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FERC Proposes to Reduce Regulatory Requirements for Small Power Production Qualifying Facilities

On October 15, 2009, the Federal Energy Regulatory Commission ("FERC") issued a proposed rulemaking that would all but eliminate the regulatory burden for small power production qualifying facilities ("QFs") of 1 MW or less.¹ If approved, FERC's new regulations will, among other things, significantly ease the burden for small power production facilities, including renewable energy projects, that are now required to file self-certifications (and maintain self-recertifications) for each and every project developed, no matter how small. In addition, for QFs greater than 1 MW, FERC proposes to make electronic filing a requirement and proposes to implement clarifying changes to its filing procedures and the standard self-certification Form No. 556.

Background

Currently, self-certification filings are required by all QFs as a condition of QF status and they must be in the hard-copy format of FERC's Form No. 556, the text of which is included in the Commission's regulations, 18 C.F.R. § 131.80. As a result, QF owners are

¹ *Revisions to Form, Procedures, and Criteria for Certification of Qualifying Facility Status for a Small Power Production or Cogeneration Facility, Notice of Proposed Rulemaking*, 74 Fed. Reg. 54503 (issued October 15, 2009) (NOPR).

faced with making numerous paper filings for self-certifications at FERC for each and every project installed no matter how small. In addition, any time there is a change in any of the information submitted in the self-certification, a new Form No. 556 filing is required for a self-recertification, showing the changed information. Making and keeping track of all these filings can be burdensome.

Proposal to Make Electronic Filing a Requirement

With the goal of furthering FERC's policies for encouraging cogeneration and small power production as required under the Public Utility Regulatory Policies Act of 1978, FERC proposes to remove the text of Form No. 556 from the regulations and instead include a copy of the Form No. 556 "then in effect" on its website. FERC will require that all self-certifications, self-recertifications and applications for certification be filed electronically using the web version of the Form No. 556 then in effect.

According to FERC, electronic filing (1) will be faster, easier, less costly and less resource-intensive than

hard-copy filing²; (2) will allow the Commission to electronically process QF applications, reducing required staff resources and human error and allowing the Commission to identify patterns of reporting errors and noncompliance that would be difficult to detect through manual processing; and (3) would facilitate the compilation of QF data that could be made available to the public.³

According to FERC, one of the drawbacks to the electronic filing requirement is that some small entities that are submitting applications for certification of QF status may consider the electronic filing requirement a burden because of the cost of legal representation and/or a lack of access to the computer facilities necessary to make an electronic filing.⁴

Proposed Exemption from Filing Requirements for QFs of 1 MW or Less

To address the potential burden of the electronic filing requirement on small QFs, FERC proposes to exempt the smallest applicants, those with a net power production capacity less than or equal to 1 MW, from the requirement to make any filings with the Commission to maintain QF status.

² An applicant filing electronically will receive an acknowledgement of receipt and a docket number for their submittal much more quickly than they would by filing in hard-copy format.

³ According to FERC, each year Commission staff field a number of requests for QF certification data from private organizations, researchers and other government agencies. Requiring that QF applicants file data electronically would make it possible to respond to many more such requests, and/or to publish compiled QF data on the Commission's website.

⁴ NOPR at P 15.

FERC recognized that while valuable data are submitted on Form No. 556, "there may not be as compelling reasons for facilities that are very small, such as solar generation facilities installed at residences or other relatively small electric consumers such as retail stores, hospitals, or schools, to make filings with the Commission for QF status." In contrast, facilities larger than 1 MW represent "a significant departure from residential power generation, and we would expect entities certifying such facilities to have access to the legal representation and the computer facilities needed to electronically file a Form No. 556."

FERC seeks comments on whether a 1 MW threshold is the appropriate threshold for eliminating the filing requirement. Alternatively, FERC seeks comments on whether it should maintain a hard-copy filing requirement for small facilities instead of exempting small facilities from any certification requirement. FERC acknowledged, however, that maintaining a hard-copy filing requirement would add to the complexity of FERC's regulations and impose burdens on the affected parties with very limited benefits as a result.

Proposed Revisions to Form No. 556

As mentioned above, FERC proposes to remove the text of Form No. 556 from the regulations and, instead, to provide that an applicant seeking to certify qualifying facility status of a small power production or cogeneration facility must complete, and electronically file, the Form No. 556 that is in effect at the time of filing, which will be available for download from FERC's QF website. FERC is

also proposing to revise Form No. 556 to make it easier and faster to complete and to decrease opportunities for confusion and error in completing the form. As a result, FERC hopes to improve consistency and quality of the data collected by the form and reduce Commission resources dedicated to managing errors and omissions in submitted forms. The specific changes to Form No. 556 include:

- Require applicants to provide all the information for their facility in each Form No. 556 they submit with a self-recertification or an application for Commission recertification, instead of the current requirement to report only the new changes.
- Improve the instructions, narrow the scope of the questions and use electronic data controls (*i.e.*, checkboxes, specially formatted data entry boxes) to minimize the number of incorrect or deficient submissions.
- Require specific locational data be submitted for all QFs filing Form No. 556. For QFs without a street address, geographic coordinates (latitude and longitude) would be required.⁵
- Clarify that applicants need only provide information for direct owners that hold at least 10 percent equity interest in the facility and that applicants identify

⁵ The Form No. 556 instructions would discuss several different ways through which applicants might obtain the geographic coordinates of their facilities, such as through certain free online map services; a GPS device; Google Earth™; a property survey; various engineering or construction drawings; a property deed; or a municipal or county map showing property lines.

all upstream owners that both (1) hold at least a 10 percent equity interest in the facility and (2) are electric utilities or holding companies.

- Regarding the required certification of the QF's fuel use requirements for small power production facilities, FERC proposes to state what the fuel use requirements are, and to require the applicant to certify, by checking a box next to each requirement, that they will comply. This would

replace the more open-ended item in the current Form No. 556 that requires applicants to describe how they will comply with the fuel use requirements.

Conclusion

FERC's proposal to exempt QFs of 1 MW or less will greatly reduce the regulatory burden for small projects. If approved, FERC's elimination of the self-certification filings for QFs of less than 1 MW will effectively remove any filing requirements at

FERC for such small projects and yet such projects will still be able to enjoy the benefits of QF status as long as they meet the QF criteria.

In addition, FERC's proposed changes to the filing procedures and Form No. 556 will help clarify and streamline regulatory requirements for QFs larger than 1 MW. FERC will be accepting comments on its proposed changes until December 21, 2009. FERC's proposed changes will not become effective until a final rule is issued approving the proposed changes.

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