

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Inman Solar Holdings 2, LLC

Docket Nos. EL20-11-000
QF20-250-001

ORDER GRANTING REQUEST FOR PARTIAL WAIVER
AND ACCEPTING REFUND REPORT

(Issued May 4, 2020)

1. On November 18, 2019, Inman Solar Holdings 2 LLC (Inman Solar) filed a petition for declaratory order, requesting partial waiver from the filing requirements of section 292.203(a)(3) of the Commission's regulations¹ applicable to small power production qualifying facilities (QFs) for the period from December 18, 2017, when the Simmons Solar Farm (the Facility) began operations, until November 8, 2019, the date Inman Solar filed for self-certification of QF status. Inman Solar also filed a refund report. We grant the request for partial waiver and accept the refund report, as discussed below.

2. Inman Solar states that it owns the Facility, a 1.98 MW solar facility located in Jacksonville, Florida.² Inman Solar sells its output to Jacksonville Electric Authority pursuant to a long-term power purchase agreement (PPA). Inman Solar states that, due to an inadvertent error, it did not file for self-certification of QF status before the Facility began operations but did file a Form No. 556 on November 8, 2019, when it became aware of the error.³

I. Petition

3. Inman Solar requests partial waiver of the QF filing requirements for the period from December 18, 2017, when the Facility began operations, until November 8, 2019,

¹ 18 C.F.R. § 292.203(a)(3) (2019).

² Petition at 2.

³ *Id.* at 4.

the date Inman Solar filed for self-certification of QF status. Inman Solar requests waiver of section 292.203(a)(3) of the Commission's regulations, stating that absent waiver the Facility would not be eligible for exemptions under Part II of the Federal Power Act (FPA) and the Public Utility Holding Company Act of 2005 (PUHCA).

4. Inman Solar states that, except for its inadvertent error to timely file the Form No. 556, the Facility has complied with all substantive requirements for QF status since it began operations.⁴ Inman Solar argues that this partial waiver request is consistent with Commission precedent granting waivers to similarly-situated QFs.⁵

5. Inman Solar explains that it calculated time value refunds based on the time value of amounts received for QF sales of energy to Jackson Electric for the time period during which the rates were charged without Commission authorization.⁶ Inman Solar states that it made a payment to Jackson Electric on November 11, 2019.

II. Notice

6. Notice of the Petition was issued by the Commission on November 22, 2019, with interventions and protests due on or before December 18, 2019.⁷ None was filed.

III. Discussion

7. In Order No. 671,⁸ the Commission added the filing requirements for QF status now contained in sections 292.203(a)(3) (for small power production QFs) and

⁴ *Id.* at 4-5.

⁵ *Id.* at 3-4 (citing *SuneE M5B Holdings, LLC*, 157 FERC ¶ 61,045 (2016) (*SuneE M5B*); *Minwind I, LLC*, 149 FERC ¶ 61,109, at P 22 (2014) (*Minwind I*); *Beaver Falls Munic. Auth.*, 149 FERC ¶ 61,108, at P 30 (2014) (*Beaver Falls*); *OREG I, Inc.*, 135 FERC ¶ 61,150, at P 13 (2011) (*OREG I*), *order on reh'g*, 138 FERC ¶ 61,110 (2012); *WM Renewables, LLC*, 130 FERC ¶ 61,268 (2010); *Ashland Windfarm, LLC*, 124 FERC ¶ 61,068 (2008)).

⁶ *Id.* at 5-6.

⁷ On November 22, 2019, the Commission corrected and extended the comment due date to December 18, 2019. Errata Notice, Docket Nos. EL20-11-000 and QF20-250-001 (Nov. 22, 2019).

⁸ *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).

292.203(b)(2) (for cogeneration QFs) of the Commission's regulations.⁹ Thus, since 2006, the regulations have required 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 Commission certification in order to establish QF status for a generating facility larger than 1 MW.¹⁰

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.”¹¹ 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.¹²

9. Consistent with those prior orders, we grant Inman Solar partial waiver so that the Facility will be treated as a QF for the time period during which it operated out of compliance with the Commission's QF certification filing requirements, that is, from December 18, 2017, when the Facility began operations, until November 8, 2019, the date Inman Solar filed for self-certification of QF status. Accordingly, Inman Solar qualifies for most of the exemptions contained in sections 292.601 and 292.602 of the Commission's regulations,¹³ excepting exemption from FPA sections 205 and 206.¹⁴ Granting Inman 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 sections 205 and 206 of the FPA, is consistent with the Commission's action in other, similar cases.¹⁵

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

¹⁰ *Id.*

¹¹ *OREG I*, 135 FERC ¶ 61,150 at P 8.

¹² See *Branch Street Solar Partners, LLC*, 169 FERC ¶ 61,269 (2019); *Zeeland Farm Servs., Inc.*, 163 FERC ¶ 61,115 (2018) (*Zeeland*); *Minwind I*, 149 FERC ¶ 61,109; *Beaver Falls*, 149 FERC ¶ 61,108; see also *OREG I*, 135 FERC ¶ 61,150.

¹³ 18 C.F.R. §§ 292.601, 292.602.

¹⁴ We remind Inman Solar that it must submit required filings on a timely basis or face possible sanctions by the Commission.

¹⁵ See *Zeeland*, 163 FERC ¶ 61,115 at P 15; *SunE B9 Holdings, LLC*, 157 FERC ¶ 61,044, at P 19 (2016); *SunE M5B*, 157 FERC ¶ 61,045 at P 18; *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*

10. Regarding the refund reports, in *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*,¹⁶ 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,¹⁷ 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.¹⁸ 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.¹⁹ To the extent that there is no difference between the QF's rate collected and the market-based rate or between 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, Inman Solar has been selling pursuant to a negotiated rate, satisfying the second component of the two-part refund methodology, but Inman Solar remains subject to the first component (i.e., the time value refund obligation). Inman Solar filed a refund report for the Facility consistent with this obligation. We accept the refund report.

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).

¹⁶ *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).

¹⁷ 18 C.F.R. § 35.19a (2019).

¹⁸ *Prior Notice*, 64 FERC ¶ 61,139 at 61,980.

¹⁹ *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 Commission orders:

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

(B) Inman 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.