

169 FERC ¶ 61,269
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Branch Street Solar Partners, LLC
SSA Solar of NM 4, LLC

Docket Nos. EL20-5-000
QF19-881-001
QF19-882-001

ORDER GRANTING REQUEST FOR PARTIAL WAIVER

(Issued December 31, 2019)

1. On October 22, 2019, Branch Street Solar Partners, LLC (Branch Street) and SSA Solar of NM 4, LLC (SSA Solar) (collectively, Petitioners) jointly filed a petition for declaratory order, requesting a partial waiver from the filing requirements in section 292.203(a)(3) of the Commission's regulations¹ for small power production qualifying facilities (QF) from January 25, 2017 when the Branch Street QF began operation and from February 17, 2015 when the SSA Solar QF began operation until February 25, 2019, the date Petitioners self-certified the facilities as QFs.² Petitioners also filed a refund report for each facility. We grant the request for partial waiver and accept the refund report, as discussed below.

I. Background

2. Branch Street owns and operates the Branch Street facility located in Mansfield, Massachusetts. The Branch Street facility is a solar facility with a net capacity of 1.5 MW that began operation on January 25, 2017. Branch Street sells all of the facility's power output to Mansfield Municipal Electric Department, pursuant to a long-term power purchase agreement (PPA).

3. SSA Solar owns and operates the SSA Solar facility located in Truth or Consequences, New Mexico. The SSA Solar facility is a solar facility with a net capacity

¹ 18 C.F.R. § 292.203(a) (2019).

² Branch Street filed its Form No. 556 in Docket No. QF19-881-000. SSA Solar filed its Form No. 556 in Docket No. QF19-882-000, which it supplemented on September 10, 2019.

of 1.5 MW that began operation on February 17, 2015. SSA Solar sells all of the facility's power output to Truth or Consequences Utility Department, pursuant to a long-term PPA.

II. Petition

4. Petitioners request partial waiver of the QF filing requirements from the time the facilities began operation (January 25, 2017, for Branch Street and February 17, 2015, for SSA Solar) until February 25, 2019, the date Petitioners self-certified the facilities as QFs.³ Petitioners request waiver of most of the provisions of sections 262.601 of the Commission's regulations and the Public Utility Holding Company Act of 2005 (PUHCA), and certain state laws and regulations regarding the rates and financial and organizational regulations of electric utilities.⁴ Petitioners do not seek waiver of sections 205 and 206 of the Federal Power Act (FPA), however.

5. Petitioners state that, with the exception of filing Form No. 556s, the facilities have satisfied all requirements for QF status under the Public Utility Regulatory Policies Act of 1978 (PURPA) and have been in substantive compliance with the QF requirements from the date they began operation. Petitioners also contend that the facilities have complied with the Commission's QF regulations since February 25, 2019, when the Form No. 556s were filed. Petitioners state that, by granting the requested waiver of the Form No. 556 filing requirement, the Commission will support small, renewable energy.⁵ Petitioners argue that this partial waiver request is consistent with Commission precedent.⁶ Petitioners add that neither of the purchasers of the facilities' respective outputs contested this waiver request.

III. Notice

6. Notice of the petition for a declaratory order was published in the *Federal Register*, 84 Fed. Reg. 58,147 (2019), with interventions and protests due on or before November 21, 2019. None was filed.

³ Petition at 1-2.

⁴ *Id.* at 2.

⁵ *Id.* at 3-4.

⁶ *Id.* (citing *Minwind I, LLC*, 149 FERC ¶ 61,109 (2014) (*Minwind I*) (granting limited waiver of filing requirement under section 292.203(a)(3) of the Commission's regulations and requiring time value refunds for those facilities that have been selling pursuant to negotiated rates)).

IV. Discussion

7. In Order No. 671,⁷ 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.⁸ 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.⁹

8. 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.”¹⁰ 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.¹¹

9. Therefore, we grant Petitioners partial waiver so that the Branch Street facility and the SSA Solar facility will be treated as QFs for the period that they operated out of compliance with the Commission’s QF certification filing requirement from January 25, 2017 when the Branch Street facility began operation and from February 17, 2015 when the SSA Solar facility began operation until February 25, 2019, when Petitioners self-certified the facilities as QFs. Accordingly, Petitioners will qualify for most of the exemptions contained in sections 292.601 and 292.602 of the Commission’s regulations,¹²

⁷ *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).

⁸ 18 C.F.R. §§ 292.203(a)(3), 292.203(b)(2).

⁹ *Id.*

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

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

¹² 18 C.F.R. §§ 292.601, 292.602 (2019).

excepting exemption from FPA sections 205 and 206.¹³ Granting Petitioners 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.¹⁴

10. In *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*,¹⁵ 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,¹⁶ 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.¹⁷ 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.¹⁸ 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, the QF would not have a refund obligation under that part of the refund methodology. Here, Petitioners have been selling pursuant to a negotiated rate, satisfying the second component of the two-part refund methodology, but Petitioners remain subject to the first component (i.e.,

¹³ We remind Petitioners that they must submit required filings on a timely basis or face possible sanctions by the Commission.

¹⁴ *Accord CII Methane Mgmt. 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); *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 (2014).

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

¹⁶ 18 C.F.R. § 35.19a (2019).

¹⁷ *Prior Notice*, 64 FERC at 61,980.

¹⁸ *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 time value refund obligation). Petitioners have filed refund reports that are consistent with this obligation. Accordingly, we accept the refund reports.

The Commission orders:

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

(B) Petitioners' refund reports are hereby accepted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.