

148 FERC ¶ 61,229  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;  
Philip D. Moeller, Tony Clark,  
and Norman C. Bay.

CII Methane Management IV, LLC

Docket No. QF14-642-000

ORDER GRANTING REQUEST FOR WAIVER

(Issued September 25, 2014)

1. On July 25, 2014, CII Methane Management IV, LLC (CII Methane) filed a request for waiver of section 292.203(a)(3) of the Commission's regulations requiring it, as an owner of a small power production facility, to make a filing in order to certify as a qualifying facility (QF)<sup>1</sup> under the Public Utility Regulatory Policies Act of 1978 (PURPA).<sup>2</sup> Specifically, CII Methane requests this waiver for the period of non-compliance between April 27, 2013, when it commenced sales of energy, to July 3, 2014, when it submitted a Form 556 notice of self-certification.<sup>3</sup> The request for waiver is granted as discussed herein.

2. CII Methane is the owner and operator of an approximate 1.49 MW net capacity biomass (landfill gas) small power production QF located in Johnston County, North Carolina.<sup>4</sup> CII Methane states that it became aware in June 2014, following a sale of upstream ownership interests in CII Methane, that a Form 556 notice of self-certification had not been submitted by its experienced third-party consultant.

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<sup>1</sup> 18 C.F.R. § 292.203(a)(3) (2014) (requiring that a facility claiming QF status must either file a notice of self-certification pursuant to section 292.207(a) of the Commission's regulations or an application for Commission certification under section 292.207(b)(1)).

<sup>2</sup> 16 U.S.C. § 824a-3 (2012).

<sup>3</sup> See CII Methane Management IV, LLC, Docket No. QF14-642-000 (July 3, 2014).

<sup>4</sup> CII Methane Management IV, LLC, Docket No. QF14-642-000 (July 3, 2014).

CII Methane also states that it has satisfied all of the criteria for QF status during the period of non-compliance, other than the requirement to file a Form 556.<sup>5</sup>

3. CII Methane states that the requested waiver would qualify its project for most exemptions from the Federal Power Act (FPA), the Public Utility Holding Company Act of 2005, and state laws, as set forth in the Commission's regulations implementing PURPA. However, CII Methane does not request exemption from the requirements of FPA sections 205 and 206. Rather, to expeditiously resolve this matter, CII Methane submits for acceptance a proposed refund report, to remedy any period of non-compliance with the Commission's prior-notice requirements for wholesale sales of power. Accordingly, CII Methane includes a calculation of the time value of revenues received by CII Methane between the date it began operating and selling power from its facility to its interconnecting utility, Progress Energy Carolinas, Inc. (Progress), on April 27, 2013, until the last day before it submitted a Form 556 on July 3, 2014. The calculations reflect the compound interest owed on gross revenues collected during that period. CII Methane states that under its power purchase agreement with Progress, its QF's entire output is sold pursuant to a negotiated or market-based rate that is equivalent to or less than the applicable avoided cost rate, and therefore the difference between the rate collected and the avoided cost rate for which a refund required is zero.<sup>6</sup> CII Methane commits to refunding the time value of revenues collected prior to the QF self-certification date.

4. In *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 (1993) (*Prior Notice*), the Commission clarified its refund remedy (for both cost-based and market-based rates) for the late filing of jurisdictional rates and agreements under section 205 of the FPA when waiver of notice is denied. With respect to market-based rates, the Commission stated that, in the case where a utility transacted without authorization, the Commission 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, 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.<sup>7</sup> 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 the market-based rate or the avoided cost rate.<sup>8</sup> To the extent that there is no

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<sup>5</sup> CII Methane Request for Waiver at 6-7.

<sup>6</sup> CII Methane Request for Waiver at 5-6.

<sup>7</sup> *Prior Notice*, 64 FERC ¶ 61,139 at 61,980.

<sup>8</sup> See *Trigen-St. Louis Energy Corp.*, 120 FERC ¶ 61,044, at P 32 (2007).

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.

4. Notice of the waiver request was published in the *Federal Register*, 79 Fed. Reg. 44,760 (2014). No protests or interventions were filed.

5. Upon consideration, the Commission will grant the requested waiver of the Commission's QF filing requirements, consistent with the waiver granted in *Iowa Hydro*.<sup>9</sup> CII Methane's facility will be treated as a QF for the period that it operated out of compliance with the Commission's requirement that an owner of a small power production facility must make a filing in order to certify as a QF, and will be granted most of the exemptions contained in sections 292.601 and 292.602 of the Commission's regulations,<sup>10</sup> excepting the exemptions from sections 205 and 206 of the FPA from which CII Methane does not request waiver. CII Methane must provide time value refunds to its customers within 30 days of the date of this order, calculated pursuant to section 35.19a of the Commission's regulations.<sup>11</sup> Consistent with section 35.19a of the Commission's regulations, the time value of revenues collected shall be calculated until the date refunds are made. CII Methane must submit a refund report in the form of an informational filing with the Commission in this docket confirming payment of refunds within 60 days of the date of this order.

The Commission orders:

(A) The requested waiver of the filing requirements in section 292.203(a) of the Commission's regulations is hereby granted, as discussed in the body of this order.

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<sup>9</sup> *Iowa Hydro, LLC*, 146 FERC ¶ 61,207, at PP 14-15 (2014) (*Iowa Hydro*).

<sup>10</sup> 18 C.F.R. §§ 292.601, 292.602 (2014). See *LG&E-Westmoreland Southampton*, 76 FERC ¶ 61,116, at 61,605 (1996) (stating with regard to sections 292.601 and 292.602 that "as a general matter, there is no compelling reason to eliminate all of the exemptions from federal and state regulation otherwise applicable to QFs, assuming the non-compliance was not marked by long duration or frequent recurrence."), *order granting clarification and denying reh'g*, 83 FERC ¶ 61,182 (1998).

<sup>11</sup> 18 C.F.R. § 35.19a (2014).

(B) CII Methane is hereby directed to make the refunds within 30 days of the date of this order, calculated pursuant to section 35.19a of the Commission's regulations, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.