

THE ALCON DECISION: DISINCENTIVE TO COGENERATION

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In 1978, Congress enacted the Public Utility Regulatory Policies Act (PURPA)¹ with the goal of reducing the demand for fossil fuels.² PURPA contains provisions which are intended to encourage the development of cogeneration³ and small power production⁴ facilities. Although cogeneration and small power production have existed in the United States since early in the twentieth century, three major obstacles had hindered their development.

First, electric utilities were often unwilling to purchase power produced by cogenerators and small power producers or were willing to purchase power only at rates which would render the cogeneration or small power production project uneconomic. Second, utilities often charged excessive rates for back-up power⁵ required during periods when the cogeneration or small power production facility did not produce power or when the power it produced was inadequate to meet the facility owner's needs. Third, the sale of power to a utility could subject the seller to regulation as a utility at the state and/or federal level.⁶

Section 210 of PURPA⁷ contains provisions which are intended to eliminate the obstacles listed above for cogeneration and small power production

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1. The Public Utility Regulatory Policies Act of 1978, Pub. L. No. 95-617, 92 Stat. 3117.

2. *American Paper Institute, Inc. v. American Electric Power Service Corp. et al.*, 461 U.S. 402 (1983).

3. A cogeneration facility produces electricity and useful forms of thermal energy (such as steam or heat) using the same fuel, by sequential use of energy. See *FERC Statutes and Regulations, Regulations and Preambles 1977-1981*, 45 Fed. Reg. 17,959 (March 20, 1980).

4. A small power production facility produces electricity using biomass, waste, renewable resources or any combination thereof as fuel. *Id.*

5. In this article, as in the Commission's opinion and in Commissioner Stalon's dissent, the term "back-up power" will be used to refer collectively to supplementary power, back-up power, maintenance power and interruptible power.

"Supplementary power" means electric energy or capacity supplied by an electric utility, regularly used by a qualifying [cogeneration or small power production] facility in addition to that which the facility generates itself. 18 C.F.R. § 292.101(b)(8) (1985).

"Back-up power" means electric energy or capacity supplied by an electric utility to replace energy ordinarily generated by a facility's own generation equipment during an unscheduled outage of the facility. 18 C.F.R. § 292.101(b)(9) (1985).

"Maintenance power" means electric energy or capacity supplied by an electric utility during scheduled outages of the qualifying facility. 18 C.F.R. § 292.101(b)(11) (1985).

"Interruptible power" means electric energy or capacity supplied by an electric utility subject to interruption by the electric utility under specified conditions. 18 C.F.R. § 292.101(b)(10) (1985).

6. *FERC Statutes and Regulations, Regulations and Preambles 1977-1981*, 45 Fed. Reg. 17,959 (March 20, 1985).

7. 16 U.S.C. § 824a-3 (1985).

facilities meeting certain qualifications (qualifying facilities)⁸. That section requires electric utilities to purchase power generated by qualifying facilities at the purchasing utility's incremental cost⁹ and to provide back-up power at non-discriminatory rates.¹⁰ Qualifying facilities are also exempted from state and federal public utility regulation.¹¹ The success of PURPA in providing incentives to cogeneration and small power production is evidenced by the fact that between 1980 and August, 1985, the Federal Energy Regulatory Commission had received filings in connection with over 23,000 megawatts of planned cogeneration and small power production projects.¹²

In *Alcon (Puerto Rico) Inc.*¹³, a case of first impression, the Commission decided the question of whether PURPA's guarantee of back-up power was available to a manufacturing plant (plant) which consumed cogenerated power and steam produced by a cogeneration facility which the plant owner leased from a third party. In a 2 to 1 decision,¹⁴ the Commission held that the manufacturing plant was not part of the qualifying facility because the two did not share common ownership and, accordingly, the manufacturing plant was not entitled to mandatory back-up power. It should be noted that the *Alcon* transaction is distinguishable from a retail sale of cogenerated power to a purchaser who has no interest in or control over the cogeneration facility. Here, title to the cogeneration facility was held by someone other than the owner of the manufacturing plant solely as a financing technique.

This article analyzes the Commission's order and the dissent in *Alcon*. It concludes that PURPA does not mandate the majority's limitation on the right to back-up power. By mechanically applying its regulations to the *Alcon* situation, the Commission reinstated an obstacle to the development of cogeneration which PURPA was designed to remove. The Commission's action will curb the development of cogeneration and small power production, a result which is contrary to the intent of PURPA. The preferable approach to resolving the issue before the Commission in this case is the one taken by Commissioner Stalon in his dissent.

I. BACKGROUND

Alcon (Puerto Rico) Inc. (Alcon) owns and operates a pharmaceutical plant in Humacao, Puerto Rico which purchases electricity from the Puerto Rico Electric Power Authority (PREPA). Operation of the plant also requires steam which is produced using diesel oil. In order to reduce its overall energy

8. A "qualifying" cogeneration or small power production facility is a facility which meets the criteria for size, ownership, fuel use and operating and efficiency standards described at 18 C.F.R. § 292.203.

9. 16 U.S.C. § 824a-3(b) (1982). See also 18 C.F.R. § 292.304 (1985).

10. 16 U.S.C. § 824a-3(c) (1982). See also 18 C.F.R. § 292.305 (1985).

11. 16 U.S.C. § 824a-3(e) (1982). See also 18 C.F.R. § 292.601-292.602 (1985).

12. The Energy Daily, September 16, 1985, at 18. Owners or operators of qualifying facilities are required to file with the Commission either a notice of qualifying status under PURPA or an optional request for certification of qualifying status. See 18 C.F.R. § 292.207 (1985).

13. 32 F.E.R.C. ¶ 61,247 (1985).

14. The order was authored by Chairman O'Connor and Commissioner Sousa. Commissioner Stalon issued a dissent. There were two vacancies on the five member commission at the time the decision was issued.

use and costs, Alcon entered into an agreement with O'Brien Energy Products, Inc. (O'Brien) pursuant to which O'Brien would design, construct and install cogeneration equipment to meet Alcon's needs for electricity and part of its need for steam. The facility was to be constructed at Alcon's plant on land owned by Alcon. The agreement provided that Alcon would lease the cogeneration facility for a term of five years. Lease payments would vary depending upon the amount of power generated. After five years, Alcon had the option of extending the lease, purchasing the cogeneration facility or requiring that O'Brien remove the facility from Alcon's property. The agreement between Alcon and O'Brien was structured as a lease transaction, rather than a purchase, because of tax and financial considerations.¹⁵

On January 27, 1984, Alcon filed an application for certification of the proposed cogeneration facility as a qualifying facility pursuant to section 292.207 of the FERC's regulations¹⁶ and Section 201 of PURPA.¹⁷ PREPA intervened and argued that Alcon's application should be denied for two reasons. First, PREPA contended that under the Commission's regulations, the application should have been filed by O'Brien, the owner and operator of the cogeneration facility, rather than by Alcon. Second, the proposed facility would violate PURPA's prohibition against ownership of qualifying facilities by electric utilities¹⁸ because O'Brien, the owner and operator of the plant, would resell to Alcon backup power purchased from PREPA. This sale would cause O'Brien to become a utility as defined in the Federal Power Act.¹⁹

Alcon responded by arguing that it would in fact be the owner and operator of the cogeneration facility²⁰ and would purchase backup power for its manufacturing plant directly from PREPA. Therefore, the question of utility ownership of the cogeneration facility did not need to be considered. Alcon requested that the Commission declare that section 210 of PURPA required PREPA to supply backup power to Alcon's pharmaceutical plant.²¹

On August 19, 1985, the FERC issued an order by a two-to-one vote provisionally granting Alcon's application for certification of the proposed facility as a qualifying facility.²² Although Alcon won the battle, it lost the war because the Commission denied Alcon's request for an order requiring PREPA to supply back-up power to its plant. The Commission went on to note that if

15. 32 F.E.R.C. ¶ 61,247 at 61,577 (1985).

16. 18 C.F.R. § 292.207 (1985).

17. 16 U.S.C. § 796 (18) (1982).

18. 18 C.F.R. § 292.206 (1985).

19. 16 U.S.C. § 824(e) (1982). The Commission dismissed PREPA's first contention on the theory that Alcon had filed as O'Brien's de facto agent. Alcon (Puerto Rico) Inc., 32 F.E.R.C. at 61,578. As to PREPA's second argument, the Commission certified the facility because O'Brien and Alcon stated that O'Brien would not resell purchased power to Alcon. *Id.* at 61,579. The Commission noted that if O'Brien did resell purchased power to Alcon, O'Brien would be a utility under the Federal Power Act, causing the cogeneration facility to lose its qualifying status under PURPA and depriving O'Brien of the right to continue to purchase back-up power. *Id.*

20. 32 F.E.R.C. ¶ 61,247 at 61,577 (1985).

21. *Id.*

22. This order was provisional pending O'Brien's filing a statement with the Commission certifying that no electric utility owned more than a 50 percent equity interest in O'Brien. 32 F.E.R.C. ¶ 61,247 at 61,579 (1985).

O'Brien resold back-up power to Alcon, the cogeneration facility would no longer be a qualifying facility because it would be owned by a utility. Commissioner Stalon's dissent was issued on September 9, 1985. Alcon filed a request for rehearing on September 18, 1985. In addition, a substantial number of late interventions together with requests for rehearing or reconsideration were filed. On October 17, 1985 the Commission issued an order granting rehearing for the limited purpose of further consideration.

II. THE MAJORITY'S REASONING CONCERNING THE RIGHT TO BACK-UP POWER

Because the majority interpreted the Commission's regulations as requiring that a utility sell back up power only to a qualifying facility or to the owner or operator of a qualifying facility, the question whether Alcon was the owner or operator of the cogeneration facility was pivotal to the majority's reasoning. To support its conclusion that Alcon would not own the facility during the term of the agreement, the majority analyzed the Lease/Purchase and Service Agreement (agreement) executed by Alcon and O'Brien which sets out the rights and obligations of both parties in relation to the cogeneration facility. The Commission found it significant that under the agreement, O'Brien would design, procure, install and maintain the cogeneration facility for a term of five years. The agreement did not automatically transfer title to the cogeneration facility to Alcon at the end of the five year term. Furthermore, if Alcon wished to purchase the facility at that time, the purchase price would be the fair value of the facility, not a nominal price which would indicate that Alcon's payments during the term of the agreement were credited against the purchase price of the facility. Thus, the majority reasoned, the agreement was distinguishable from an installment sales agreement which was styled as a lease with an option to purchase.

The majority was equally unmoved by Alcon's argument that the term "qualifying facility" encompassed Alcon's plant as well as the cogeneration facility. Alcon argued that the owner of the cogeneration facility and of the plant which consumes the cogenerated power are both owners of the qualifying facility. Therefore, as an owner of the qualifying facility, Alcon would be entitled to back-up power.²³ In rejecting Alcon's contention, the Commission quoted the following definition of the term "cogeneration facility" from its regulations: "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." 18 C.F.R. 292.202(c).²⁴ Relying on that language, the majority concluded that a cogeneration facility encompassed only the equipment which generates electric power and that Alcon's ownership of the plant which consumed the power did not render it an owner of the cogeneration facility as well.

The majority also rejected Alcon's argument that O'Brien would operate

23. The majority did not take issue with Alcon's contention that a qualifying facility can have more than a single owner. *Id.* at 61,578-79.

24. 32 F.E.R.C. ¶ 61,247 at 61,577-78 (1985) (emphasis added).

the facility as Alcon's agent. Because O'Brien would control the maintenance of the facility and because the operation of the facility would be largely automatic, the majority concluded that "Alcon does not have the necessary right to control the details of the QF's [cogeneration facility's] operation to render O'Brien an agent."²⁵

Having decided the ownership issue, the majority turned to Alcon's request that PREPA be required to sell it back-up power. As with the question of ownership of the facility, the result was based on the language in the Commission's regulations. According to the majority, those regulations require electric utilities to sell back-up power "only to a QF [qualifying facility] and to the owners and operators of a QF."²⁶ Because the qualifying facility did not include the pharmaceutical plant, and because Alcon was not to be an owner or operator of the qualifying facility, the majority held that PREPA was not required to provide back-up power to Alcon's plant.

III. COMMISSIONER STALON'S DISSENT

In a scathing dissent that is twice as long as the majority's opinion,²⁷ Commissioner Stalon rejected the majority's mechanical application of the Commission's regulations to the question of Alcon's entitlement to back-up power. He characterized the majority's reasoning as "little more than a definitional tautology,"²⁸ criticizing them for failing to consider whether the narrow definition of the term "qualifying cogeneration facility" contained in the regulations is appropriate in the context of the question of the availability of back-up power. That definition was developed with the goal of defining the technical and ownership requirements for qualifying status of production facilities. Commissioner Stalon argued that the question how the definition affected the entity consuming the power was not considered when the definition was adopted.

Commissioner Stalon suggested two ways in which the regulations might be modified so that they are applicable to the back-up power question. One was to expand the definition of qualifying cogeneration facility so that it includes the consuming entity. In the alternative, he proposed developing a second definition for the term "qualifying facility" for purposes of determining which consuming facilities are entitled to back-up power. Noting that each of these approaches would require the initiation of a rulemaking to amend the Commission's regulations, Commissioner Stalon proposed a broad interpretation of the Commission's regulations which would include Alcon's plant as part of the qualifying facility.

Commissioner Stalon argued that the production and consumption facilities can be construed as a unified entity under the facts presented in *Alcon*. The cogeneration facility was to be designed, installed and operated by O'Brien specifically to serve Alcon's needs. If Alcon had legal title to the cogeneration facil-

25. 32 F.E.R.C. ¶ 61,247 at 61,578 (1985).

26. 32 F.E.R.C. ¶ 61,247 at 61,579 (1985).

27. 32 F.E.R.C. ¶ 61,247 at 61,580 (1985).

28. He went on to describe the tautology as: "the statute tells us to guarantee back-up power to QF's; we have defined qualifying cogeneration facility narrowly to include only the production equipment; hence, the consumption entity is not a QF entitled to back-up power." 32 F.E.R.C. ¶ 61,247 at 61,581-5 (1985).

ity, this would be a typical "unified" cogeneration facility. The fact that O'Brien would have title to the cogeneration facility for financing purposes did not change the relationship between the cogeneration and consuming entities.

Commissioner Stalon did not find any evidence in Section 210 of PURPA or in its legislative history that the guarantee of back-up power should be available only when the consuming and generating entities share common corporate ownership.²⁹ In his opinion, the majority erred by focusing only on ownership of the two entities instead of considering all the facts presented concerning Alcon's relationship to the cogeneration facility. He observed that most potential cogenerators are utility customers who require a reliable source of electricity and that few such businesses would risk developing cogeneration facilities if they could not be assured of back-up power. Thus, common sense dictated that Congress intended to guarantee back-up power to the consuming entity. This analysis was particularly cogent in view of the fact that the unavailability of back-up power was one of the disincentives to cogeneration that PURPA was designed to eliminate.

Finally Commissioner Stalon quoted section 210(a) of PURPA which requires that the Commission prescribe rules "which encourage cogeneration and small power production,"³⁰ and require utilities to sell electric energy to qualifying facilities. Here again, he found support for the argument that in its interpretation of its regulations in this case, the majority had not adhered to the mandate of PURPA and, to the contrary, had established an "unnecessary barrier" to the development of cogeneration.

IV. CONSISTENCY WITH PURPA AND PRECEDENT

The language of PURPA does not support the Commission's denial of mandatory back-up power to the entity which consumes the power generated by a cogeneration facility financed in a manner which requires separate ownership of the consuming entity and the generating facility. Ownership of a cogeneration facility is germane to PURPA's statutory scheme only to the extent that a utility cannot own a qualifying facility.³¹ Neither the statute nor the legislative history indicates that Congress intended to discourage cogeneration projects financed using leases of the sort entered into by Alcon and O'Brien.

Besides limiting the financing options available in connection with cogeneration projects, the *Alcon* order has narrowed the meaning of the statutory guarantee of back-up power. Under this decision, a cogenerator is entitled to back-up power only to serve the electric needs of its generating facility. That entitlement does not include the power required by the consuming entity in excess of what is supplied by the cogeneration facility or in place of cogenerated

29. He noted that in other instances, separate ownership of the consumption and generating facilities might be a decisive factor in determining eligibility to back-up power. 32 F.E.R.C. ¶ 61,247 at 61,581-4 (1985).

30. 16 U.S.C. § 824a-3(a) (1982).

31. See 16 U.S.C. § 796(17)(C), 796(18)(B) (1982); 18 C.F.R. § 292.206 (1985). PURPA prohibits utility ownership of a qualifying facility. 16 U.S.C. 796(18)(B). In its regulations, the FERC has defined utility ownership as a situation where a utility owns more than a 50 percent equity interest in a cogeneration or small power production facility. 18 C.F.R. § 292.206 (1985).

power when the cogeneration facility is not in operation. This approach is inconsistent with language contained in the preamble to the Commission's regulations under PURPA, where the Commission provided the following example to illustrate the definition of supplementary power:³²

Supplementary power is electric energy or capacity used by a facility in addition to that which it ordinarily generates on its own. Thus, a cogeneration facility with a capacity of ten megawatts might require five more megawatts from a utility on a continuing basis to meet its electric load of fifteen megawatts. The five megawatts supplied by the electric utility would normally be provided as supplementary power.³³

This example indicates that the Commission construed supplementary power as power required by the consuming entity.

The majority's narrow construction of what comprises a qualifying facility is also at odds with the approach taken by the Commission in *Kern River Cogeneration Company*³⁴ where the Commission construed the same definition broadly. In *Kern River* the Commission concluded that interconnection equipment owned by a cogenerator to transmit back-up power to the consumer of its cogenerated power was a part of the cogeneration facility. It reached that conclusion in spite of the fact that under the Federal Power Act, interconnection equipment was traditionally treated as a transmission facility rather than a generating facility. By including the interconnection equipment as part of the generating facility, that equipment became part of the qualifying facility under PURPA and was therefore exempted from regulation under the Federal Power Act. To support its conclusion, the Commission stated that:

. . . the traditional analyses [as to which facilities are subject to Federal Power Act jurisdiction] must yield in this instance to an analysis of PURPA section 210(a) and our regulations that is consistent with the intent of Congress to encourage cogeneration and small power production. . . .³⁵

V. IMPACT OF THE ALCON CASE

The impact of the Commission's order in *Alcon* will be significant because a substantial percentage of cogeneration and small power production projects use financing techniques which require that someone other than the owner of the consuming entity hold legal title to the generating facilities.³⁶ This enables tax-exempt entities such as governmental bodies and not-for-profit hospitals, as well as taxable entities with little or no tax liability, to take full advantage of tax credits and deductions available in connection with development of small power production and cogeneration projects by "selling" those tax benefits to a third party.³⁷ In addition, such third party financing enables the developer of a

32. As previously noted, the term "back-up power" as used in this article includes supplementary power. See *supra* note 5 and accompanying text.

33. 45 Fed. Reg. 12,229 (Feb 25, 1980).

34. 31 F.E.R.C. ¶ 61,183 (1985).

35. 31 F.E.R.C. ¶ 61,183 at 61,355 (1985).

36. Energy User News, March 11, 1985, at 2.

37. For a brief period of time, the safe-harbor leasing provisions of the Economic Recovery Tax Act of 1981 allowed the owner of the consuming entity to sell the tax benefits associated with a cogeneration facility (*i.e.* depreciation and investment tax credits) to a third party lessor pursuant to a lease which vested legal title

project to use off-balance sheet financing, thereby financing the generating facility with minimal effect on the developer's ability to raise capital for other purposes.³⁸

Developers of such third-party financed projects may be able to look to state commissions to enforce PURPA's guarantee of back-up power from state regulated utilities. Under PURPA, state commissions were required to adopt regulations which provide for the availability of back-up power at reasonable rates.³⁹ However, many of those regulations adopt by reference the FERC's definition of the terms "qualifying cogeneration facility" and "qualifying small power production facility."⁴⁰ Thus state commissions could easily follow the FERC's lead and define those terms so as to deny back-up power to third-party financed qualifying facilities.

Another basis in state law for arguing that a cogenerator or small power producer has the right to fairly-priced back-up power from a regulated utility can be found in state statutes which require utilities to provide service to customers without discrimination as to rates. However, those statutes predate PURPA and historically did not effectively insure that cogenerators and small power producers had access to back-up power. Therefore, reliance on those statutes would be questionable today, particularly in a situation where a state commission has taken the position that its regulations implementing PURPA do not require that back-up power be made available to third-party financed projects.

The effect of *Alcon* is just beginning to be felt at the state level. In at least two instances, regulated electric utilities have relied on the *Alcon* order as a basis for refusing to supply back-up power to third-party financed cogeneration projects.⁴¹ In response, a cogenerator has requested that the Pennsylvania Public Utility Commission declare that Pennsylvania law requires provision of back-up power.⁴² The New Jersey Department of Energy's Master Energy Plan seeks to avoid the result reached in *Alcon* by requiring that utilities in New Jersey provide back-up power at nondiscriminatory rates to "all cogeneration facilities, regardless of who in fact owns title to the hardware or operates the equipment."⁴³

to the cogeneration facility in the lessee (owner of the consuming entity) upon expiration of the lease, without payment of additional consideration. For a discussion of that type of lease, see *Arizona Public Service Company*, 22 F.E.R.C., ¶ 63,062 at 65,225-26 (1983).

For a discussion of the importance of the *Alcon*-O'Brien type lease to governmental bodies which desire to take advantage of the provisions of PURPA, see the Request for Rehearing filed in the *Alcon* case by the Office of Energy Assessments of the Department of General Services of the State of California.

38. For a discussion of third-party financing, see Appendix A to Request for Rehearing of *Alcon* (Puerto Rico), Inc. and Appendix I to Brief in Support of the Application for Rehearing of O'Brien Energy Systems; and Appendices A, B, and C to Motion to Intervene Out of Time of the Cogeneration Coalition of America, Inc.

39. 16 U.S.C. § 824a-3(f) (1982).

40. See, e.g. 83 Ill. Admin. Reg., 430.30 (1984); 52 P.A. ADMIN. CODE § 57.31 (Shepard's 1982).

41. *Cogeneration Report*, December 6, 1985, at 4.

42. *In Re: Petition for Declaratory Order: Back-Up Power for Customers of PURPA Qualifying Facilities is Required Under Pennsylvania Law*, Pennsylvania Public Utility Commission Docket No. P-85-0088 (December, 1985).

43. *New Jersey Master Energy Plan*, mimeo at 145 (1985).

Third-party financed projects which must rely on unregulated utilities for back-up power face a more serious problem. Although unregulated utilities are required to implement the back-up power when not required to do so because of the potential for loss of load.⁴⁴ Cogenerators served by unregulated utilities are likely to find themselves in Alcon's position if they elect to use third-party financing like that used in *Alcon*.

One alternative available under PURPA to a qualifying facility which is unable to purchase reasonably priced back-up power would be to sell all of its power to a utility while simultaneously meeting its need for electricity by purchasing power from the utility.⁴⁵ Qualifying utilities electing that alternative would not face the problem of securing back-up power. However, this simultaneous purchase and sale is feasible only if the price at which a utility purchases cogenerated power exceeds the rates it charges its customers for power.

Besides the obvious solution of ownership and operation of the generating facility exclusively by the owner of the consuming entity, a cogeneration project might be designed to provide an on-site source of back-up power.⁴⁶ This approach was taken prior to the enactment of PURPA by electricity users wishing to generate their own power to reduce high energy costs. However, the increased initial capital costs were often so high that the project was uneconomic.

Alternatively, the owner of the consuming entity might enter into an installment sales contract rather than a lease with the title holder of the generating facility. The owner of the cogeneration facility could also provide purchased back-up power to the consuming entity at no charge. Presumably this would avoid characterization of the cogeneration facility as a utility. Because the majority specifically refused to offer guidance as to how a third-party financed project should be structured to insure that the consuming entity is entitled to back-up power, that issue will presumably be addressed by the Commission on a case-by-case basis.

The present trend is toward cogeneration and small power production projects designed with a primary goal of meeting on-site electrical needs, rather than selling power to a local utility.⁴⁷ In such instances the consuming entity obviously has a substantial need for electricity or the project would not be economically justifiable. Such projects would not be feasible without the availability of reasonably priced back-up power.⁴⁸ In light of this trend, the uncertainty created by the *Alcon* decision will undoubtedly impede the further development of cogeneration and small power production.

44. In its pleadings, PREPA expressed the concern that the development of cogeneration in Puerto Rico would cut into its market. 32 F.E.R.C. ¶ 61,247 at 61,581-3 (1985).

45. 18 C.F.R. § 292.304(b)(4) (1985).

46. Energy User News, January 13, 1986, at 8.

47. Energy User News, January 13, 1986, at 1.

48. Back-up power might be less vital to a project which is designed primarily to sell power to a utility. In that case, the "consuming entity" might have a minimal need for power, and might continue to purchase its power under a standard rate schedule while selling all its power to the utility.

