



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
AIR AND RADIATION

R. James Ansell
General Manager
Inter-Power / AhlCon Partners
3 Penn Center West, Suite 411
Pittsburgh, PA 15276

Dear Mr. Ansell:

I am responding to your October 3, 1994 letter requesting a determination of applicability for the Colver Power Project ("Colver"). This letter represents EPA's official determination of applicability.

As described in your letter, Colver is a qualifying facility (QF-87-632), meeting the definition of "qualifying facility" under 40 CFR §72.2. Colver has a power purchase agreement with Pennsylvania Electric ("Penelec"). The power purchase agreement is a "power purchase commitment" as defined at 40 CFR §72.2. The original agreement was signed November, 1988. In addition, the only changes made to the Colver-Penelec agreement have been with regard to capacity. Thus, the Colver-Penelec agreement fits the definition of a "qualifying power purchase commitment" under §72.2.

Under 40 CFR 72.6(b)(5), a qualifying facility is unaffected by Acid Rain Program requirements if (i) its qualifying power purchase commitment(s) were for at least 15% of its total planned net output capacity, as of November 15, 1990, and (ii) its installed net output capacity does not exceed 130% of the total planned net output capacity. The Colver-Penelec agreement was originally for approximately 80 MWe, which was the total capacity planned at that time. Thus, the criterion in (b)(5) is met.

The remaining issues for Colver are: what is the total planned net output capacity, and what is the maximum installed net output capacity that Colver may have while still remaining unaffected by the Acid Rain Program requirements. The "total planned net output capacity" as defined at §72.2 may be specified in the "power purchase commitment or in contemporaneous documents as of November 15, 1990." FERC approval for the Colver project in 1987 specified 79.5 MWe. As documented in the March 6, 1990 memorandum, Fichtner Engineering, the original design engineers, recommended a 4 MWe increase in power. Based on the engineer's recommendation, Colver petitioned for and received FERC approval to increase power to 83.5 MWe at Colver, in 1991. In 1992, Penelec requested another small increase in power from Colver, with no other changes to the power purchase agreement.

In addition, the power purchase commitment requires a + / - 2 MWe “swing” for Penelec power regulation. EPA agrees that this “swing” must be added to the average output to compute the total planned net output capacity, as of November 15, 1990.

Based on the March 1990 engineer’s memorandum, the average net planned capacity for Colver was 83.5 MWe. With the “swing,” the total planned net output capacity of Colver was 85.5 MWe, as of November 15, 1990. According to the Colver-Penelec agreement, all power measurement are made at the Glory substation.

As you recognize, unaffected qualifying facilities are limited to installing no more than 130% of the total planned net output capacity. Therefore, Colver would compromise its status as an unaffected facility if more than 111.15 MWe of net generator output capacity is ever installed (as measured at the Glory substation).

This determination is based solely on the representations made in your letter and attachments of October 3, 1994. according to 40 CFR 72.6(c)(5), this decision may be appealed under 40 CFR part 78. Under the requirement of 40 CFR §72.6(c), you are required to send copies of this letter to each owner or operator of the Colver Power Plant. If you have further questions regarding the Acid Rain Program, please contact Kathy Barylski of my staff at (202) 233-9074.

Sincerely,

/s/ (April 26, 1995)

Brian J. McLean, Director
Acid Rain Division