

139 FERC ¶ 61,190  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
and Cheryl A. LaFleur.

Northern Laramie Range Alliance	Docket Nos. EL11-51-001
Pioneer Wind Park 1, LLC	QF10-649-002
Pioneer Wind Park II, LLC	QF10-687-001

ORDER DENYING REHEARING

(Issued June 8, 2012)

1. Northern Laramie Range Alliance (Petitioner) and Xcel Energy Services Inc. (XES), on behalf of itself and on behalf of the Xcel Energy Operating Companies,<sup>1</sup> have filed requests for rehearing of the Commission's March 15, 2012 order in this proceeding.<sup>2</sup>

2. In the March 15 Order, the Commission denied Petitioner's request that we revoke the qualifying facility (QF) status of Pioneer Wind Park 1, LLC (Wind Park 1) and Pioneer Wind Park II, LLC (Wind Park II). Petitioner had argued that Wind Park 1 and Wind Park II should be treated as a single facility which would not satisfy the size criterion for a qualifying small power production facility contained in the Public Utility Regulatory Policies Act of 1978 (PURPA)<sup>3</sup> and in section 292.204(a) of the Commission's regulations.<sup>4</sup> The Commission found that Wind Park 1 and Wind Park II

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<sup>1</sup> The Xcel Energy Operating Companies are Northern States Power Company, a Minnesota corporation; Northern States Power Company, a Wisconsin corporation; Southwestern Public Service Company; and Public Service Company of Colorado.

<sup>2</sup> *Northern Laramie Range Alliance*, Pioneer Wind Park I, LLC and Pioneer Wind Park II, LLC, 138 FERC ¶ 61,171 (2012) (March 15 Order).

<sup>3</sup> 16 U.S.C. §§ 796, 824a-3 (2006).

<sup>4</sup> 18 C.F.R. § 292.204(a) (2011).

were separate facilities that each met the size criterion for qualifying small power production facilities.

3. On rehearing, Petitioner and XES each argues that the Commission misinterpreted its regulations in finding that Wind Park 1 and Wind Park II satisfy the Commission's size criterion for certification as qualifying small power production facilities. As discussed below, the Commission will deny the requests for rehearing.

### **I. Petition**

4. In its petition, Petitioner claimed that the Wind Park 1 and Wind Park II facilities constitute a single facility with total net capacity that exceeds the 80 MW size limit for a small power production QF.<sup>5</sup> Petitioner admitted that "under legitimate circumstances" two facilities more than one mile apart, each having a net capacity no greater than the 80 MW, can qualify as separate small power production QFs.<sup>6</sup> In this regard, according to Petitioner, the Commission has established a "rebuttable presumption" that generating facilities that are located one mile or more apart are not located at the same site and are thus separate facilities.<sup>7</sup> Petitioners alleged, however, that this presumption may be rebutted if "gaming" can be shown.<sup>8</sup>

5. Petitioner alleged that, by filing separate Form 556s in Docket Nos. QF10-649-000 and QF10-687-000 to represent Wind Park 1 and Wind Park II are two separate facilities, Wasatch Wind Intermountain, LLC (Wasatch), as the owner, was "gaming."<sup>9</sup> To support this contention, Petitioner argued that: (1) Wasatch in other contexts has represented the two wind facilities as a single wind energy facility or, alternatively, a single wind farm; (2) the two Wasatch facilities share a common interconnection to the grid; and (3) Wasatch was pursuing a single site permit for the combined facilities.<sup>10</sup>

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<sup>5</sup> Wind Park 1 and Wind Park II each have a net capacity of approximately 48.6 MW, totaling together approximately 97.2 MW.

<sup>6</sup> Petition at 6 (citing 18 C.F.R. §§ 292.203(a), 292.204(a), and 292.204(a)(2) (2011)).

<sup>7</sup> *Id.* (citing *New PURPA Section 210(m) Regulations Applicable to Small Power Production and Cogeneration Facilities*, Order No. 688, FERC Stats. & Regs. ¶ 31,233, at P 77 (2006)).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 1, 2, 4, and 6.

<sup>10</sup> *Id.* at 4-5.

Petitioner argued that the Commission “cannot be bound by the one-mile standard in the face of such blatant attempted abuse by Wasatch.”<sup>11</sup>

## II. March 15 Order

6. In the March 15 Order,<sup>12</sup> the Commission recited that section 292.204 of the Commission’s regulations contains the criteria for qualifying small power production facilities.<sup>13</sup> First, a small power production facility must meet certain fuel use criterion;<sup>14</sup> the Commission found that there was no question that Wind Park 1 and Wind Park II satisfy the fuel use criterion.<sup>15</sup>

7. The Commission then explained that the power production capacity of the facility must satisfy the size criterion for qualifying small power production facilities:<sup>16</sup> the maximum size of a qualifying small power production facility is 80 MW, including the capacity of any other small power production facilities that use the same energy resource, are owned by the same person(s) or its affiliates, and are located at the same site.<sup>17</sup> Section 292.204(a)(2) establishes the method of calculating the size of a small power production facility.<sup>18</sup> Pursuant to section 292.204(a)(2)(i), facilities are considered to be located at the same site if they are located within one mile of each other.<sup>19</sup> For purposes of determining whether one facility is located within one-mile of another facility, the distance between the facilities is measured from the electrical generating equipment of the facilities.<sup>20</sup>

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<sup>11</sup> *Id.* at 5.

<sup>12</sup> March 15 Order, 138 FERC ¶ 61,171 at PP 12-14.

<sup>13</sup> 18 C.F.R. § 292.204 (2011).

<sup>14</sup> 18 C.F.R. § 292.204(b) (2011).

<sup>15</sup> March 15 Order, 138 FERC ¶ 61,171 at P 12.

<sup>16</sup> 18 C.F.R. § 292.204(a)(1) (2011).

<sup>17</sup> *Id.*

<sup>18</sup> 18 C.F.R. § 292.204(a)(2) (2011).

<sup>19</sup> 18 C.F.R. § 292.204(a)(2)(i) (2011).

<sup>20</sup> 18 C.F.R. § 292.204(a)(2)(ii) (2011).

8. Applying the one-mile rule, the Commission first found that Wind Park 1 and Wind Park II use the same energy resource, and are both owned by the same person, and must therefore be located more than a mile apart to be considered separate facilities. The Commission then found that the electrical generating equipment of Wind Park 1 and Wind Park II are located more than a mile apart, and that each therefore meets the size criteria for small power production facilities.<sup>21</sup>

9. The Commission found Petitioner's argument -- that because Wind Park 1 and Wind Park II use a single line to deliver power to the grid, the facilities are not actually a mile apart -- without merit because the regulations provide that it is the distance between the facilities' respective generating equipment that is used to determine whether the one-mile rule has been satisfied. The Commission also explained that the line used to deliver the electric energy to the grid is not considered part of the facilities' electric generating equipment and is not relevant for purposes of the one-mile rule.<sup>22</sup> The Commission also found no merit to Petitioner's argument that the one-mile rule in the Commission's regulations is not a rule, and is merely a rebuttable presumption.<sup>23</sup> Finally, the Commission found without merit Petitioner's argument that language contained in Order No. 688<sup>24</sup> can be read to say that the Commission will disregard the one-mile rule where there is evidence of "gaming."

### **III. Requests for Rehearing**

10. On rehearing, Petitioner argues that the Commission mischaracterized Order No. 688, and that the Commission therefore erred in finding that the one-mile rule of 18 C.F.R. § 292.204(b) (2011) is indeed a rule and not a rebuttable presumption.<sup>25</sup> Petitioner also argues that the Commission failed to address its claim that Wasatch did not act in good faith in self-certifying Wind Park 1 and Wind Park II as separate facilities.<sup>26</sup> Petitioner argues that the Commission should have considered the common

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<sup>21</sup> March 15 Order, 138 FERC ¶ 61,171 at P 14 & n.25.

<sup>22</sup> *Id.* P 16.

<sup>23</sup> *Id.* P 17.

<sup>24</sup> Order No. 688, FERC Stats. & Regs. ¶ 31,233 at P 77, *order on reh'g*, Order No. 688-A, FERC Stats. & Regs. ¶ 31,250 (2007), *aff'd sub nom. American Forest and Paper Association v. FERC*, 550 F.3d 1179 (D.C. Cir. 2008).

<sup>25</sup> Petitioner's Request for Rehearing at 6.

<sup>26</sup> *Id.* at 7.

ownership of the facilities, the common transmission facilities and the common point of interconnection to find that the proposed development is “a fully integrated, non-qualifying facility on a single site.”<sup>27</sup> Petitioner further argues that the Commission should disregard prior precedent concerning the use of a common transmission line because that precedent was prior to Order No. 688 where the Commission first discussed “gaming.”<sup>28</sup> Petitioner also argues that “collector” transmission lines constitute generating equipment.<sup>29</sup> Finally Petitioner argues that the Commission should have held a hearing on the merits of its allegations and Petitioner asks that on rehearing the Commission order a hearing on the merits.

11. On rehearing, XES argues that Commission erred “in determining that the one-mile rule may not be treated as a rebuttable presumption.”<sup>30</sup> XES urges the Commission to treat the one-mile rule as a rebuttable presumption; in this regard, XES argues that the Commission has recognized that the one-mile rule is “essentially arbitrary” and XES therefore argues that it should be treated as establishing a rebuttable presumption.<sup>31</sup> XES also urges the Commission to recognize that an applicant may engage in gaming to achieve QF certification.<sup>32</sup> XES further argues that the Commission should permit utilities to take advantage of the waiver provisions of 18 C.F.R. § 292.204 (2011) to waive the one-mile rule so that facilities more than a mile apart may be considered to be at the same site.<sup>33</sup>

#### **IV. Discussion**

12. Petitioner’s and XES’s arguments on rehearing are essentially that the Commission misapplied the one-mile rule contained in 18 C.F.R. § 292.204(a)(2) (2011), and that the Commission should treat the one-mile rule not as a rule, but as a rebuttable presumption. Petitioner further argues that a hearing was required to assess its

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<sup>27</sup> *Id.* at 8.

<sup>28</sup> *Id.* at 8-10.

<sup>29</sup> *Id.* at 9.

<sup>30</sup> XES’ Request for Rehearing at 4.

<sup>31</sup> *Id.* at 5, 9-10 (citing *Windfarms, Ltd.*, 13 FERC ¶ 61,017, at 61,032 (1980) (*Windfarms*)).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 6-7.

allegations of “gaming.” Nothing raised by Petitioner or XES on rehearing warrants granting rehearing. We therefore deny rehearing, as discussed in more detail below.

13. At the onset, we address Petitioner’s claim that we should have ordered a hearing to address the merits of its claim of “gaming.” As explained in the March 15 Order,<sup>34</sup> the Commission, when it acts on a petition seeking to decertify a facility’s QF status, performs essentially the same function as when it acts on an application for certification of QF status – it issues what is essentially a declaratory order on the facility’s QF status.<sup>35</sup> When the Commission acts on an application for QF status, it acts on the information presented in the application for QF status, and in any responsive pleadings objecting to QF status.<sup>36</sup> It then renders what is essentially a declaratory order on the bases of that record, deciding whether the facility, if built as described, meets the statutory and regulatory requirements set forth in PURPA and the Commission’s regulations for QF status. When the Commission acts on a petition to decertify a self-certified QF, or multiple self-certified QFs, it performs a similar analysis, and looks at the representations contained in the self-certification, or self-certifications, considers the arguments presented by the petitioner seeking decertification of the self-certified QF or QFs, and declares whether those facilities, if built as described, satisfy the requirements for QF status contained in PURPA and the implementing regulations.

14. Petitioners argument that the Commission should have held a hearing to make a determination on QF status of the Wind Park 1 and Wind Park II facilities is thus without merit. What the Commission determined in the March 15 Order was simply that the Wind Park 1 and Wind Park II facilities satisfy the requirements for QF status, *if built as described*.<sup>37</sup> For this reason alone we would deny Petitioner’s request for a hearing in this case. But, as discussed further below, we find that, even if the Commission’s

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<sup>34</sup> March 15 Order, 138 FERC ¶ 61,171 at P 11.

<sup>35</sup> See *Chugach Electric Association, Inc.*, 121 FERC ¶ 61,287 (2007); *Hydro Investors, Inc. v. Trafalgar Power, Inc.*, 94 FERC ¶ 61,207, *reh’g denied*, 95 FERC ¶ 61,120 (2001).

<sup>36</sup> *Calpine King City Cogen, LLC*, 111 FERC ¶ 61,174, at P 17 (2005); *Arroyo Energy, Limited Partnership*, 62 FERC ¶ 61,257, *reh’g denied*, 63 FERC ¶ 61,198 (1993); *Cogentrix of Mayaguez, Inc.*, 59 FERC ¶ 61,159, *reh’g denied*, 59 FERC ¶ 61,392 (1992); *Inter-Power of New York, Inc.*, 55 FERC ¶ 61,387 (1991); *CMS Midland, Inc.*, 50 FERC ¶ 61,098, at 61,277 (1990), *reh’g denied*, 56 FERC ¶ 61,177 (1991), *aff’d sub nom. Michigan Municipal Cooperative Group v. FERC*, 990 F.2d 1377 (D.C. Cir. 1993), *cert. denied*, 510 U.S. 990 (1993).

<sup>37</sup> March 15 Order, 138 FERC ¶ 61,171 at P 11.

practice were to hold hearings on QF status (either applications for Commission certification of QF status, or petitions to decertify QF status), Petitioners have presented no facts that call into question our finding that, under our regulations. Wind Park 1 and Wind Park II are located at separate sites and are thus separate QFs, each of which satisfies the size criteria for qualifying small power production facilities.

15. Before addressing Petitioner's and XES's arguments concerning whether the one-mile rule is actually a rule, or merely a rebuttable presumption, a brief history of PURPA and the Commission's regulations implementing PURPA may help put the Commission's criteria for qualifying small power production facilities in context.

16. Title II of PURPA.-- section 201 of PURPA, which provides rules for certification of QFs and is codified in the Federal Power Act (FPA) at sections 3(17) through 3(22),<sup>38</sup> and section 210 of PURPA,<sup>39</sup> in which Congress required the Commission to prescribe rules as the Commission determined necessary to encourage cogeneration and small power production, including rules requiring electric utilities to offer to purchase electric power from and sell electric power to QFs.-- was intended to encourage "the development of cogeneration and small power production facilities and thus to reduce American dependence on fossil fuels by promoting increased energy efficiency."<sup>40</sup> Prior to the enactment of PURPA, a cogenerator or small power producer seeking to establish interconnected operation with a utility faced three major obstacles. First, utilities generally were not willing to purchase their electric output or were not willing to pay an appropriate rate for that output. Second, utilities generally charged discriminatorily high rates for back-up service to cogenerators and small power producers. Third, a cogenerator or small power producer providing electricity to a utility's grid was treated as a public utility and subjected to extensive federal and state regulation.<sup>41</sup> The Commission enacted its regulations against this background.

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<sup>38</sup> 16 U.S.C. § 796(17) – (22) (2006).

<sup>39</sup> 16 U.S.C. § 824a-3 (2006).

<sup>40</sup> *Independent Energy Producers Ass'n v. California Pub. Utils. Comm'n*, 35 F.3d 848, 850 (9<sup>th</sup> Cir. 1994); see *FERC v. Mississippi*, 456 U.S. 742, 745 (1982).

<sup>41</sup> *Small Power Production and Cogeneration Facilities – Qualifying Status*, Order No. 70, FERC Stats. & Regs., Regulations Preambles 1977-1981 ¶ 30,134, at 30,932 (1980).

17. The Commission provided two paths to QF status: self-certification and Commission certification.<sup>42</sup> The first is self-certification, the procedures for which are contained in section 292.207(a) of the Commission's regulations.<sup>43</sup> When a small power production facility or cogeneration facility self-certifies (or self-recertifies), it certifies that it satisfies the requirements for QF status. The Commission does not formally review the self-certification.

18. The Commission recognized, however, that the self-certification process would not always satisfy all those interested in a particular facility's status. Accordingly, the Commission also established, in section 292.207(b) of the regulations,<sup>44</sup> what it called (and what is still called in the regulations) the "optional procedure" for QF status. Under the optional procedure, an entity may file an application with the Commission for a determination by the Commission that a facility meets the requirements for QF status. This process gives those that need assurance of a facility's QF status (or lack of such status) a Commission order certifying QF status, or denying QF status. This optional procedure is commonly known as Commission certification.

19. In its original rules, the Commission also provided that once a facility was certified by the Commission, its qualifying status could be revoked by the Commission, upon the Commission's own motion, or upon the motion of any person.<sup>45</sup>

20. The PURPA requirements for what facilities are qualifying small power production facilities are codified in section 3(17) of the FPA.<sup>46</sup> As relevant to this case, a small power production facility is one which produces electric energy solely by the use, as a primary energy source, of biomass, waste, renewable resources, geothermal

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<sup>42</sup> There is no fee for a self-certification; there is, however, a fee for Commission certification. 18 C.F.R. § 381.505 (2011). The Commission will not process an application for Commission certification without either the applicable fee, or waiver of the fee.

<sup>43</sup> 18 C.F.R. § 292.207(a) (2011).

<sup>44</sup> 18 C.F.R. § 292.207(b) (2011).

<sup>45</sup> *See* 18 C.F.R. § 292.207(d)(ii) (2011). A similar opportunity for the Commission to revoke the qualifying facility status of a self-certified QF on its own motion, or on the motion of another party, was not expressly provided in the regulations; the Commission, however, allowed others to seek the revocation of a self-certified QF by filing a petition for declaratory order. In Order No. 671, the right to file a motion seeking revocation of a self-certification was added to the Commission's regulations.

<sup>46</sup> 16 U.S.C. § 796(17)(A)(ii) (2006).

resources, or any combination thereof, and which “has a power production capacity, which, together with any other facilities *located at the same site (as determined by the Commission)*, is not greater than 80 [MW].”<sup>47</sup>

21. The Commission implemented the size requirement for a qualifying small power production facility in section 292.204(a)(1). That maximum size for a qualifying small power production facility is 80 MW, including the capacity of any other small power production facilities that use the same energy resource, are owned by the same person(s) or its affiliates, and are located “at the same site.”<sup>48</sup> Section 292.204(a)(2) implements the statutory direction that the Commission determine what is “the same site.”<sup>49</sup> Pursuant to section 292.204(a)(2)(i), facilities are considered to be located at the same site as the particular facility for which qualification is sought if they are located within one mile of the particular facility for which qualification is sought.<sup>50</sup> Conversely, facilities are not considered to be located at the same site as a particular facility for which qualification is sought if they are not located within one mile of the particular facility for which qualification is sought.

22. Contrary to the arguments of Petitioner and XES, section 292.204(a)(2)(i) of the Commission’s regulations was not intended to establish and did not establish merely a rebuttable presumption. Instead, section 292.204(a)(2)(i) established a rule that facilities that use the same energy resource, and that are owned by the same person(s) or its affiliates and that are located within one mile of each other are at the same site. There is certainly no language in that rule that suggests otherwise, i.e., that it is merely a rebuttable presumption. To the contrary, the language reads, as it was supposed to read, as a rule. When the Commission intended to create a rebuttable presumption, as it did in

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<sup>47</sup> *Id.* (emphasis added).

<sup>48</sup> 18 C.F.R. § 292.204(a)(1) (2011). There is one exemption from the size criterion, contained in section 292.204(a)(4), for facilities meeting the criteria of section 3(17)(E) of the FPA. Facilities meeting those criteria have no size limit. *See* 16 U.S.C. § 796(17)(E) (2006); 18 C.F.R. § 292.204(a)(4) (2011). Wind Park 1 and Wind Park II, however, do not meet the criteria of section 3(17)(E) of the FPA.

<sup>49</sup> 18 C.F.R. § 292.204(a)(2) (2011).

<sup>50</sup> 18 C.F.R. § 292.204(a)(2)(i) (2011).

the context of its regulations implementing PURPA section 210(m), it certainly knew how to do so.<sup>51</sup> It did not do so here, however.

23. Moreover, the originally proposed regulation that ultimately led to the one-mile rule would have “enabled *an applicant* to rebut the presumption that facilities located within one mile of the facility for which qualification is sought, using the same energy resource and owned by the same person, should be considered to be at the same site.”<sup>52</sup> The Commission, however, decided that it would not adopt the proposed language and instead adopted the one-mile rule.<sup>53</sup> What is significant is that the Commission rejected making use of a rebuttable presumption in the context of the certification of small power production QFs.<sup>54</sup> What resulted was the current (and less burdensome) one-mile rule that an applicant’s facilities which are not located within one mile of other facilities owned by the applicant are not located at the same site. Rejection of reliance on a rebuttable presumption, albeit a different rebuttable presumption that the one Petitioner and XES would impose here, in Order No. 70 further shows that the language of 18 C.F.R. § 292.204(a)(2)(i) establishes a rule and not a presumption.

24. Moreover, the sole exemption to the one-mile rule contained in the rule, pursuant to section 292.204(2)(i), is hydroelectric facilities located within one mile are considered to be located at the same site only if the facilities use water from the same impoundment

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<sup>51</sup> See 18 C.F.R. §§ 292.309(c), .309(d), .309(e), .309(f) (2011); *accord* 16 U.S.C. § 824a-3(m) (2006).

<sup>52</sup> Order No. 70, FERC Stats. & Regs., ¶ 30,134, at 30,943-44 (emphasis added), *order on reh'g*, Order Nos. 69-A and 70-A, FERC Stats. & Regs., Regulations Preambles 1977-1981 ¶ 30,160 (1980), *aff'd in part and vacated in part*, *American Electric Power Service Corp. v. FERC*, 675 F.2d 1226 (D.C. Cir. 1982), *rev'd in part*, *American Paper Institute, Inc. v. American Electric Power Service Corp.*, 461 U.S. 402 (1983). We emphasize, as well, that even this proposed language focused on the “applicant,” i.e., the QF, having the right to rebut the presumption and show that two facilities located less than a mile apart could both be QFs. Here, in contrast, the entity seeking the right to rebut the presumption is a third party seeking to have the Commission find that two facilities located more than a mile apart are, in fact, a single QF.

<sup>53</sup> *Id.*

<sup>54</sup> The rejection of the rebuttable presumption format was based on the Commission’s concern that making use of a rebuttable presumption would be burdensome and confusing to an applicant. No similar concern, we note, was expressed towards the rights of the electric utility opposing certification.

for power generation.<sup>55</sup> There is no other exemption,<sup>56</sup> and certainly no indication that the one-mile rule somehow is no more than a rebuttable presumption.

25. XES has pointed to *Windfarms*<sup>57</sup> for the proposition that the one-mile rule is essentially arbitrary and therefore effectively can be ignored. In *Windfarms*, the Commission did acknowledge the essentially arbitrary nature of the one-mile rule, but that case does not support XES's claim that the one-mile rule should therefore be treated as permitting opponents of certification of a small power production facility to show, with vague allegations of "gaming,"<sup>58</sup> that facilities located more than a mile apart should be considered to be located at the same site.<sup>59</sup> In *Windfarms*, the Commission granted a waiver of the one-mile rule for facilities located within one-mile of each other pursuant to

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<sup>55</sup> Order No. 70, FERC Stats. & Regs., ¶ 30,134 at 30,943. And this sole exemption, we add, allows two hydroelectric facilities to be located within one mile of each other and still both be QFs. Only if both draw water from the same impoundment would they not both be QFs. So, this exemption from the one-mile rule favors certification. It thus differs noticeably from Petitioner's and XES's efforts here essentially to create a further barrier to certification.

<sup>56</sup> The Commission explained in the notice of proposed rulemaking that resulted in the one-mile rule that it chose one mile to "encourage the development of small power production facilities as intended by Congress." *Qualification of Small Power Production and Cogeneration Facilities Under Section 201 of the Public Utility Regulatory Policies Act of 1978*, FERC Stats. & Regs., Proposed Regulations 1977-1981 ¶ 32,028, at 32,332 (1979). Construing the one-mile rule as merely a rebuttable presumption, as sought by Petitioner and XES here, and the litigation that would inevitably follow, would hardly be consistent with this intent.

<sup>57</sup> *Windfarms*, 13 FERC at 61,032.

<sup>58</sup> The fact that Wasatch in other contexts may have characterized the facilities as a single facility or pursued a single site permit does not demonstrate that Wind Park I and Wind Park II are a single facility for purposes of our QF regulations or that Wasatch was engaged in "gaming."

<sup>59</sup> In the March 15 Order, the Commission explained that Order No. 688 does not support the argument that the Commission should evaluate gaming in the context of determining whether facilities satisfy the requirements for QF status. March 15 Order, 138 FERC ¶ 61,171 at P 18. We see no reason to revisit that determination.

section 292.204(a)(3).<sup>60</sup> The facilities were a series of wind turbines, owned by the same person or affiliates, located on three separate ridges, and located within one mile of each other. The Commission found that the energy resource and the topography of the area supported a finding that the wind resource was located at separate sites -- that is, that each of the three ridges constituted a separate site and that each of the three facilities was a separate facility.<sup>61</sup> *Windfarms* is thus the reverse of the facts present here. It involved facilities closer than a mile apart, and the issue was whether they were separate facilities rather than one. Here the facilities are more than a mile apart, and the issue is whether they are a single facility rather than separate.

26. Finally we turn to Petitioner's argument that "collector" lines should be considered generation equipment for purposes of applying section 292.204(a)(2)(ii) of the Commission's regulations, which provides that the distance between facilities shall be measured from the electrical generating equipment of the facility. We disagree. The Commission adopted 292.204(a)(2)(ii) to make clear that it is the electrical generating equipment, and not other equipment, such as "collector" lines for gathering energy, or even the single interconnection to the grid, that determines where a facility is for purposes of measuring the distance between facilities.<sup>62</sup> While other equipment, such as transmission lines and other equipment, including equipment used for interconnection purposes, may be part of a QF certification,<sup>63</sup> they are not electrical generating equipment. The Commission, in its regulations, explicitly refers to electrical generation equipment as the equipment that determines the distance between the facilities and Petitioner has offered no reason to rule otherwise.

27. We conclude that nothing raised on rehearing causes us to reconsider our finding that Wind Park 1 and Wind Park II constitute separate QFs located on separate sites.

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<sup>60</sup> 18 C.F.R. § 292.203(a)(3) (2011). To the extent that XES argues that an opponent should be permitted to request waiver of the one-mile rule, nothing in the rule suggests that any waiver was intended other than to benefit the QF. *See El Dorado County Water Agency and El Dorado Irrigation District*, 24 FERC ¶ 61,280, at 61,578 (1983), *reh'g denied*, 26 FERC ¶ 61,185 (1984).

<sup>61</sup> *Windfarms*, 13 FERC at 61,033-34.

<sup>62</sup> Order No. 70, FERC Stats. & Regs., ¶ 30,134 at 30,943.

<sup>63</sup> *See* 18 C.F.R. § 292.101(b)(1)(i) (2011).

The Commission orders:

The requests for rehearing are hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.