

170 FERC ¶ 61,093
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Bluestone Solar, LLC
Chisago Holdco, LLC
CMR Solar, LLC
Frontenac Holdco LLC
Montevideo Solar LLC
Sartell Solar LLC
Underhill Solar, LLC

Docket Nos. EL19-85-000

Bluestone Solar, LLC	QF19-1315-001
Chisago Holdco, LLC	QF19-1299-001
CMR Solar, LLC	QF19-1302-001
Frontenac Holdco LLC	QF19-1300-001
Montevideo Solar LLC	QF19-1311-001
Sartell Solar LLC	QF19-1314-001
Underhill Solar, LLC	QF19-1301-001

ORDER GRANTING REQUEST FOR PARTIAL WAIVER AND ACCEPTING
REFUND REPORTS

(Issued February 7, 2020)

1. On July 17, 2019, Bluestone Solar, LLC (Bluestone), Chisago Holdco LLC (Chisago), CMR Solar, LLC (CMR Solar), Frontenac Holdco LLC (Frontenac), Montevideo Solar LLC (Montevideo), Sartell Solar LLC (Sartell), and Underhill Solar, LLC (Underhill) (collectively, Petitioners) filed a petition for declaratory order, requesting partial waiver from the filing requirements in section 292.203(a)(3) of the Commission's regulations¹ applicable to small power production qualifying facilities (QFs) for the time periods beginning when they commenced operating their respective generation facilities and ending with their filing for self-certification of QF status on

¹ 18 C.F.R. § 292.203(a)(3) (2019).

June 24, 2019 and June 26, 2019.² Petitioners also separately filed refund reports for each relevant QF. We grant the request for partial waiver and accept the refund reports, as discussed below.

I. Background

2. Petitioners state that their QFs are located in Minnesota and New York and each has a net power production capacity in excess of one megawatt (MW). Petitioners state that their QFs participate in state-administered, community solar programs in which individual community members can subscribe to a QF and subscribers receive a credit on their retail electric bill for a portion of the energy generated by the QF to which they are subscribed.³ Petitioners state that, due to an error, the facilities became operational before the QFs' self-certification filings were submitted to the Commission. Petitioners explain that the error was partially due to an oversight during the transition of regulatory and business development support functions after GIP III Zephyr Acquisition Partners, L.P. acquired membership interests in Clearway Energy Group LLC, which is part of Petitioners' corporate structure. Petitioners add that their funding schedules included milestones to ensure that the necessary QF self-certification filings were made prior to completing construction; however, because construction continued in spite of delays in the funding schedules, the facilities were completed and became operational before the funding schedule milestones were reached.⁴

II. Petition

3. Petitioners request partial waiver of the QF filing requirements for the time periods, beginning when they commenced operating their respective generation facilities and ending with their filing for self-certification of QF status on June 24, 2019 and June 26, 2019 (i.e., when each QF's Form No. 556 was filed with the Commission). Petitioners request waiver of most of the provisions of sections 292.203(a)(3), 292.601 and 292.602 of the Commission's regulations⁵ and the Public Utility Holding Company Act of 2005 (PUHCA),⁶ and certain state laws and regulations regarding rates and

² Petition at 1-2.

³ *Id.* at 3.

⁴ *Id.* at 3-4.

⁵ *Id.* at 7

⁶ *Id.*

financial and organizational regulation.⁷ Petitioners do not seek waiver to obtain exemption from sections 205 and 206 of the Federal Power Act (FPA).⁸

4. Petitioners request, for each QF, partial waiver for the following periods: (1) Bluestone from March 27, 2019, until June 26, 2019; (2) Chisago from April 9, 2019, until June 24, 2019; (3) CMR Solar from May 10, 2019, until June 24, 2019; (4) Frontenac from March 7, 2019, until June 24, 2019; (5) Montevideo from December 18, 2018, until June 26, 2019; (6) Sartell from May 1, 2019, until June 26, 2019; and (6) Underhill from March 18, 2019, until June 24, 2019.⁹

5. Petitioners state that they promptly filed a Form No. 556 for each facility when they became aware that they had not timely complied with the Commission's QF certification requirements.¹⁰ According to Petitioners, each QF has met all the other requirements for QF status. Petitioners also state that they have revised their construction schedules and worked with regulatory personnel to ensure the timely filing of self-certification forms in the future.¹¹ Petitioners argue that this partial waiver request is consistent with Commission precedent granting waivers to similarly-situated QFs.¹²

6. On September 13, 2019, in Docket Nos. QF19-1299-000, QF19-1300-000, QF19-1301-000, QF19-1302-000, QF19-1311-000, QF19-1314-000, and QF19-1315-000, Petitioners submitted a refund report for each late-filed QF certification.

III. Notice

7. Notice of the Petition was published in the *Federal Register*, 84 Fed. Reg. 35,666 (2019), with interventions and protests due on or before August 16, 2019. None was filed. As noted above, on September 13, 2019, Petitioners filed a refund report for each QF. Notice of the refund reports was published in the *Federal Register*, 84 Fed. Reg. 49,518 (2019), with interventions and protests due on or before October 4, 2019. None was filed.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 5.

¹⁰ *Id.* at 8.

¹¹ *Id.* at 4.

¹² *Id.* at 7.

IV. Discussion

8. In Order No. 671,¹³ the Commission added the filing requirements for QF status contained in sections 292.203(a)(3) (for small power production QFs) and 292.203(b)(2) (for cogeneration QFs) of the Commission's regulations.¹⁴ 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.¹⁵

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.”¹⁶ In recent orders, the Commission has denied waiver of the filing requirements but granted partial waiver to treat the facilities as QFs for the time period during which those QFs were out of compliance.¹⁷

10. Therefore, consistent with those prior orders, we grant Petitioners partial waiver so that their facilities will be treated as QFs for the time period during which they operated out of compliance with the Commission's QF certification filing requirements, that is, for the time periods beginning when they commenced operating their respective generation facilities and ending with their filing of self-certification of QF status on June 24, 2019 and June 26, 2019. Accordingly, Petitioners qualify for most of the exemptions

¹³ *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).

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

¹⁵ *Id.*

¹⁶ *OREG I, Inc.*, 135 FERC ¶ 61,150, at P 8 (2011) (*OREG I*), *order on reh'g*, 138 FERC ¶ 61,110 (2012).

¹⁷ *See Branch Street Solar Partners, LLC*, 169 FERC ¶ 61,269 (2019); *Zeeland Farm Servs., Inc.*, 163 FERC ¶ 61,115 (2018) (*Zeeland*); *Minwind I, LLC*, 149 FERC ¶ 61,109 (2014) (*Minwind I*); *Beaver Falls Munic. Auth.*, 149 FERC ¶ 61,108 (2014) (*Beaver Falls*); *see also OREG I*, 135 FERC ¶ 61,150.

contained in sections 292.601 and 292.602 of the Commission's regulations,¹⁸ excepting exemption from FPA sections 205 and 206.¹⁹ 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 sections 205 and 206 of the FPA, is consistent with the Commission's action in other, similar cases.²⁰

11. Regarding the refund reports, in *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*,²¹ 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 the entity has not received a waiver of the 60 day prior notice requirement. With respect to sales for resale made without Commission authorization under FPA section 205, the Commission stated that 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 the Commission's regulations,²² 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.²³ 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

¹⁸ 18 C.F.R. §§ 292.601, 292.602.

¹⁹ We remind Petitioners that they must submit required filings on a timely basis or face possible sanctions by the Commission.

²⁰ See *Zeeland*, 163 FERC ¶ 61,115 at P 15; *SunE B9 Holdings, LLC*, 157 FERC ¶ 61,044, at P 19 (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); 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).

²¹ *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 (*Prior Notice*), order on *reh'g*, 65 FERC ¶ 61,081 (1993).

²² 18 C.F.R. § 35.19a.

²³ *Prior Notice*, 64 FERC ¶ 61,139 at 61,980.

cost rate.²⁴ 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., the time value refund obligation). Petitioners filed a refund report for each QF consistent with this obligation. 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.

²⁴ *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.