

168 FERC ¶ 61,075  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Cheryl A. LaFleur, Richard Glick,  
and Bernard L. McNamee.

Rockville Solar I LLC  
Rockville Solar II LLC

Docket Nos. EL19-64-000  
QF19-907-001  
QF19-908-001

ORDER GRANTING REQUEST FOR PARTIAL WAIVER

(Issued August 2, 2019)

1. On April 15, 2019, Rockville Solar I LLC (Rockville I) and Rockville Solar II, LLC (Rockville II) (collectively, Rockville Solar) jointly filed a petition for declaratory order (Petition), requesting a partial waiver from the filing requirements in section 292.203(a)(3) of the Commission's regulations<sup>1</sup> applicable to small power production qualifying facilities (QFs) from 2014 when Rockville I and Rockville II began operations until March 6, 2019, the date Rockville Solar self-certified the facilities as QFs. Rockville Solar also filed a refund report. We grant the request for partial waiver and accept the refund report, as discussed below.

**I. Background**

2. Rockville I is a 2.291 MW solar facility that began operations on April 9, 2014.<sup>2</sup> Rockville II is a 2.374 MW solar facility that began operations on August 19, 2014. Both facilities are located in Indianapolis, Indiana. Both are connected to Indianapolis Power and Light Company (IPL) and sell their energy, capacity, and green attributes to IPL through separate power purchase agreements.

3. Rockville Solar states that in 2014 it was unaware that a self-certification needed to be filed with the Commission in order to obtain QF status, and that when it became aware it promptly filed the necessary Form No. 556s self-certifying the facilities.

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<sup>1</sup> 18 C.F.R. § 292.203(a)(3) (2018).

<sup>2</sup> Petition at 2.

## II. Petition

4. Rockville Solar requests partial waiver of the QF filing requirements from the time the facilities began operation (April 9, 2014 for Rockville I and August 19, 2014 for Rockville II) until March 6, 2019, the date both facilities were self-certified as QFs. Rockville Solar requests waiver of most of the provisions of section 292.601 of the Commission's regulations and the Public Utility Holding Act of 2005 (PUHCA),<sup>3</sup> and certain state laws and regulations regarding the rates, financial and organization regulations of electric utilities.<sup>4</sup> Rockville Solar does not seek waiver of FPA sections 205 and 206, however.

5. Rockville Solar states that it promptly filed a Form No. 556 for each facility when it became aware of the QF certification requirements. According to Rockville Solar, with the exception of filing a Form No. 556, Rockville I and Rockville II met all of the other requirements for QF status. Rockville Solar also states that it has revised its compliance procedures to ensure the timely filing of self-certifications in the future. Rockville Solar argues that this partial waiver request is consistent with Commission precedent granting waivers to similarly situated QFs.<sup>5</sup>

6. Rockville Solar also submits a refund report for the time-value refunds it owes for the time value of the revenues that Rockville Solar collected during the requested waiver period.<sup>6</sup> Rockville Solar states that, on April 4, 2019, it paid its refund obligation of \$739,430 to IPL, its sole customer.

## III. Notice

7. Notice of the Petition was published in the *Federal Register*, 84 Fed. Reg. 17,152 (2019), with interventions and protests due on or before May 15, 2019. None was filed.

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<sup>3</sup> *Id.* at 3 (citing 18 C.F.R. § 292.602(b)).

<sup>4</sup> *Id.* (citing 18 C.F.R. § 292.602(c)).

<sup>5</sup> Petition at 4-5 (citing *Bright Light Capital, LLC*, 157 FERC ¶ 61,046 (2016); *Iowa Hydro, LLC*, 146 FERC ¶ 61,207 (2014)).

<sup>6</sup> Petition at 6.

#### IV. Discussion

8. In Order No. 671,<sup>7</sup> the Commission added the filing requirements for QF status contained in sections 292.203(a)(3) (for small power production facilities) and 292.203(b)(2) (for cogeneration facilities) of the Commission's regulations.<sup>8</sup> Thus, since 2006, the regulations require that an owner or operator of a facility must, in addition to meeting other specified requirements, file either a notice of self-certification (i.e., Form No. 556), or receive a Commission certification, in order to establish QF status for a generating facility larger than 1 MW.<sup>9</sup>

9. As the Commission has stated, “[t]he filing requirement is a substantive and important criterion for QF status, which was expressly adopted in Order No. 671 and must be followed.”<sup>10</sup> In recent orders, the Commission has denied waiver of the filing requirements, but granted partial waiver to treat the facilities as QFs for the period that they were out of compliance.<sup>11</sup>

10. Therefore, we grant Rockville Solar partial waiver so that the Rockville I and Rockville II facilities will be treated as QFs for the period that they operated out of compliance with the Commission’s QF certification filing requirement from April 9, 2014 for Rockville I and from August 19, 2014 for Rockville II until March 6, 2019, when Rockville Solar self-certified the facilities as QFs. Accordingly, Rockville Solar will qualify for most of the exemptions contained in sections 292.601 and 292.602 of the

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<sup>7</sup> *Revised Regulations Governing Small Power Production and Cogeneration Facilities*, Order No. 671, 114 FERC ¶ 61,102, *order on reh’g*, Order No. 671-A, 115 FERC ¶ 61,225 (2006).

<sup>8</sup> 18 C.F.R. §§ 292.203(a)(3), 292.203(b)(2) (2018).

<sup>9</sup> 18 C.F.R. §§ 292.203(a)(3), 292.203(b)(2).

<sup>10</sup> *OREG I, Inc.*, 135 FERC ¶ 61,150, at P 8 (2011) (*OREG I*), *reh’g denied*, 138 FERC ¶ 61,110 (2012) (*OREG II*).

<sup>11</sup> *See Zeeland Farm Servs., Inc.*, 163 FERC ¶ 61,115 (2018) (*Zeeland Farm*); *Minwind I, LLC*, 149 FERC ¶ 61,109 (2014) (*Minwind I*); *Beaver Falls Mun. Auth.*, 149 FERC ¶ 61,108 (2014) (*Beaver Falls*); *see also OREG I*, 135 FERC ¶ 61,150.

Commission's regulations,<sup>12</sup> excepting exemption from FPA sections 205 and 206.<sup>13</sup> Granting Rockville Solar most of the exemptions from the FPA, PUHCA, and state laws, as provided in sections 292.601 and 292.602 of the regulations, but denying exemption from FPA sections 205 and 206 of the FPA, is consistent with the Commission's action in other, similar cases.<sup>14</sup>

11. In *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*,<sup>15</sup> the Commission clarified its refund remedy (for both cost-based and market-based rates) for the late filing of jurisdictional rates and agreements under FPA section 205 when waiver of the 60-day prior notice requirement is denied. With respect to sales for resale made without Commission authorization under FPA section 205, the Commission stated it would require the utility to refund to its customers: (1) the time value of the revenues collected, calculated pursuant to section 35.19a of our regulations,<sup>16</sup> for the entire period that the rate was collected without Commission authorization; and (2) all revenues resulting from the difference, if any, between the market-based rate and a cost-justified rate.<sup>17</sup> The second component of the two-part refund methodology does not typically apply to QFs because the Commission has previously indicated that a QF can use a substitute for the cost-justified rate, which may include a market-based rate or an avoided cost rate.<sup>18</sup> To the extent that there is no difference between the QF's rate collected and the market-based rate or the QF's rate collected and the avoided cost rate,

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<sup>12</sup> 18 C.F.R. §§ 292.601, 292.602 (2018).

<sup>13</sup> We remind Rockville Solar that it must submit required filings on a timely basis, or face possible sanctions by the Commission.

<sup>14</sup> See *Zeeland Farm*, 163 FERC ¶ 61,115 at P 15; *SunE B9, LLC*, 157 FERC ¶ 61,044, at P 17 (2016); *SunE M5B Holdings, LLC*, 157 FERC ¶ 61,045, at P 18 (2016); *Minwind I*, 149 FERC ¶ 61,109 at P 22; *Beaver Falls*, 149 FERC ¶ 61,108 at P 31; *OREG I*, 135 FERC ¶ 61,150 at P 16; see also *Iowa Hydro, LLC*, 146 FERC ¶ 61,207 at PP 14-15; *accord CII Methane Management IV, LLC*, 148 FERC ¶ 61,229, at P 5 (2014) (*CII Methane*); *LG&E-Westmoreland Southampton*, 76 FERC ¶ 61,116, at 61,603-05 (1996), *order granting clarification and denying reh'g*, 83 FERC ¶ 61,182, at 61,752-53 (1998).

<sup>15</sup> 64 FERC ¶ 61,139 (*Prior Notice*), *order on reh'g*, 65 FERC ¶ 61,081 (1993).

<sup>16</sup> 18 C.F.R. § 35.19a (2018).

<sup>17</sup> *Prior Notice*, 64 FERC ¶ 61,139 at 61,980.

<sup>18</sup> *Minwind I*, 149 FERC ¶ 61,109 at P 23; see *Trigen-St. Louis Energy Corp.*, 120 FERC ¶ 61,044, at P 32 (2007); see also *CII Methane*, 148 FERC ¶ 61,229 at P 4.

the QF would not have a refund obligation under that part of the refund methodology. Here, Rockville Solar has been selling pursuant to a negotiated rate, satisfying the second component of the two-part refund methodology, but Rockville Solar remains subject to the first component (i.e., the time value refund obligation). Rockville Solar has filed a refund report that is consistent with this obligation. Accordingly, we accept the refund report.

The Commission orders:

(A) Rockville Solar's request for partial waiver is hereby granted, as discussed in the body of this order.

(B) Rockville Solar's refund report is hereby accepted, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.