including its thermal host meeting the criteria set forth in Union Carbide Corporation, 48 FERC ¶ 61,130, reh'g denied, 49 FERC ¶ 61,209 (1989), aff'd sub nom., Gulf States Utilities Company v. FERC, 922 F.2d 873 (D.C. Cir. 1991);

- (C) If such lines and equipment are used to transmit power from other qualifying facilities or to transmit standby, maintenance, supplementary and backup power to other qualifying
- (ii) The construction and ownership of such lines and equipment shall be subject to any applicable Federal, state, and local siting and environmental requirements.

18. In § 292.202, paragraphs (b), (d), (e) and (h) are revised and paragraph (s) is added to read as follows:

## § 292.202 Definitions.

- (b) Waste means an energy input that is listed below in this subsection, or any energy input that has little or no current commercial value and exists in the absence of the qualifying facility industry. Should a waste energy input acquire commercial value after a facility is qualified by way of Commission certification pursuant to § 292.207(b), or self-certification pursuant to § 292.207(a), the facility will not lose its qualifying status for that reason. Waste includes, but is not limited to, the following materials that the Commission previously has approved as waste:
- (1) Anthracite culm produced prior to July 23, 1985;
- (2) Anthracite refuse that has an average heat content of 6,000 Btu or less per pound and has an average ash content of 45 percent or more;

(3) Bituminous coal refuse that has an average heat content of 9,500 Btu per pound or less and has an average ash content of 25 percent or more;

- (4) Top or bottom subbituminous coal produced on Federal lands or on Indian lands that has been determined to be waste by the United States Department of the Interior's Bureau of Land Management (BLM) or that is located on non-Federal or non-Indian lands outside of BLM's jurisdiction, provided that the applicant shows that the latter coal is an extension of that determined by BLM to be waste.
- (5) Coal refuse produced on Federal lands or on Indian lands that has been determined to be waste by the BLM or that is located on non-Federal or non-Indian lands outside of BLM's jurisdiction, provided that applicant shows that the latter is an extension of that determined by BLM to be waste.

(6) Lignite produced in association with the production of montan wax and lignite that becomes exposed as a result of such a mining operation;

(7) Gaseous fuels, except:

(i) Synthetic gas from coal; and

(ii) Natural gas from gas and oil wells unless the natural gas meets the requirements of § 2.400 of this chapter;

(8) Petroleum coke;

- (9) Materials that a government agency has certified for disposal by combustion;
  - (10) Residual heat:
  - (11) Heat from exothermic reactions;
  - (12) Used rubber tires;
  - (13) Plastic materials; and
- (14) Refinery off-gas.

- (d) Topping-cycle cogeneration facility means a cogeneration facility in which the energy input to the facility is first used to produce useful power output, and at least some of the reject heat from the power production process is then used to provide useful thermal energy;
- (e) Bottoming-cycle cogeneration facility means a cogeneration facility in which the energy input to the system is first applied to a useful thermal energy application or process, and at least some of the reject heat emerging from the application or process is then used for power production;

(h) Useful thermal energy output of a topping-cycle cogeneration facility means the thermal energy

(1) That is made available to an industrial or commercial process (net of any heat contained in condensate return and/or makeup water);

(2) That is used in a heating application (e.g., space heating, domestic hot water heating); or

- (3) That is used in a space cooling application (i.e., thermal energy used by an absorption chiller).

(s) Sequential use of energy means:

- (1) For a topping-cycle cogeneration facility, the use of reject heat from a power production process in sufficient amounts in a thermal application or process to conform to the requirements of the operating standard; or
- (2) For a bottoming-cycle cogeneration facility, the use of reject heat from a thermal application or process, at least some of which is then used for power
- 19. In § 292.204, paragraphs (a)(1) and (b)(2) are revised to read as follows:

## § 292.204 Criteria for qualifying small power production facilities.

(a) Size of the facility.—(1) Maximum size. There is no size limitation for an

eligible solar, wind, waste or facility, as defined by section 3(17)(E) of the Federal Power Act. For a non-eligible facility, the power production capacity for which qualification is sought, together with the power production capacity of any other non-eligible small power production facilities that use the same energy resource, are owned by the same person(s) or its affiliates, and are located at the same site, may not exceed 80 megawatts.

(b) Fuel use. \* \* \*

(2) Use of oil, natural gas and coal by a facility, under section 3(17)(B) of the Federal Power Act, is limited to the minimum amounts of fuel required for ignition, startup, testing, flame stabilization, and control uses, and the minimum amounts of fuel required to alleviate or prevent unanticipated equipment outages, and emergencies, directly affecting the public health, safety, or welfare, which would result from electric power outages. Such fuel use may not, in the aggregate, exceed 25 percent of the total energy input of the facility during the 12-month period beginning with the date the facility first produces electric energy and any calendar year subsequent to the year in which the facility first produces electric energy.

20. In § 292.205, paragraphs (a)(1), (a)(2)(i) introductory text, and (b)(1) are revised to read as follows:

## § 292.205 Criteria for qualifying cogeneration facilities.

(a) Operating and efficiency standards

for topping-cycle facilities.

(1) Operating standard. For any topping-cycle cogeneration facility, the useful thermal energy output of the facility must be no less than 5 percent of the total energy output during the 12month period beginning with the date the facility first produces electric energy, and any calendar year subsequent to the year in which the facility first produces electric energy.

(2) Efficiency standard. (i) For any topping-cycle cogeneration facility for which any of the energy input is natural gas or oil, and the installation of which began on or after March 13, 1980, the useful power output of the facility plus one-half the useful thermal energy output, during the 12-month period beginning with the date the facility first produces electric energy, and any calendar year subsequent to the year in which the facility first produces electric energy, must:

(b) Efficiency standards for bottomingcycle facilities. (1) For any bottomingcycle cogeneration facility for which