necessary to complete the application, along with the appropriate filing fee.

Comments: Tenaska contends that the proposed clarification perpetuates uncertainty, since there is no provision to notify an applicant when the Commission considers the filing complete. Electric Generation Association points out that, without an explicitly announced beginning point for each application, no party can know when, if ever, the 90-day period will expire. It suggests that setting a clear date for determining when the Commission deems an application complete would be consistent with the 60-day "deficiency" notification process for electric rate filings under § 35.2(c) of the Commission's regulations. Independent Energy Producers suggests that the Commission establish a maximum period for staff to send to an applicant any questions regarding the application.²²

SDG&E suggests that the Commission's **Federal Register** notice of each supplemental filing that responds to a staff inquiry identify the project, its location, when the Commission deems the application complete, when the Commission will issue a decision or tolling order on the application, or when the Commission will deem the application granted by virtue of the passage of time.²³

Commission Response: While the Commission intends to process a pending application for Commission certification of qualifying status as

American Cogen, American Forest and Paper, American Iron and Steel, Electric Generation Association, Independent Energy Producers, SDG&E, Tenaska, and Texaco express concern that repeated requests for additional information by the Commission's staff have the effect of extending the process indefinitely. These commenters suggest that the Commission treat an application for Commission certification as automatically complete when a completed Form 556 has been filed and/or the application is otherwise literally responsive to the Commission's regulations.

²³ Atlantic Electric and EEI want the Commission to issue notices of all responses to deficiency inquiries. Electric Generation Association also proposes that the Commission delete the reference to the Commission's tolling the time for issuance of an order. Electric Generation Association contends that tolling has caused unnecessary delay in the processing of applications and that the only basis for tolling the operation of the 90-day period should be an incomplete application. As noted above, in this regard, proposed § 292.207(b)(3)(i) merely corresponds to the Commission's existing 90-day action regulation at § 292.207(b)(5). Electric Generation Association's tolling policy proposal is outside the scope of the instant proceeding. rapidly as possible, the Commission will not further restrict its ability to evaluate such applications by providing a maximum period for considering the sufficiency of the application.²⁴ Likewise, the Commission will not adopt the practice of formally notifying an applicant with respect to deficiencies by a date certain; ²⁵ nor will the Commission indicate by notice in the **Federal Register** when a filing is complete.²⁶

However, the Commission will amend its regulations to provide that the Commission will act within 90 days of the filing of the application, or, if the application is supplemented or amended, within 90 days of the filing of the supplement or amendment. Commission action may include finding the application deficient, granting or denying the application, or tolling the time for action.

2. Improvements to the Self-Certification Process

In the NOPR, the Commission proposed to amend § 292.207(a)(1) to require that notices of self-certification be in the form of an affidavit signed by the facility's owner, operator or authorized representative. The Commission's intention was to provide interested financing institutions, electric utilities and state regulatory authorities with greater assurance that a selfcertified cogeneration or small power production facility conforms to the Commission's ownership and technical criteria. The NOPR also proposed that a self-certifying facility provide a copy of its notice of self-certification to the

The steps the Commission has taken elsewhere in this proceeding to improve the QF application process, through clarifications and the establishment of step-by-step procedures to follow in Form 556, should result in more complete applications being filed in the first place. However, in the end, the speed with which the Commission processes an application depends, in addition to staff availability, primarily on the quality of the submittal, its complexity, its novelty, whether it is opposed, and the response time of the applicant to any information inquiries.

²⁵ In uncontested proceedings, staff informally requests additional information by telephone in order to speed the processing of an application. In contested applications, staff must resort to formal deficiency letters to obtain additional information.

²⁶ The Commission will continue to notice responses to deficiencies in the **Federal Register**.

utility with which the cogenerator or small power producer intends to deal. These proposed revisions were intended to reduce reliance on the alternative process through which the cogenerator or small power producer submits an application for Commission certification accompanied by a filing fee.

Comments: Southern Companies maintains that, in order for lenders and investors to derive comfort from the affidavit requirement, the Commission must ensure that a notice of selfcertification with an affidavit is accurate and reliable.²⁷ SDG&E suggests that the reason that more facilities have not taken advantage of the self-certification process is that the process is inadequate.²⁸ SDG&E does not think that an affidavit is sufficient to provide the requisite level of comfort to lenders and to utilities with which the selfcertifying facilities intend to interact.29 SDG&E points out that even under the proposed self-certification procedure, there is no substantive information requirement, no guarantee that submittals will contain the minimum information required, and no expectation that any party or the Commission will ensure that a selfcertified facility meets the QF criteria.30

²⁸ Ridgewood observes that it is disputes about the interpretation of the Commission's regulations by lenders, state commissions and utilities that have prevented greater reliance on the existing selfcertification process.

²⁹ Florida P&L observes that a utility, before seriously undertaking any negotiations for integrating a QF into the utility's system, needs something more concrete than a notice of selfcertification with an affidavit. Niagara Mohawk proposes that a notice of self-certification describe how a facility meets the QF criteria.

³⁰ Southern California Edison notes that the affidavit does not provide ongoing assurance that a facility will continue to meet the QF criteria. In this regard, Florida P&L suggests that the Commission adopt a standardized annual or biennial affidavit reporting requirement. Niagara Mohawk also proposes that the Commission allow a utility to periodically inspect the QF's operations. These Continued

²² Some commenters advocate an initial period ending 10 to 30 days after the filing of the application, after which the application would be treated as complete and no notification of a deficiency could be made. Some commenters further suggest that the number of deficiency inquiries be limited to two. NEP also suggests that a copy of the deficiency letter be served on the utilities with which the QF is expected to deal.

²⁴ This is also consistent with the Commission's policy applicable to electric rate filings of not providing a maximum period (within the 60-day statutory review period) for considering the sufficiency of the application. Regarding the 60-day statutory review period, see Duke Power Company, 57 FERC ¶ 61,215 at 61,713 (1991); see also Southern Company Services, Inc., 60 FERC ¶ 61,297 at 61,065–66 & n.12 (1992), *aff'd sub nom. Alabama Power Company* v. *FERC*, 22 F.3d 270 (11th Cir. 1994) (any amendment or supplemental filing establishes a new filing date for the filing in question).

²⁷ Among other comments, SDG&E asserts that it is reasonable, in the absence of Commission review, to require greater specificity as to what the affidavit and notice of self-certification should pertain to. SDG&E also suggests that an affidavit requirement implies that a prior self-certification submitted without an affidavit is of dubious legal value. Electric Generation Association maintains that there is no reason to require an affidavit, since even a Commission determination on qualifying status is considered void if it is based on erroneous facts. Electric Generation Association further contends that the current regulations do not suggest that a notice of self-certification signed by an officer or partner of the developer is less trustworthy or less legally binding than a Commission certification of qualifying status. NEP observes that an affidavit will underscore the importance to the owner or operator of accurately describing its facility. The CPUC suggests that, in fairness to all interested parties, including the signatory to the affidavit, the Commission should set forth more clearly the contents of the notice of self-certification.