

May 29, 2001

Gerald Campbell
Alternate Designated Representative
Enron North America Corp.
P.O. Box 1188
Houston, TX 77251-1188

Re: Petition for extension of CEMS certification deadline for Elizabethtown and
Lumberton

Dear Mr. Campbell:

EPA has reviewed your February 22, 2001 petition in which Enron North America Corp. (Enron), on behalf of North Carolina Power Holdings, LLC (NCPH) requests an extension of the deadline for installing and certifying continuous emission monitoring systems (CEMS) at the Elizabethtown Power, LLC (Elizabethtown) and Lumberton Power, LLC (Lumberton) facilities in North Carolina. Specifically, Enron requests an extension of the deadline for each facility from March 1, 2001 to September 1, 2001. As discussed below, EPA approves the extensions, with certain conditions.

Background

_____ According to Enron, Elizabethtown and Lumberton are cogeneration facilities that were owned by Cogentrix Eastern Carolina Corporation¹ and were exempt from the Acid Rain Program under §72.6(b)(5), which applies to a qualifying facility with qualifying power purchase commitment. Each facility includes two coal-fired, dry bottom wall-fired boilers that serve a 35 MWe single extraction/condensing steam turbine generator. Some steam is extracted from the turbine generator at each facility and used as process steam in an adjacent textile mill initially owned by West Point Pepperell.² Enron states that the units were qualifying cogeneration facilities (under section 3(17)(C) of the Federal Power Act) with “qualifying power purchase commitments” (as defined under §72.2) to sell electricity and steam and therefore were unaffected units. However, while each facility’s steam purchase agreement for each facility has remained in effect, each facility’s power purchase agreement expired on November 30, 2000. According to Enron, the units became affected units on December 1, 2000 and, under §75.4(c), were required to install and certify CEMS within 90 days of becoming subject to the Acid Rain Program, i.e., by March 1, 2001.

¹ Elizabethtown and Lumberton were originally owned by Cogentrix of North Carolina, Inc. and have subsequently been owned by a series of affiliates of Cogentrix of North Carolina, Inc. For purposes of this letter, EPA refers to all of these entities collectively as “Cogentrix.”

² The textile mills are now owned by Almac Knit Fabrics, Inc.

Prior to the sale of Elizabethtown and Lumberton, Cogentrix did not commence the process of installing and certifying CEMS. Further, the sale of the units by Cogentrix to NCPH was uncertain until the transaction was actually closed on February 1, 2001. Due to this uncertainty, NCPH was unable to make the financial commitments necessary to install and certify the required CEMS by the March 1, 2001 deadline. Enron estimates that 10 to 12 weeks will be necessary to procure the CEMS for the units and a total of 16 to 18 weeks (including the 10-12 week procurement time) to install and certify the CEMS. Because of the potential for unanticipated problems, Enron requests an extension of the CEMS certification deadline until September 1, 2001 and requests to use substitute data during the period March 1-September 2001.

EPA's determination

Sections 402(17)(A) and 405(g)(6)(A) of the Clean Air Act include provisions discussing in detail the conditions under which a cogeneration unit is exempt from the Acid Rain Program. See 42 U.S.C. 7651a(17)(A) (stating that a cogeneration unit is not a utility unit if it meets certain requirements concerning the purpose of its construction and the amount of electricity that it sells) and 42 U.S.C. 7651d(g)(6)(A) (stating that Clean Air Act title IV does not apply to qualifying cogeneration facility that meets certain conditions as of November 15, 1990, the date of enactment of title IV). EPA interprets these provisions, and §§72.2 and 72.6 of the regulations implementing the provisions, to provide that a cogeneration unit used to produce electricity for sale is a utility unit and thus subject to the Acid Rain Program, unless the unit meets the requirements for an exemption as set forth in §72.6(b).

In this case, Elizabethtown and Lumberton each are qualifying cogeneration facilities with two units.³ On June 22, 1984, Cogentrix entered into two agreements with Carolina Power & Light Company (Carolina Power). In one agreement, Cogentrix agreed to sell electric capacity (35 MWe), and electricity generated (250,000 MWe-hours), at Lumberton to Carolina Power. Similarly, in the other agreement, Cogentrix agreed to sell electric capacity (35 MWe), and electricity generated (250,000 MWe-hours), at Elizabethtown to Carolina Power. Each agreement set the prices for capacity and electricity. See Electric Power Purchase Agreement, Cogentrix Schedule No. 1 (June 22, 1984) (applicable to Lumberton); and Electric Power Purchase Agreement, Cogentrix Schedule No. 1 (June 22, 1984) (applicable to Elizabethtown). Each agreement was to continue in effect until September 30, 2001 and would be automatically extended year by year, unless terminated by either party.

EPA finds that Elizabethtown and Lumberton are each a qualifying cogeneration facility that, as of November 15, 1990, was subject to a power purchase agreement meeting the requirements for a qualifying power purchase commitment under §72.2. Further, the agreement

³ See Cogentrix Eastern Carolina Corporation - Lumberton, Order Granting Application for Recertification as a Qualifying Cogeneration Facility (Docket No. QF83-278-005 (March 3, 1992)) and Cogentrix Eastern Carolina Corporation - Elizabethtown, Order Granting Application for Recertification as a Qualifying Cogeneration Facility (Docket No. QF83-316-005 (March 3, 1992)).

continued to meet these requirements through November 30, 2000, when the power purchase agreements were terminated. Until December 1, 2000, the identity of the electricity purchaser did not change and the terms and conditions of the agreements were not changed. See 40 CFR §72.2 (definition of “qualifying power purchase commitment”). Consequently, the units were exempt from the Acid Rain Program under §72.6(b)(4) until December 1, 2000.

However, the power purchase agreements were terminated on November 30, 2000. Since each unit was no longer covered by a qualified power purchase agreement, each unit lost its exemption from the Acid Rain Program under §72.6(b)(4). Further, Enron does not claim that the units are exempt under any other provision (e.g., §72.6(b)(5), which only applies to a cogeneration units that sells electricity less than one-third of its generating capacity or 219,000 MWe-hrs per year). Consequently, starting on December 1, 2000, the units were affected units subject to the Acid Rain Program.

EPA agrees that an extension of the CEMS certification deadline is appropriate in this case, in view of the circumstances surrounding the purchase of Elizabethtown and Lumberton and the good-faith efforts made by NCPH to obtain the required CEMS equipment. While §75.4(c) requires the installation and certification of CEMS at the units within 90 days of the date the units became subject to the Acid Rain Program (i.e., by March 1, 2001), Enron has shown that the February 1, 2001 finalization of its purchase of the units made compliance with the March 1, 2001 deadline impossible. According to Enron, the CEMS could not have been procured by that deadline, much less installed and certified.

Further, although Enron requests a relatively long extension of 6 months, Enron agrees to report emission data during the extension based on the substitute data provisions in §§75.30-75.31 and Appendix A of Part 75.⁴ Specifically, the units will use maximum potential values for emissions until the CEMS are installed and certified: i.e., maximum potential concentration of sulfur dioxide (SO₂), nitrogen oxide (NO_x), carbon dioxide (CO₂), and maximum potential flow rate. See 40 CFR 75.31(b)(2) and (c)(3). Maximum potential concentration values will be determined using the procedures in Appendix A of Part 75: for SO₂, Equation A-1a; for NO_x, the applicable value on Table 2-2; for CO₂, the applicable value in section 2.1.3.1 of Appendix A; and for flow, Equation A-3a and section 2.1.4 of Appendix A. See March 23, 2001 submission (setting forth the equations and values to be used). By using the substitute data procedures in Part 75, Enron ensures that emissions will not be under-reported during the extension period for the certification deadline. EPA’s approval of the extension is conditioned on Enron reporting substitute data for starting March 1, 2001 until the respective CEMS is installed and certified.

EPA notes that, in addition to these reporting requirements, several other requirements must be met as conditions for the extensions. For each unit, the designated representative must submit a monitoring plan, as well as test notifications, not less than 45 days before the respective CEMS are tested for certification. The designated representative must also submit quarterly emission reports for each unit. Because these units are not allocated any SO₂ allowances, NCPH

⁴ In the February 22, 2001 petition, Enron proposed a approach for developing substitute data that differed from the methodology under §§75.30-75.31 and Appendix A of Part 75. However, on March 23, 2001, Enron revised its proposal to instead follow the latter methodology.

must obtain or purchase SO₂ allowances sufficient to cover the SO₂ emissions from these units starting March 1, 2001.

EPA is aware that for the first quarter of 2001 and possibly for the second quarter of 2001, NCPH will be unable to meet the deadlines (i.e., 30 days from the end of each quarter) for submitting the quarterly emission reports for Elizabethtown and Lumberton since a functional data acquisition and handling system (DAHS) is needed to generate the electronic reports in the proper format. In view of this, EPA is granting for each unit an extension of the deadlines for submission of the first and second quarter 2001 emission reports until September 30, 2001 (the deadline for submission of the third quarter 2001 emission report).

EPA's determinations in this letter rely on the accuracy and completeness of the information provided in the February 22, 2001 petition and the additional submissions on March 8 and 23, April 9, 23, and 24, and May 10, 2001 and are appealable under 40 CFR part 78. Please contact Ms. Kim Nguyen of my staff at (202) 564-9102 if you have any questions. Thank you for your continued cooperation.

Sincerely,

/s/

Brian J. McLean, Director
Clean Air Markets Division

cc: David McNeal, EPA Region 4
Lynn Haynes, EPA Region 4
Dennis Igboko, North Carolina Department of Environment and Natural Resources
Kim Nguyen, EPA Clean Air Markets Division