

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on August 22, 2007

COMMISSIONERS PRESENT:

Patricia L. Acampora, Chairwoman
Maureen F. Harris
Robert E. Curry, Jr.
Cheryl A. Buley

Case 07-E-0802 - Burrstone Energy Center LLC - Petition For a
Declaratory Ruling That the Owner and
Operator of a Proposed Cogeneration Facility
Will Not Be Subject to Commission
Jurisdiction.

DECLARATORY RULING ON
EXEMPTION FROM REGULATION

(Issued and Effective August 28, 2007)

BY THE COMMISSION:

BACKGROUND

In a Petition filed on July 9, 2007, Burrstone Energy Center LLC (Burrstone) requests issuance of a Declaratory Ruling finding that the 3.6 MW cogeneration facility it intends to construct in Oneida County will not be regulated under the Public Service Law (PSL). Burrstone reports that it will provide electric and steam service to Faxton-St. Luke's Health Care, Inc. (the Hospital), and electric service to Utica College (the College) and St. Luke's Home Residential Health Care Facility, Inc. (the Home). Burrstone believes its facility, including its appurtenant distribution lines, is a qualifying cogeneration facility (QF) under PSL §2(2-a) and §2(2-d).

No responses to the Petition were received within the 21-day period prescribed under the Rules of Procedure, 16 NYCRR §8.2(c). That period expired on July 30, 2007.

THE PETITION

Burrstone begins by describing its cogeneration facility as consisting of four natural gas-fueled engine generators with a total capacity of approximately 3.6 MW that will operate in parallel with the system of the local utility, National Grid (Grid). The thermal output from the engine generators will be consumed by the Hospital in the form of steam and hot water, enabling it, through the installation of absorption chillers, to meet its cooling needs as well as its heating needs. The thermal energy usage, Burrstone asserts, will satisfy the requirements of the Public Utility Regulatory Policies Act of 1978 (PURPA) and PSL §2(2-a), enabling it to obtain QF status under both federal and state law.

Besides distributing electricity to the Hospital, the College, and the Home, Burrstone intends to sell excess electricity to Grid. The Hospital, the College and the Home will remain Grid customers, purchasing from it any electricity they need in excess of the cogeneration facility's production.

Its generators, Burrstone relates, will be installed in a separate building constructed on the Hospital's campus. From the cogeneration building, separate electric distribution systems will lead to the College, the Hospital, and the Home. To reach the College, Burrstone will install approximately 3,800 feet of underground cable that will cross underneath Champlin Avenue, a public street separating the Hospital and College campuses, and extend into the College campus. Thermal energy will be delivered to the Hospital through an approximately 50-foot pipeline. Burrstone anticipates commencing construction of

the project soon, and is aiming to enter service by the first quarter of 2008.

The project, says Burrstone, will benefit the customers and will further important public policies. Burrstone emphasizes that the new cogeneration facility will replace older, less efficient facilities, including the Hospital's boilers that are more than 50 years old. Burrstone also notes that, because its cogeneration project will enable the customers to achieve significant energy savings and enhances service reliability, in conformance with public policies, it was able to obtain a grant of \$1.0 million from the New York State Energy Research and Development Authority.

Asserting that it qualifies for the exemptions from regulation afforded to QFs under the PSL, Burrstone contends that it is a cogeneration facility under PSL §2(2-a), because it is sized at less than 80 MW, it generates electricity, and it produces thermal energy that is useful for commercial purposes. Its electric and steam distribution lines, Burrstone continues, are "related facilities" falling within the scope of the QF exemptions.

Burrstone cites the Nassau District and Nissequogue Rulings for the proposition that cogeneration facilities similar to its configuration have been granted the QF exemptions from regulation.¹ It notes that its electric and steam distribution lines are shorter than the lines that, in those Rulings, were deemed related facilities under PSL §2(2-d) because located "at or near" the cogeneration facilities.

¹ Case 89-E-148, Nassau District Energy Corporation, Declaratory Ruling (issued September 27, 1989); Case 93-M-0564, Nissequogue Cogen Partners, L.P., Declaratory Ruling (issued November 19, 1993).

The only feature of its project that distinguishes it from the Nassau District and Nissequogue projects, Burrstone explains, is that those cogeneration facilities serve only one user owning property on both sides of a street. Its facility, Burrstone continues, will supply multiple users, with one user, the College, owning property separated from the others by a street. Burrstone asserts, however, that PSL §2(2-d) explicitly contemplates multiple users, in providing for inclusion within the definition of related facilities those needed to transmit electricity or steam to "users," in the plural. That its electric line to the College crosses a street, Burrstone continues, does not remove the line from the scope of the §2(2-d) definition of related facilities. In both the Nassau District and Nissequogue Rulings, Burrstone emphasizes, distribution lines that crossed streets were treated as related facilities.

As a result, Burrstone believes its cogeneration facility, including the electric distribution line to the College, falls within the ambit of the exemptions from regulation granted to QFs, under PSL §2(3), §2(4), §2(13) and §2(22). Therefore, Burrstone concludes it is not, respectively, a corporation, person, electric corporation, or steam corporation for the purposes of the PSL.

DISCUSSION AND CONCLUSION

Under PSL §2(2-a), a cogeneration facility is defined as an electric generating plant sized at up to 80 MW, together with any related facilities located at the same project site, which simultaneously or sequentially produces electricity and thermal energy useful for industrial or commercial purposes. The electric and steam cogeneration facility that Burrstone intends to construct resembles the facilities found to satisfy

the §2(2-a) statutory definition in the Nassau District and Nissequogue Rulings. As a result, its cogeneration facility falls within the ambit of the §2(2-a) criteria.

Under PSL §2(2-d), a cogeneration facility includes, besides the electric and steam cogeneration facility itself, "such transmission or distribution facilities as may be necessary to conduct electricity...or useful thermal energy to users located at or near a project site."² The lines distributing electricity and steam from Burrstone's cogeneration facility to users are similar to lines, including some that cross public streets, that were deemed related facilities in the Nassau District and Nissequogue Rulings, except that Burrstone's lines are shorter and less extensive in scope. Since it was decided in those Rulings that the distribution facilities were located at or near the cogeneration facilities, notwithstanding the street crossings, we find that Burrstone's distribution lines are located at or near its cogeneration facility even though one line crosses a street.

As Burrstone points out, the only distinction between its circumstances and those at issue in the Nassau District and Nissequogue Rulings is that, instead of serving one user owning property on two sides of a public street, it is furnishing electric service to multiple users, with one user owning property separated from the others by a street.³ PSL §2(2-d), however, specifically contemplates multiple users, by providing that electricity may be distributed to "users," in the plural, and does not require that users share property ownership rights.

² See Case 06-E-1203, Steel Winds Project LLC, Declaratory Ruling on Electric Corporation Jurisdiction (issued December 13, 2006).

³ The College qualifies as a user because it consumes the electricity delivered to it for useful purposes.

Therefore, the electric and steam distribution facilities that Burrstone describes, with an electric distribution line extending across a property line and a public street to serve one of a number of multiple users, are related facilities falling within the exemption from regulation granted to cogeneration facilities.

Since Burrstone's proposed project is a cogeneration facility under PSL §2(2-a), and its electric and steam distribution lines are related facilities that are part of the cogeneration project under PSL §2(2-d), it qualifies for the exemptions from regulation set forth at PSL §§2(3), 2(4), 2(13) and 2(22). Therefore, Burrstone is not, respectively, a corporation, person, electric corporation or steam corporation for the purposes of the PSL.⁴

The Commission finds and declares:

1. The electric and steam generation and distribution facilities Burrstone Energy Center LLC describes in its Petition filed in this proceeding constitute a cogeneration facility as defined in the Public Service Law, and, accordingly, it is exempt from the provisions of the Public Service Law (except for Article VII).

2. This proceeding is closed.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary

⁴ Burrstone is reminded that, under PSL §2(4), cogeneration facilities remain subject to PSL Article VII, if they build electric or gas transmission lines sized above the thresholds triggering application of that Article.