelling. It nevertheless suggests that the convening of a settlement conference, at which it is prepared to present a proposal ''which it believes would accommodate the interests of all concerned, including Virginia Power, its ratepayers and the public'' (Motion at 4), would speed Commission resolution of this case.

Discussion

Under the circumstances presented herein, we will accept Southampton's request for rehearing as if it had been timely filed on August 8, 1994. In addition, we will consider all supplemental pleadings and letters filed in this proceeding (which we have added to the public record in these proceedings), in order to complete the arguments of the parties and to assist in our resolution of the issues presented.

Southampton's Request for Rehearing

As an initial matter, we will deny Southampton's request for rehearing to the extent we decline to upset our prior decision to deny its request for waiver for calendar year 1992. Southampton has not presented any arguments on rehearing that suggest to our satisfaction that our balancing of relevant factors improperly tilted in favor of a denial of waiver.

We are not persuaded by Southampton's argument on rehearing that the waiver decision should be motivated by whether the operators of its facility were its own employees or those employed by ''an experienced'' third-party contractor. In either event, the QF owner cannot abdicate its ongoing obligation to ensure compliance with the Commission's QF requirements. This is especially true where, as here, the QF owner already has received a Commission waiver to excuse non-compliance during a previous period of non-compliance (here, calendar year 1991). In light of Southampton's representation to the Commission, in support of waiver for calendar year 1991, that it expected to be back in compliance for calendar year 1992 and later periods, we believe that Southampton had a responsibility—which it failed to exercise—to be especially vigilant in ensuring QF compliance. In these circumstances, we believe it is no excuse for Southampton to claim that its non-compliance was neither willing nor knowing; it should have taken appropriate steps in these circumstances to understand the operation of its facility at all relevant times to ensure compliance.

We will, however, grant rehearing to the extent that we will grant Southampton's request that it retain most of the exemptions from federal and state regulation otherwise available to

explains that, due to ''photocopying equipment malfunctions,'' its courier did not arrive at the Commission to file its rehearing until 5:02 p.m. on August 8, 1994, after the close of business. On August 23, 1994, Virginia Electric & Power Company (Virginia Power), the utility-purchaser of Southampton-generated power, filed an answer in opposition to Southampton's motion.

QFs under the Commission's regulations. The one exemption we will deny is the obligation that Southampton file for Commission review, under section 205 of the FPA, the rates it charged Virginia Power during calendar year 1992 for wholesale power sales in interstate commerce.

We base this latter decision on a general policy we now announce to guide our resolution of all pending and future cases of QF non-compliance. We believe it is important at this time to explain the consequences of a denial of QF status. We take this action at this juncture to encourage QFs to be as vigilant as possible in promptly detecting possible non-compliance and in alerting the Commission as to possible non-compliance. Our concern is that if we do not articulate a clear policy as to the consequences of unexcused non-compliance, QFs will not exercise such vigilance.

Below, we explain this general policy. We then apply it to the circumstances of this particular case.

General Policy With Respect to Non-Compliance With the Commission's QF Regulations

Rate Review

As to the rates for power sales during a period of non-compliance with the Commission's QF requirements, we believe it is appropriate to distinguish between the following circumstances: (1) where the parties contemplated in the power sales agreement that QF status would be maintained during the entire term of the agreement; and (2) where the parties contemplated in the power sales agreement that QF compliance might not be maintained during the entire term of the agreement, *e.g.*, by negotiating an alternative non-compliance rate. In the former (more common) circumstance, we believe that the just and reasonable rate for such sales should be no higher than the price the buyer would have paid for energy had it not been required to purchase from the QF under our mandatory purchase requirements and instead had made an economic decision to purchase power from the QF in the hour. This places the buyer in the same position it would have faced had it known that it was not required to purchase the QF's power. Accordingly, with one exception, we will use the utility buyer's economy energy (incremental) cost during the period of non-compliance.[2] The one exception will be where the QF contract rate was less than the utility buyer's economy energy cost.[3]

As the Commission explained in *Medina Power Company*, 72 FERC ¶ 61,224 at 62,038–39 (1995), there is no reason to presume that the utility-purchaser would have agreed to purchase QF power at an avoided cost rate if, freed of the perceived obligation to purchase QF-generated power under PURPA, it could have purchased equivalent amounts of power from alternative sources at lower prices. An economy energy rate, in our judgment, places the utility-purchaser (and its ratepayers) in no worse a position than if it had known at the time of purchase that its ''QF'' supplier would be adjudged to be out of compliance with the Commission's QF requirements. Similarly, such a rate places the ''QF'' in the same position as if it had known at the relevant time that it would not be eligible for QF status during a particular period of non-compliance and would not be entitled to compel a purchase at the purchasing utility's avoided cost.

We agree with the California Commission that a fully allocated cost-based rate is not appropriate during the period of non-compliance when the parties were operating under the assumption that the seller would remain a QF during the entire term of their power purchase agreement (and thus did not contractually provide for an alternative non-compliance rate).

Further, a QF should not be able to charge a fully allocated cost-based rate if it represented to the Commission and to the utility-purchaser that it would operate in accord with the Commission's QF requirements. Such an opportunity, if successful, would act only to undermine compliance with the Commission's QF requirements. While the Commission is subject to the PURPA directive to ''encourage'' cogeneration and small power production, 16 U.S.C. 824a–3(a), it also is obligated to ensure that the rate charged by the QF ''shall be just and reasonable to the electric consumers of the electric utility and in the public interest'' and does not ''exceed[] the incremental cost to the electric utility of alternative electric energy.''[4] 16 U.S.C. 824a–3(b) (1994).

Finally, an economy energy rate is a market-driven (as opposed to fully allocated cost-based) rate that is more likely to reflect market conditions at the time of non-compliance than would the ''old'' avoided cost rate. Accordingly, an economy energy rate will better protect electric utility purchasers from uneconomic mandatory purchases from non-complying QFs.

We recognize that a substitute rate based on the purchasing utility's economy energy costs may not be appropriate in situations in which the parties in their contract have contemplated the possibility of non-compliance with the Commission's QF regulations. We are aware of QF power purchase contracts that do not require the seller to remain a QF throughout the term of the power purchase agreement and contemplate continued power sales during periods of non-compliance at a negotiated default rate. *See Medina Power Company (Medina)*, 71 FERC ¶ 61,264, *reh'g denied*, 72 FERC ¶ 61,224 (1995) (instituting a hearing to determine the reasonableness of the seller's rates on a cost basis, where the seller never has complied with the Commission's QF regulations).

We believe that it is appropriate to continue to consider cases like the *Medina* case, in which the parties contractually provided for continuing service during periods of QF non-compliance at a different rate, on a case-by-case basis.[5]

Regulatory Exemptions

Turning to the continuing availability of the regulatory exemptions, *see* 18 C.F.R. §§ 292.601, 292.602 (1995), we agree with Southampton that, as a general matter, there is no compelling reason to eliminate all of the exemptions from federal and state

[2] We believe that in the majority of cases any attempt to replicate actual market conditions during past periods would be a difficult and time consuming procedure. Moreover, data about the actual economic decisions of the buyer can be found in its dispatch logs. Except for its must run generating units and mandatory purchases including QF purchases, a utility will evaluate its economic options in each hour (energy purchases and generating unit running costs) and select a combination of resources sufficient to meet its load at the lowest overall cost. To set a rate for sales made during a period of non-compliance, we will adopt the highest cost option actually selected by the buyer in the hour, *e.g.*, the most expensive energy purchase or unit running cost. This is because the highest cost option represents the utility's incremental cost in that hour. Such costs represent a reasonable proxy for the market rate the buyer would have paid during the period of non-compliance. To the extent an investigation is necessary, it would be limited to determining the purchaser's actual energy costs during the period of non-compliance.

[3] To the extent the contract rate was less than the economy energy costs over all the hours of the period of noncompliance, the just and reasonable rate will be the contract rate. Any other result would penalize ratepayers due to the facility's non-compliance with QF requirements. Such a perverse result would not comply with the requirements of section 210(b) of the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. 824a–3(b) (1994).

[4] As noted, the utility-purchaser's economy energy costs during the period of non-compliance are, in effect, a measure of the utility's ''incremental costs.''

[5] In such cases, the ''QF'' should file its proposed rate, with appropriate support, with the Commission.

regulation otherwise applicable to QFs, assuming the non-compliance was not marked by long duration or frequent recurrence. We believe that the prospect of a lower, substitute economy energy rate during a period of non-compliance (in conjunction with whatever contractual remedies are appropriate for non-compliance), or the possibility of case-specific scrutiny to determine a just and reasonable rate where the parties' contract provides for a non-compliance default rate, should provide ample incentive for QFs to retain their QF status. Similarly, these rate remedies also should provide ample incentive for QFs, to the extent uncertain as to their continuing compliance, to take the initiative to seek Commission guidance as soon as possible.

This approach is entirely consistent with the explicit language of PURPA which provides in section 210 that the Commission has the authority to grant such exemptions ''in whole or part.'' 16 U.S.C. § 824a–3(e) (1994). The same section provides that the Commission may grant exemptions from ''any combination of'' FPA, PUHCA and state regulation ''*if* the Commission determines such exemption is necessary to encourage cogeneration and small power production.'' *Id*. (emphasis added).

Accordingly, in all cases in which a QF failed to comply with our QF regulations during some past period of time, fails to receive a waiver to excuse such non-compliance, and is now back in compliance, we will continue to grant all of the exemptions otherwise applicable to QFs except for the FPA section 205 exemption.[6] As explained above, such QFs must commit to FPA section 205 rate regulation for the period of non-compliance.

For pending cases as well as future cases, we will grant all of the regulatory exemptions (other than FPA rate review) unless the non-compliance is marked by long duration or frequent recurrence. In circumstances where the QF has engaged in more than one period of non-compliance, the QF will assume a heavy burden in demonstrating that the non-compliance merits a second waiver.

Determination of Southampton's Rates

Applying this policy to Southampton's circumstances, we will grant its request for continued exemption during calendar year 1992 from regulation under PUHCA and state utility laws and most sections of the FPA, consistent with 18 C.F.R. §§ 292.601, 292.602 (1995). However, as explained above, the extension of QF regulatory exemptions is subject to Southampton's obligation to submit for Commission rate review, under section 205 of the FPA, the rates it charged to Virginia Power during calendar year 1992. It also must refund to Virginia Power the difference between the contract rate during that year and the Commission-approved rate, with interest calculated pursuant to the Commission's regulations, *see* 18 C.F.R. § 35.19a (1995).

We have decided above that the just and reasonable rate for wholesale power service provided during each hour of the period of non-compliance (1992) should be no higher than what Virginia Power would have paid for energy had it made an economic decision to purchase power from Southampton in these hours.[7] For this reason, we direct Virginia Power to compile data from its dispatch logs showing the highest cost option actually selected by Virginia Power in the hour, *e.g.*, the most expensive energy purchase or unit running cost[8] for each hour during 1992 and to submit a report of such costs to us within 45 days of the date of this order. To avoid questions about the source of such cost data, we direct personnel from both Southampton and Virginia Power to compile the data jointly from Virginia Power's system dispatch logs. We strongly encourage the parties to reach agreement as to this remaining rate issue. After we receive the required report, we will determine whether further proceedings are necessary.

In light of these procedures, we see no need to undertake additional ''settlement judge'' procedures as recommended by Southampton.

The Commission Orders

(A) Southampton's request for rehearing is hereby accepted as if it were timely filed.

(B) Southampton's request for rehearing is hereby granted in part and denied in part, as discussed in the body of this order.

(C) Virginia Power is hereby directed to file with the Commission, within 45 days of the date of this order, a report compiling its hourly economy energy costs for 1992, as discussed in the body of this order.

(D) The Secretary is hereby directed to publish a copy of this order in the Federal Register.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 96–20051 Filed 8–6–96; 8:45 am]

BILLING CODE 6717–01–P

[6] We will issue orders in the near future that apply this policy to pending cases raising the non-compliance issues. Of course, we retain the discretion to resolve any individual cases on any peculiar facts presented, such as those resolved through negotiated settlement.

[7] *See supra* at 6 & n. 2.

[8] The highest cost in the hour is the incremental cost for that hour.

[Docket No. RP96–318–000]

Midwestern Gas Transmission Company; Notice of Cashout Report

August 1, 1996.

Take notice that on July 29, 1996, Midwestern Gas Transmission Company (Midwestern) tendered for filing its cashout report for the September 1994 through August 1995 period.

Midwestern states that the cashout report reflects a total cashout loss during this period of $22,755.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before August 8, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–20046 Filed 8–6–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP–96–683–000]

Mississippi River Transmission Corporation; Notice of Application To Abandon

August 2, 1996.

Take notice that on July 30, 1996, Mississippi River Transmission Corporation (Applicant), 1600 Smith Street, Houston Texas 77002, filed pursuant to Section 7(b) of the Natural Gas Act, for authority to abandon, a certificated transportation service with El Paso Natural Gas Company. The service is Applicant's Rate Schedule X–23 in its FERC Gas Tariff, Original Volume No. 2. Applicant's proposal is