CFR 385.214). All such motions or protests should be filed on or before February 24, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the 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. 98–4024 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1678–000]

Black Hills Corporation; Notice of Filing

February 11, 1998.

Take notice that on February 2, 1998, Black Hills Corporation, which operates its electric utility business under the assumed name of Black Hills Power and Light Company (Black Hills), tendered for filing an executed Form Service Agreement with Colorado Springs utilities.

Copies of the filing were provided to the regulatory commission of each of the states of Montana, South Dakota, and Wyoming.

Black Hills has requested that further notice requirement be waived and the tariff and executed service agreements be allowed to become effective January 12, 1998.

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 Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 24, 1998. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–4025 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1675–000]

Cinergy Services, Inc.; Notice of Filing

February 11, 1998.

Take notice that on January 30, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Power Sales Standard Tariff entered into between Cincergy and MidAmerican Energy Company (MidAmerican).

Cincergy and MidAmerican are requesting an effective date of one day after the filing of this Power Sales Service Agreement.

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 Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 24, 1998. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–4022 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–2–000]

CLX Energy, Inc.; Notice of Petition for Adjustment

February 12, 1998.

Take notice that on February 9, 1998, CLX Energy, Inc. (CLX), successor in interest to Calvin Exploration, Inc. (Calvin), filed a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA),[1] requesting to be relieved of its obligation to refund to Panhandle Eastern Pipe Line Company (Panhandle) the Kansas ad valorem tax refunds owed by CLX's royalty interest, overriding royalty interest, and other working interest owners, otherwise required by the Commission's September 10, 1997 order in Docket Nos. GP97–3–000, GP97–4–000, GP97–5–000, and RP97–369–000.[2] CLX also requests Commission authorization to amortize its own refund obligtion over a 5-year period. CLX's petition is on file with the Commission and open to public inspection.

The Commission's September 10 order on remand from the D.C. Circuit Court of Appeals[3] directed first sellers under the NGPA to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. The Commission's September 10 order also provided that first sellers could, with the Commission's prior approval, amortize their Kansas ad valorem tax refunds over a 5-year period, although interest would continue to accrue on any outstanding balance.

CLX states that it became successor in interest to Calvin as a result of a March, 1993 merger with Calvin. CLX further states that Panhandle made a total of $57,731.80 in Kansas ad valorem tax distributions to Calvin, of which $12,956.03 was distributed to Calvin and $38,868.10 to the other working interest owners. Royalty owners received $5,503.83, and overriding royalty owners received $403.84.

CLX states that it notified the various interest owners of their respective refund obligations, but doubts that anyone will pay the specified amount by the March 9, 1998 deadline for making refunds. CLX also asserts that it is not in a financial position to pursue litigation against the other interest owners, and that paying the entire refund (which is approaching $200,000) would be financially devastating to CLX.

CLX's petition includes a copy of Securities and Exchange Commission Form 10–Q for the quarter ending December 31, 1997. CLX argues that it would not be fair, equitable, or reasonable to require CLX to pay the entire refund amount when it only received the benefit of a small portion

[1] 15 U.S.C. § 3142(c) (1982)

[2] See 80 FERC ¶ 61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[3] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 94–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997) (Public Service).

of the total Kansas ad valorem tax reimbursements that were paid to Calvin by Panhandle. Therefore CLX requests: (1) to be relieved of its obligation to refund the Kansas ad valorem tax refunds owned by CLX's royalty interest, overriding royalty interest, and other working interest owners; and (2) Commission authorization to amortize its own refund obligation over a 5-year period.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rule of Practice and Procedure (18 CFR 394.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participant as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4017 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL94–10–000 and QF86–177–001; Docket Nos. EL94–62–000 and QF85–102–005; Docket Nos. EL96–1–000 and QF86–722–003]

Order Granting Requests for Declaratory Order in Part and Denying Requests for Declaratory Order in Part, Denying Requests for Revocation of QF Status, and Announcing Policy Concerning the Regulatory Consequences and Remedies for Sales in Excess of Net Output

Issued February 11, 1998.

Connecticut Valley Electric Company, Inc. v. Wheelabrator Claremont Company, L.P., Wheelabrator Environmental Systems Inc., Signal Environmental Systems, Inc., SES Claremont Company L.P., NH/VT Energy Corp., and Wheelabrator New Hampshire Inc., Carolina Power & Light Company v. Stone Container Corporation; Niagara Mohawk Power Corporation v. Penntech Papers, Inc.

I. Introduction

This order addresses three cases currently before the Commission: *Connecticut Valley Electric Company, Inc.* v. *Wheelabrator Claremont Company, L.P., et al.*, Docket Nos. EL94–10–000 and QF86–177–001; *Carolina Power & Light Company* v. *Stone Container Corp.*, Docket Nos. EL94–62–000 and QF85–102–005; and *Niagara Mohawk Power Corporation* v. *Penntech Papers, Inc.*, Docket Nos. EL96–1–000 and QF86–722–003. The three cases raise the following issues: (1) Whether a qualifying facility (QF), under the Public Utility Regulatory Policies Act of 1979 (PURPA) and the Commission's PURPA regulations, may sell its gross output, as opposed to its net output (gross output less station power needs and line loses to the point of interconnection), to the utility-purchaser; and (2) if not, what are the regulatory consequences and remedies if a facility sells more output than is permissible?

In this order the Commission:

(1) Reiterates its 1991 determination that a QF may not sell in excess of its net output;

(2) Announces a Commission policy regarding the regulatory consequences of past and future sales by QFs in excess of net output; and

(3) Finds that revocation of QF status is not warranted in the three cases addressed in this order.

II. Summary

The three cases arise because of a seeming conflict between a Commission regulation implementing PURPA and Commission precedent under PURPA. The Commission has a regulation called the ''simultaneous buy-sell'' rule (18 C.F.R. § 292.303(a)-(b) (1997)), which, the QFs argue, entities QF facilities to sell their gross output, and simultaneously buy station power needs from the utility-purchasers of QF power. A number of State regulatory authorities have drafted standard QF power sales contracts based on the apparent belief that the simultaneous buy-sell rule permits QFs to sell gross output to utilities and purchase back station power needs (often at a lower rate).

The utility-purchasers of QF power point to Commission precedent in stating that QFs may only sell net output. They argue that under the Commission precedent, a QF may only sell its net output; a facility that sells more than its net output cannot satisfy the ownership requirements for QF status under sections 3(17) and (18) of the Federal Power Act (FPA) and section 292.206 of the Commission's regulations unless the incremental capacity is *solely* from cogeneration or small power production facilities. *See Turners Falls Limited Partnership,*, 55 FERC ¶ 61,487 at 62,668 & n. 24 (1991) (*Turners Falls*).

The initial issue raised by the three cases is whether the QFs and the State regulatory authorities correctly have interpreted the simultaneous buy-sell rule in light of Commission precedent. In addressing this initial issue one of the questions that arises is the period of time over which a facility's output should be calculated. This question arises because a generation facility's actual output varies over time due to a number of external factors including temperature, humidity, and fuel quality. The QFs have argued that the Commission should not measure actual net output on a continuous basis but should allow QF facilities to sell up to their net capacity at any time.[1] This is because, if a QF buys back its station power needs, it is possible for the QF at times to sell more than its actual net output but still sell less than its certified net capacity. As a result, the period over which net output is measured will affect how much energy a QF may sell.

The second issue raised is what are the regulatory consequences and remedies if the Commission finds that a facility has sold more output than is permissible. This issue involves whether such a facility should be decertified as a PURPA QF. In addition, it presents how the Commission should calculate the rate under the FPA during any period of non-compliance and whether such rates should be applicable to all of the facility's sales during the period of non-compliance or just the incremental amount of the sale above the permissible level. Finally, we must consider whether, and if so under what circumstances, to revoke or permit the continuing applicability of PURPA regulatory exemptions (*see* 18 CFR §§ 292.601, .692 (1997)) during the period of noncompliance. A related question is whether to reform QF contracts with utilities for the sale of output above permissible levels.

Finally, there is an issue as to the effective date of any decision, first with respect to the three case-specific disputes before the Commission, and then with respect to any other QFs that may be selling in excess of permissible levels.

In this order, we announce that, as a legal matter, a QF may not sell in excess

[1] A QF's certified net capacity is the maximum net output of the facility which can be achieved safely and reliably under the most favorable conditions likely to occur over a period of several years.