producer or cogenerator has filed a notice of self-certification referring to such material, the facility will not lose its qualifying status because the material from which it generates electric energy has acquired commercial value.⁹⁴

The requirement that the waste energy input exist in the absence of the QF industry will allow the Commission to regard as waste those materials that are not by-products of industrial processes but are nevertheless unwanted, while precluding the creation of contrived energy inputs for the sole purpose of having the Commission view them as "waste."

It is virtually impossible to develop a simplified determination procedure that will work perfectly to determine what is waste. There may, for example, be substances that the Commission has not listed as waste and do not qualify as waste under the "no commercial value" component of the test that, nevertheless, may truly be waste. The Commission will consider reasonable proposals for the special treatment of specific materials as "waste," on a case-by-case basis.

The Commission will list petroleum coke and used rubber tires as waste, without reference to their commercial marketability. 95 The Commission will also add refinery off-gas and plastic to the list of those materials that it regards as waste. The Commission will consider the average Btu and ash content of coal located in refuse ponds when determining whether it is waste.

The Commission notes that it currently accepts BLM determinations regarding waste coal located both within BLM's jurisdiction and located on non-Federal or non-Indian lands outside of BLM's jurisdiction, provided that applicants show that the latter refuse is an extension of a portion of the relevant coal seam (e.g., top or bottom coal) or

other refuse source (*e.g.*, refuse pile) determined to be waste by BLM. However, since reference to Federal or Indian lands serves to clarify the extent of BLM's jurisdiction for all applicants, the Commission sees no reason to modify the regulatory text in this regard.⁹⁶

The Commission will not list as waste: Anthracite and bituminous coal fines; subbituminous coal; blends of bituminous and subbituminous coal having an average heat value greater than 9,500 Btu per pound with an average of 25 percent or more ash content; or used crankcase oil or other used petroleum products.⁹⁷

In this proceeding, the Commission does not intend to make generic rulings on specific materials that it has not previously considered. With respect to materials which the Commission has not listed as "waste," an applicant is always free to submit a showing that in a particular case the material has little or no current commercial value and would not exist in the absence of the QF industry.

Finally, in light of the Commission's treatment of waste natural gas for cogeneration purposes, 98 the final rule will provide that a cogeneration facility may use a waste that meets the definition of § 292.202(b) as an energy input without considering the waste fuel's energy input to the cogeneration facility in computing its efficiency value under § 292.205.

The Commission agrees with Anthracite IPPs' suggestions that any coal source not listed as a waste in the Commission's regulations may qualify as waste upon a showing that it has little or no commercial value and that all references to Btu or ash content refer to average values.

The final rule revises and clarifies §§ 292.202(b) and 292.205 accordingly.

G. Part 294—Procedures for Shortages of Electric Energy and Capacity Under Section 206 of Public Utilities Regulatory Policies Act

In the NOPR, the Commission proposed to modify § 294.101(b) to provide that a public utility need not file with the Commission a contingency plan for accommodating shortages of electric energy or capacity affecting its firm power wholesale customers, or modify such a contingency plan already on file with the Commission, if the public utility includes certain provisions in the appropriate wholesale rate schedule. The Commission also proposed to modify § 294.101 by adding a new paragraph (f), which would provide that, if a public utility includes in its rate schedule provisions that it will report anticipated shortages of electric energy or capacity to appropriate state regulators and to its wholesale customers, then the public utility need only report to the Commission the nature and projected duration of the anticipated capacity or energy supply shortage and furnish a list of the firm power or wholesale supply customers likely to be affected by the shortage.

EEI, NEP and Southern Companies support the proposed revisions to the Commission's reporting requirements. Baltimore Gas & Electric asks the Commission to eliminate the requirement to report to the Commission anticipated shortages of electric energy and/or capacity for those public utilities that file an Integrated Resource Plan or least-cost plan containing the required information with their State regulatory authorities.

The Commission declines to adopt Baltimore Gas & Electric's suggestion. As the Commission noted in the NOPR, section 202(g) of the FPA requires that public utilities file contingency plans for shortages with the Commission as well as with any appropriate state regulatory authority. To satisfy section 202(g), it is not enough for public utilities to file contingency plans with state regulatory authorities only; they must also file with this Commission contingency plans that affect wholesale customers.

The proposed rule simply gives a public utility the option of not separately reporting its contingency plans if it already includes certain provisions in its wholesale rate schedules. Otherwise, the public utility must file a brief statement, summarizing the public utility's contingency plans. If a public utility does not avail itself of the new rate schedule option, it will merely have to summarize how, under

⁹⁴ The Commission rejects Southern Companies' suggestion that the Commission publish updated lists of waste materials without revising its regulations. Under Southern Companies' recommended procedure, there would still be notice and comments and the Commission would still frequently have to update its list of waste materials. The Commission would be taking on an additional administrative burden without saving any time

It would be impractical to establish a special update procedure for the waste list. Since various materials may gain or lose commercial value over time, a detailed listing of waste materials could require frequent revisions of the Commission's regulations.

⁹⁵ Petroleum coke is a by-product of the oil refining process that is very low in volatile matter, usually high in sulfur content, and an environmentally hazardous waste. Used rubber tires, while high in heat content, are not burned in conventional boilers, do not represent an energy source for electric utilities, and are detrimental to the environment.

⁹⁶ See Big Horn.

⁹⁷ Some Anthracite and bituminous coal fines, when dried and where transportation distances are short, have a high Btu content and commercial value. Some public utilities and various other entities use anthracite silt ponds as a source of fuel. See *Electrodyne*. Form 423 data for 1992 suggest that electric utilities purchase subbituminous coal with a heat content of 9,500 Btu per pound and an ash content of more than 25 percent.

Used crankcase oil is currently reprocessed for use as an industrial boiler fuel, in asphalt production and cement kilns. It is also refined for use in lubricants and for reuse as motor oil.

The Commission lacks sufficient information to support a generic finding that hot gases, such as oxygen furnace off-gas and hot blast furnace air, have no commercial value.

 $^{^{98}}$ Red Top Cogeneration Project, L.P., 62 FERC \P 61,205, reh'g denied, 65 FERC \P 61,044 (1993).