

168 FERC ¶ 61,049  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

NorthWestern Corporation

Docket Nos. EL18-195-000  
QF17-672-002  
QF17-673-003  
QF17-674-002  
QF17-675-002  
(Not Consolidated)

ORDER GRANTING MOTION TO DISMISS PETITION FOR DECLARATORY  
ORDER AS MOOT

(Issued July 23, 2019)

1. On August 14, 2018, pursuant to the Public Utility Regulatory Policies Act of 1978 (PURPA)<sup>1</sup> and section 292.207(b) of the Commission's regulations,<sup>2</sup> Beaver Creek Wind II, LLC (Beaver Creek II) filed an application seeking Commission recertification of its 78 MW wind facility as a small power production qualifying facility (QF) notwithstanding the addition of a 40 MW/h battery storage system with a SCADA system that would limit the facility's output to 80 MW at any given time. On August 31, 2018, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure and section 292.207(d) of the Commission's regulations, NorthWestern Corporation (NorthWestern) separately filed a petition for declaratory order in the form of a motion for revocation of QF status for Beaver Creek II as well as three other facilities with similar battery storage systems, Beaver Creek Wind I (Beaver Creek I), Beaver Creek Wind III (Beaver Creek III), and Beaver Creek Wind IV (Beaver Creek IV), (collectively, Beaver Creek), claiming that the addition of battery storage systems causes the four Beaver Creek facilities to violate the 80 MW limit for a small power production QF under PURPA (Petition).

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<sup>1</sup> 16 U.S.C. § 824a-3 (2012).

<sup>2</sup> 18 C.F.R. § 292.207(b) (2018).

2. On April 30, 2019, Beaver Creek II filed a request to withdraw its August 14 application for Commission recertification as a small power production QF. Beaver Creek II states that it relinquishes its QF status relating to the small power production facility and requests that the Commission close Docket No. QF17-673. Also, on April 30, 2019, Beaver Creek I, Beaver Creek III, and Beaver Creek IV each filed a notice of withdrawal, advising that it relinquishes its QF status for its facility and asks that the Commission close the respective dockets.<sup>3</sup>

### **I. Background**

3. As originally proposed, each of the four Beaver Creek facilities was an approximately 80 MW gross, 78 MW net power production capacity wind farm under development in Stillwater County, Montana. According to Beaver Creek, once operational as QFs, each of the four projects would deliver its output to NorthWestern by means of a shared radial interconnection line. In 2017, Beaver Creek I and Beaver Creek IV submitted notices of self-certification of QF status in Docket Nos. QF17-672-000 and QF17-675-000, respectively. Also, in 2017, Beaver Creek II and Beaver Creek III filed applications for Commission certification in Docket Nos. QF17-673-000 and QF17-674-000, respectively, which the Commission granted.<sup>4</sup>

4. On April 16, 2018, each of the four Beaver Creek facilities submitted notices of self-recertification in Docket Nos. QF17-672-001, QF17-673-001, QF17-674-001, and QF17-675-001, respectively, representing that each project would also incorporate a battery storage system in order to time shift the wind output and allow for dispatchability of the wind energy.

5. On August 14, 2018, in Docket No. QF17-673-002, Beaver Creek II submitted an application for Commission recertification as a small power production QF of the 78 MW wind farm with the addition of a 40 MW/h battery storage system. Beaver Creek II stated that, while the application was being submitted on behalf of Beaver Creek II only, all four of the Beaver Creek facilities are technologically identical, and therefore a determination by the Commission on this application would apply to each of the four Beaver Creek facilities.

6. On August 31, 2018, NorthWestern separately filed the Petition, seeking revocation of QF status for Beaver Creek I, Beaver Creek II, Beaver Creek III, and

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<sup>3</sup> Beaver Creek I requests that the Commission close out Docket No. QF17-672, Beaver Creek III request that the Commission close out Docket No. QF17-674, and Beaver Creek IV requests that the Commission close out Docket No. QF17-675.

<sup>4</sup> *Beaver Creek Wind II*, 160 FERC ¶ 61,052 (2017).

Beaver Creek IV for violation of the 80 MW limit for small power production QFs under PURPA given the addition of the proposed battery storage systems.

7. In its April 30, 2019, request to withdraw its application for Commission recertification as a small power production QF, Beaver Creek II states that, because its request for Commission recertification of Beaver Creek II is still pending before the Commission, the lack of regulatory certainty has impacted Beaver Creek II's ability to complete the project as proposed. Therefore, Beaver Creek II states that it plans to reconfigure the project and withdraws its application for recertification. Similarly, in their respective notices of withdrawal of self-certified QF status, Beaver Creek I, Beaver Creek III, and Beaver Creek IV request that the Commission close their respective dockets because questions of regulatory certainty have negatively impacted the ability to develop the projects.

## **II. Notice of Filings and Responsive Pleadings**

### **A. Application for Recertification**

8. Notice of Beaver Creek II's application was published in the *Federal Register*, 83 Fed. Reg. 42,284 (2018), with interventions and protests due on or before September 4, 2018. Edison Electric Institute filed a motion to intervene and comments, American Wind Energy Association filed limited comments, and NorthWestern filed a motion to intervene and a protest.

9. Beaver Creek I, II, III and IV filed notices of withdrawal of their applications in all four corresponding dockets. No protests were filed.

### **B. Petition**

10. Notice of NorthWestern's Petition was published in the *Federal Register*, 83 Fed. Reg. 45,626 (2018), with interventions and protests due on or before October 1, 2018. Beaver Creek and the National Rural Electric Cooperative Association filed timely motions to intervene. Beaver Creek also filed a protest. NorthWestern filed an answer, and Beaver Creek filed an answer to NorthWestern's answer. On March 14, 2019 and April 1, 2019, respectively, PacifiCorp and Broadview Solar III, LLC (Broadview) filed motions to intervene out-of-time and comments.

11. On May 30, 2019, Beaver Creek filed a motion to dismiss NorthWestern's Petition as moot given the withdrawal of the respective certifications and applications for small power production qualifying facility status, which provided the factual predicate for NorthWestern's Petition.<sup>5</sup>

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<sup>5</sup> Beaver Creek Motion to Dismiss at 1, 3-4.

### **III. Discussion**

#### **A. Procedural Matters**

12. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2018), we will grant Broadview’s and PacifiCorp’s late-filed motions to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

13. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept either NorthWestern’s or Beaver Creek’s answer and will, therefore, reject them.

#### **B. Commission Determination**

14. Pursuant to the Commission’s regulations, Beaver Creek’s applications for recertification of Beaver Creek I, II, III and IV are withdrawn effective April 30, 2019.<sup>6</sup> Because Beaver Creek has withdrawn its application for QF status for each of the four facilities, we grant Beaver Creek’s motion to dismiss NorthWestern’s Petition as moot.

#### **The Commission orders:**

Beaver Creek’s motion to dismiss is hereby granted, and NorthWestern’s Petition is hereby dismissed as moot, as discussed in the body of the order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>6</sup> 18 C.F.R. § 385.216(b) (“The withdrawal of any pleading is effective at the end of 15 days from the date of filing of a notice of withdrawal, if no motion in opposition to the notice of withdrawal is filed within that period . . . .”).