

172 FERC ¶ 61,240  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

CF CVEC Owner One LLC

Docket Nos. EL20-55-000  
QF15-28-001  
QF15-29-001

ORDER GRANTING REQUEST FOR PARTIAL WAIVER AND ACCEPTING  
REFUND REPORT

(Issued September 17, 2020)

1. On June 26, 2020, CF CVEC Owner One LLC (Petitioner) filed a petition for declaratory order, requesting partial waiver from the filing requirements in section 292.203(a)(3) of the Commission's regulations<sup>1</sup> applicable to two small power production qualifying facilities (QF) for the time period beginning June 16, 2014, when Petitioner's facilities, the Katama Farm QF (Katama) and the Nunnepog Well QF (Nunnepog), began operation, and ending October 17, 2014, when Petitioner filed for self-certification of QF status for the facilities (Petition).<sup>2</sup> Petitioner also filed a refund report for each QF. We grant the request for partial waiver and accept the refund report, as discussed below.

**I. Background**

2. Petitioner states that it is the upstream owner and operator of Katama and Nunnepog, which are located in Edgartown, Massachusetts.<sup>3</sup> Petitioner explains that Katama and Nunnepog are solar facilities, each with a net capacity of 1.08 MW, that began operation on June 16, 2014. Petitioner further explains that its downstream facility owner and operator, CF Katama LLC for Katama and CF Nunnepog LLC for Nunnepog,

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<sup>1</sup> 18 C.F.R. § 292.203(a)(3) (2020).

<sup>2</sup> Petitioner filed a Form No. 556 for Katama in Docket No. QF15-28-000. Petitioner filed a Form No. 556 for Nunnepog in Docket No. QF15-29-000.

<sup>3</sup> Petition at 2.

sells all of the QF's power output to Cape Vineyard Electric Cooperative, Inc. (CVEC), pursuant to an Energy Management Services Agreement.

## II. Petition

3. Petitioner requests partial waiver of the QF filing requirements beginning June 16, 2014, when the facilities began operation, and ending October 17, 2014, when Petitioner filed for self-certification of QF status for the facilities.<sup>4</sup> More specifically, Petitioner requests waiver of the QF filing requirement set forth in section 292.203(a)(3) of the Commission's regulations, in order to be able to claim, pursuant to sections 292.601 and 292.602,<sup>5</sup> the exemptions from most of the provisions of the Federal Power Act (FPA) and the Public Utility Holding Company Act of 2005 (PUHCA), and certain state laws and regulations regarding the rates and financial and organizational regulations of electric utilities.<sup>6</sup> Petitioner does not seek exemption from sections 205 and 206 of the FPA.

4. Petitioner argues that good cause supports granting the partial waiver for several reasons.<sup>7</sup> First, Petitioner states that, aside from the timely filing for self-certification, each of the Facilities has been in compliance with the Commission's substantive QF requirements since the date of first production of power. Second, Petitioner states that the delay in filing for self-certification was an inadvertent oversight. Third, Petitioner states that it does not anticipate any opposition to this Petition from CVEC. Fourth, Petitioner states that granting such a request for partial waiver is consistent with prior Commission precedent.<sup>8</sup>

5. With respect to refunds, with the Petition, Petitioner submitted a refund report. Petitioner states that no refunds of contract amounts are due to reflect the difference between the rates charged and a cost-based rate because Petitioner provided service to CVEC under negotiated agreements.<sup>9</sup> Petitioner states that it calculated refunds based on the time value of amounts received for QF sales to CVEC for service provided between the dates service commenced and the date Petitioner submitted QF self-certification

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<sup>4</sup> *Id.* at 1-2.

<sup>5</sup> 18 C.F.R. §§ 292.601, 292.602 (2020).

<sup>6</sup> Petition at 3-4.

<sup>7</sup> *Id.* at 4-6.

<sup>8</sup> *Id.* at 6.

<sup>9</sup> *Id.* at 8.

notices for the facilities.<sup>10</sup> Petitioner contends that the time value refunds reflect the interest rate set forth in section 35.19a of the Commission's regulations, compounded quarterly.

### III. Notice

6. Notice of the Petition was published in the *Federal Register*, 85 Fed. Reg. 40,632 (July 7, 2020), with interventions and protests due on or before July 27, 2020. None was filed.

### IV. Discussion

7. In Order No. 671,<sup>11</sup> the Commission added the filing requirements for QF status now 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.<sup>12</sup> Thus, since 2006, the regulations have required that an owner or operator of a facility must, in addition to meeting other specified requirements, either file a notice of self-certification (i.e., a Form No. 556) or apply for and receive a Commission certification in order to establish QF status for a generating facility larger than 1 MW.<sup>13</sup>

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.”<sup>14</sup> In recent orders, the Commission has denied waiver of the filing requirement but granted partial waiver to treat facilities as QFs for the time period during which those QFs were out of compliance.<sup>15</sup> Therefore, consistent with those prior orders,

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<sup>10</sup> *Id.* (citing *SunE M5B Holdings, LLC*, 157 FERC ¶ 61,045, at P 19 (2016) (*SunE M5B*); *Minwind I, LLC*, 149 FERC ¶ 61,109, at P 23 (2014) (*Minwind I*); *Trigen-St. Louis Energy Corp.*, 120 FERC ¶ 61,044, at P 32 (2007) (*Trigen-St. Louis*)).

<sup>11</sup> *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).

<sup>12</sup> 18 C.F.R. §§ 292.203(a)(3), 292.203(b)(2).

<sup>13</sup> *Id.*

<sup>14</sup> *OREG I, Inc.*, 135 FERC ¶ 61,150, at P 8 (2011) (*OREG I*), *order on reh'g*, 138 FERC ¶ 61,110 (2012).

<sup>15</sup> *See GRE 314 East Lyme LLC*, 171 FERC ¶ 61,199 (2020); *Branch Street Solar Partners, LLC*, 169 FERC ¶ 61,269 (2019); *Zeeland Farm Servs., Inc.*, 163 FERC ¶

we grant Petitioner partial waiver so that its facilities will be treated as QFs for the time period during which the facilities operated out of compliance with the Commission's QF certification filing requirements, that is, for the time period beginning June 16, 2014, when the facilities began operation, and ending October 17, 2014, when Petitioner filed for self-certification of QF status for the facilities. Accordingly, Petitioner qualifies for most of the exemptions contained in sections 292.601 and 292.602 of the Commission's regulations, excepting exemption from FPA sections 205 and 206.<sup>16</sup> Granting Petitioner 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 FPA sections 205 and 206, is consistent with the Commission's action in other, similar cases.<sup>17</sup>

9. Regarding the refund report, in *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*,<sup>18</sup> 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,<sup>19</sup> 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>20</sup> The second component of the two-part refund methodology does not typically

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61,115 (2018) (*Zeeland*); *Minwind I*, 149 FERC ¶ 61,109; *Beaver Falls Mun. Auth.*, 149 FERC ¶ 61,108, at P 30 (2014) (*Beaver Falls*); see also *OREG I*, 135 FERC ¶ 61,150.

<sup>16</sup> We remind Petitioner that it must submit required filings on a timely basis or face possible sanctions by the Commission.

<sup>17</sup> 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 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).

<sup>18</sup> *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).

<sup>19</sup> 18 C.F.R. § 35.19a (2020).

<sup>20</sup> *Prior Notice*, 64 FERC ¶ 61,139 at 61,980.

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.<sup>21</sup> 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, Petitioner has been selling pursuant to a negotiated rate, satisfying the second component of the two-part refund methodology, but Petitioner remains subject to the first component (i.e., the time value refund obligation). Petitioner filed a refund report for its facilities consistent with this obligation. We accept the refund report.

The Commission orders:

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

(B) Petitioner'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.

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<sup>21</sup> *Minwind I*, 149 FERC ¶ 61,109 at P 23; see *Trigen-St. Louis*, 120 FERC ¶ 61,044 at P 32; see also *CII Methane*, 148 FERC ¶ 61,229 at P 4.