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convincing evidence to the contrary is submitted in rebuttal.⁶

(3) OFP will assess units for which a derating is claimed of 10 percent or more, but less than 25 percent, on a case-by-case.

(4) In assessing whether a unit's derating is not substantial, OFP will consider the impact of a reduction in rated capacity of the unit taking into consideration all necessary appurtenances such as air pollution control equipment required to burn an alternate fuel in compliance with environmental requirements expected to be applicable at the date the prohibitions contained in the final prohibition order become effective. However, the potential order recipient may raise in rebuttal the impact of derating on the site at which the unit is located and on the system as well as on the unit itself, if under paragraph (e)(2), or case-by-case, if under paragraph (e)(3) of this section.

(f) *Financial feasibility.* In the case of certifying and electing powerplants, OFP will make this finding based on the following considerations. A certifying powerplant should present information to support its certification relevant to these considerations in order for OFP to make its review for concurrence. Conversion of a unit to burn coal or an alternate fuel shall be deemed financially feasible if the firm has the actual ability to obtain sufficient capital to finance the conversion, including all necessary land, coal and ash handling equipment, pollution control equipment, and all other necessary expenditures, without violating legal restrictions on its ability to raise debt or equity capital, unreasonably diluting shareholder equity, or unreasonably adversely affecting its credit rating. OFP will consider any economic or financial factors presented by the proposed order recipient in determining

⁶For example, units that are the subject of a prohibition order will not have installed any operating air pollution control equipment sufficient to burn coal in compliance with applicable environmental equipments. The installation and use of air pollution control equipment alone can, in many cases, produce a derating. Moreover, the shift to coal itself will, because of differences in energy density and fuel flow characteristics, typically involve some derating.

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the firm's ability or inability to finance the conversion including, but not limited to, the following:

(1) The required coverage ratios on the firm's debt and preferred stock;

(2) The firm's investment program; and

(3) The financial impact of the conversion, including other conversions which are or may be undertaken voluntarily by the proposed order recipient or imposed upon the recipient's system by the Act, and including pending or planned construction or reconstruction of alternate-fuel-fired plants and plants exempt from FUA prohibitions.⁷ Where helpful in clarifying the long-term financial feasibility of a conversion, DOE may analyze the economic benefits anticipated from operation of the converted unit or units using coal or other alternate fuel relative to those from continued operation using petroleum or natural gas.

(Approved by the Office of Management and Budget under control number 1903-0077)

(Energy Supply and Environmental Coordination Act of 1974, Pub. L. 93-319, as amended by Pub. L. 94-163, Pub. L. 95-70, and 15 U.S.C. 719 *et seq.*; Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. 7101 *et seq.*); Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95-620, 92 Stat. 3269 (42 U.S.C. 8301 *et seq.*); Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-248); E.O. 12009, 42 FR 46267, Sept. 15, 1977)

[45 FR 53692, Aug. 12, 1980, as amended at 47 FR 17044, Apr. 21, 1982; 47 FR 50849, Nov. 10, 1982]

§ 504.7 Prohibition against excessive use of petroleum or natural gas in mixtures—electing powerplants.

(a) In the case of electing powerplants, if OFP finds that it is technically and financially feasible for a unit to use a mixture of petroleum or natural gas and an alternate fuel as its primary energy source, OFP may prohibit, by order, the use in that unit of

⁷OFP will not require the proposed order recipient to cancel or defer construction or reconstruction of any alternate-fuel-fired facility, or any facility exempt from the prohibitions of the Act, for which a decision to finance such facility has been made by the appropriate company official before the publication of the prohibition order. The proposed order recipient may choose to cancel or defer any such facility.

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petroleum or natural gas, or both, in amounts exceeding the minimum amount necessary to maintain reliability of operation consistent with maintaining reasonable fuel efficiency of the mixture.

(b) In making the technical feasibility finding required by former section 301 (b) and (c) of the Act and paragraph (a) of this section, OFP may weigh "physical modification" or "de-rating of the unit," but these considerations, by themselves, will not control the technical feasibility finding. A technical feasibility finding might be made notwithstanding the need for substantial physical modification. The economic consequences of a substantial physical modification are taken into account in determining financial feasibility.

(Energy Supply and Environmental Coordination Act of 1974, Pub. L. 93-319, as amended by Pub. L. 94-163, Pub. L. 95-70, and 15 U.S.C. 719 *et seq.*; Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. 7101 *et seq.*); Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95-620, 92 Stat. 3269 (42 U.S.C. 8301 *et seq.*); Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35); E.O. 12009, 42 FR 46267, Sept. 15, 1977)

[47 FR 17045, Apr. 21, 1982, and 47 FR 50850, Nov. 10, 1982]

§ 504.8 Prohibitions against excessive use of petroleum or natural gas in mixtures—certifying powerplants.

(a) In the case of certifying powerplants, OFP may prohibit the use of petroleum or natural gas in such powerplant in amounts exceeding the minimum amount necessary to maintain reliability of operation consistent with maintaining the reasonable fuel efficiency of the mixture. This authority is contained in section 301(c) of the Act, as amended. The owner or operator of the powerplant may certify at any time to OFP that it is technically capable and financially feasible for the unit to use a mixture of petroleum or natural gas and coal or another alternate fuel as a primary energy source. In assessing whether the unit is technically capable of using a mixture of petroleum or natural gas and coal or another alternate fuel as a primary energy source, for purposes of this section, the extent of any physical modification necessary to convert the unit

and any concomitant reduction in rated capacity are not relevant factors. So long as a unit as proposed to be modified would be technically capable of using the mixture as a primary energy source under § 504.6(c), this certification requirement shall be deemed met. The criteria for certification of financial feasibility are found at § 504.6(f). In addition, the powerplant's owner or operator must submit a prohibition compliance schedule, which meets the requirements of § 504.5(d).

(b) If OFP concurs with the certification, a prohibition order against the unit's excessive use of petroleum or natural gas in the mixture will be issued following the procedure outlined in § 501.52 of these regulations.

(c) The petitioner may seek to amend its certification in order to take into account changes in relevant facts and circumstances by following the procedure contained in § 501.52(d).

NOTE: The authority of OFP implemented under this section should not be confused with the other two fuel mixture provisions of these regulations. One is the general requirement that petitioners for permanent exemptions demonstrate that the use of a mixture of natural gas or petroleum and an alternate fuel is not economically or technically feasible (See § 504.15). The second is the permanent fuel mixtures exemption itself (See § 504.56).

(Approved by the Office of Management and Budget under control number 1903-0077)

(Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7101 *et seq.*); Energy Supply and Environmental Coordination Act of 1974, Pub. L. 93-319, as amended by Pub. L. 94-163, Pub. L. 95-70, and Pub. L. 95-620 (15 U.S.C. 719 *et seq.*); Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95-620, as amended by Pub. L. 97-35 (42 U.S.C. 8301 *et seq.*); Omnibus Budget Reconciliation Act of 1981, Pub. L. 97-35)

[47 FR 17045, Apr. 21, 1982]

§ 504.9 Environmental requirements for certifying powerplants.

Under §§ 501.52, 504.5 and 504.6 of these regulations, OFP may prohibit, in accordance with section 301 and section 303 (a) or (b) of FUA, as amended, the use of natural gas or petroleum, or both, as a primary energy source in any certifying powerplant. Under sections 301(c) and 303(a) of FUA, as amended, and §§ 501.52, 504.6, and 504.8 of