

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: ROQUETTE AMERICA, INC.	DOCKET NO. WRU-08-15-3676
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ORDER GRANTING WAIVER WITH CONDITIONS AND REQUIRING FILINGS

(Issued September 9, 2008)

On April 15, 2008, Roquette America, Inc. (Roquette), filed with the Utilities Board (Board) a request for waiver of the generating certificate requirements of Iowa Code chapter 476A. Roquette filed a statement on April 24, 2008, stating that it had served a copy of the waiver request on three individuals or entities that own property adjoining the proposed facility site, pursuant to 199 IAC 24.15. The Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a conditional objection to the request on April 24, 2008; Consumer Advocate withdrew its conditional objection on August 14, 2008. No other objections or other responses to the waiver request or supplemental request were filed.

Roquette operates a corn wet-milling facility in Keokuk, Iowa. On December 26, 2002, in Docket No. WRU-02-44-3676, the Board granted Roquette a waiver of the generating certificate requirements to construct a 50 MW cogeneration facility to supply electricity to its processing facility. Roquette wants to increase the capacity of the cogeneration facility by installing a new coal-fired circulating fluidized bed (CFB) boiler (which will replace old coal and gas boilers), a new back pressure

steam generator, and auxiliary equipment. Roquette states the new steam turbine generator will have a maximum output of 34 MW and a net output of 28 MW. Even with the new 34 MW back pressure steam turbine facility, Roquette notes that it would still be able to deliver no more than 50 MW of power to the grid. Roquette intends to request qualifying facility status pursuant to 18 CFR 292.

Roquette's planned expansion falls within the parameters of Board review under chapter 476A. Pursuant to the statute, a certificate must be obtained for any "facility" with a total capacity of 25 MW or more. Iowa Code § 476A.1(5). However, Iowa Code § 476A.15 grants the Board the authority to waive the requirements of chapter 476A for any size generation unit if it determines that "the public interest would not be adversely affected."

In analyzing whether a waiver should be granted, the decision criterion for issuing a generating certificate must be examined. The three criterion in Iowa Code § 476A.6 are (1) whether the facility is consistent with legislative intent, the economic development policy of the state, and will not be detrimental to provision of adequate and reliable electric service, (2) whether the applicant will construct, maintain, and operate the facility pursuant to the provisions of a certificate, and (3) whether the construction, maintenance, and operation of the facility are consistent with reasonable land use and environmental policies.

The first criterion relates to the provision of adequate and reliable service. Roquette's facility is consistent with the legislative intent expressed in Iowa Code § 476.53 to develop generation to serve Iowa consumers. The facility also supports economic development policies by creating jobs and improving the energy infrastructure. The facility will not adversely impact the transmission system. Because power from the steam turbine generator will be produced at 13.2 kV (local distribution voltage), Roquette states that the Midwest Independent Transmission System Operator, Inc. (MISO), informed Roquette that the appropriate interconnection for sale of energy is to the local distribution system, not to MISO. Accordingly, Roquette pledges to comply with the results of any transmission or interconnection studies performed by appropriate entities, such as ITC Midwest, LLC, and Ameren Corporation. Any waiver will be specifically conditioned upon Roquette complying with the results of the interconnection studies and taking appropriate steps to remove any transmission constraints identified in those studies. Roquette will also be required to file any final transmission or interconnection studies with the Board.

The second criterion is of little importance in this case. A certificate, if required, would merely state that Roquette must comply with applicable law. Roquette is subject to statutory requirements regardless of whether an actual certificate is issued. For example, Iowa Code § 476A.2(2) provides that Board approval or a waiver must be obtained for a significant alteration to a facility. Granting this waiver will not exempt Roquette from this or any other statutory requirement with respect to its future activities.

The final decision criterion relates to environmental and land use factors. Iowa Code § 476A.6(3) requires that "construction, maintenance, and operation of the facility will be consistent with reasonable land use and environmental policies and consonant with reasonable utilization of air, land, and water resources, considering available technology and the economics of available alternatives." As the Board noted in its "Final Decision and Order" (Final Decision) issued on August 25, 2008, in Docket No. GCU-07-1, "[t]his required finding must be parsed carefully to avoid overlapping, and potentially conflicting, decisions by different state agencies." (Final Decision, p. 12).

The phrase "consistent with reasonable land use and environmental policies" refers to the terms and conditions in licenses and permits which are issued by other regulatory agencies, including the authority of the Iowa Department of Natural Resources (IDNR) to issue certain environmental licenses and permits, so long as those policies are reasonable. Environmental permits are within the purview of IDNR and the Board has traditionally deferred to IDNR's expertise in these areas that IDNR regulates and has found this criterion satisfied if IDNR issues the appropriate permits. Roquette states it has obtained all necessary air permits from the IDNR. Roquette notes that the new CFB boiler will operate efficiently with low air emissions and noise levels are not expected to exceed 70 decibels. Typically, CFB boilers can burn fuels other than coal.

As the Board indicated in its Final Decision, the second clause, "consonant with reasonable utilization of air, land, and water resources ..." can be considered separately and gives the Board authority to consider environmental issues that are not addressed by other regulatory bodies. This second clause must be read with the last clause of Iowa Code § 476A.6(3), which states "considering available technology and the economics of available alternatives." This language provides the standard the Board must apply when considering environmental issues that are not regulated by other agencies.

While the Board may have the authority to consider environmental issues that are not addressed by other regulatory bodies, it will not do so here. Roquette's planned facility will replace outdated technology, resulting in reduced emissions rates. This planned facility not only will provide electricity for Roquette's use, but also will produce steam for Roquette's operations, making it a more efficient use of air, land, and water resources than a facility that only generates electricity. The costs of the facility must be paid by Roquette, which sells its products in a competitive world market and has an incentive to control its costs. Therefore, the Board will not second-guess Roquette's evaluation of the economics of available alternatives, particularly when Roquette is replacing an outdated cogeneration facility with new, more efficient technology. For these reasons, the planned facility satisfies the requirements of § 476A.6(3) without the imposition of environmental requirements beyond those contained in existing law and enforced by the IDNR and other regulatory bodies.

Rule 199 IAC 24.15 provides that in determining whether the public interest would be detrimentally affected by granting a waiver of the generation certificate requirements, the Board should consider the purpose of the facility, the type of facility, whether the facility is for the applicant's own needs, the effect of the facility on the existing transmission system, and any other relevant factors. The facility is primarily for Roquette's own use and Roquette has notified its electric supplier, Interstate Power and Light Company, that it intends to reduce its power purchases once the new cogeneration facility is available. The new facility, however, will net generate and provide power to the grid in the event of system emergencies. The new facility will also be a CFB boiler, reducing any environmental impact from the facility. The facility will produce steam as a byproduct for use in Roquette's corn milling operations. The Board finds that the waiver request adequately addresses the decision criteria for a generating certificate and will therefore waive the requirements of chapter 476A. The waiver will not detrimentally affect the public interest. However, the Board reminds Roquette that it must obtain any other applicable environmental permits and comply with any other state and local regulations, such as applicable zoning or land use restrictions.

The Board notes that Roquette in its waiver request states that Roquette does not foreclose the possibility of supplying electricity to others by a secondary line or as an alternate energy producer as permitted by Iowa Code § 476.1. The Board

expresses no opinion here on whether or under what specific facts and circumstances this statutory provision would be available to Roquette.

IT IS THEREFORE ORDERED:

1. The request for waiver filed by Roquette America, Inc., on April 15, 2008, is granted, conditioned upon Roquette's compliance with the results of any applicable transmission or interconnection studies and compliance with any other state and local regulations, such as applicable zoning or land use restrictions.

2. Roquette shall promptly file with the Board copies of all final transmission, interconnection, or similar system impact studies that are conducted with respect to the new facility.

3. Roquette shall file a project status report once the facility is completed and begins operation.

UTILITIES BOARD

/s/ John R. Norris

/s/ Krista K. Tanner

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Darrell Hanson

Dated at Des Moines, Iowa, this 9th day of September, 2008.