

167 FERC ¶ 61,059
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, Richard Glick,
and Bernard L. McNamee.

Sunrun, Inc.

Docket No. EL18-205-000

ORDER GRANTING PETITION FOR DECLARATORY ORDER

(Issued April 18, 2019)

1. On September 24, 2018, pursuant to 18 C.F.R. §§ 292.204(a)(3) or 292.203(d)(2), Sunrun, Inc. (Sunrun) filed a petition for declaratory order (Petition), requesting waivers of qualifying facility (QF) certification filing requirements and the requirement of Item 8a of Form No. 556¹ as they relate to particular residential solar photovoltaic (PV) systems and related equipment.² For the reasons discussed below, we grant the Petition.

I. Background

2. Sunrun installs PV systems (and complementary battery systems) for homeowners. According to Sunrun, as of June 30, 2018, it has installed over 202,000 PV systems in 22 states, the District of Columbia, and Guam, totaling 1,360 MW of capacity.³ Sunrun explains that its client homeowners have two options: (1) buy and own the PV system outright; or (2) have Sunrun finance the PV system, with Sunrun retaining ownership and continuing to monitor, maintain, and insure it for the homeowner, as a third party, with the homeowner having the option to buy it outright later. Sunrun notes that typically

¹ Item 8a of Form No. 556 requires the identification of any facilities with electrical generating equipment located within one mile of the electrical generating equipment of the instant facility, and for which any of the entities identified in lines 5a or 5b (direct ownership or upstream ownership), or their affiliates, holds at least a 5 percent equity interest.

² Sunrun Petition at 1.

³ *Id.* at 7.

(continued ...)

homeowners elect the second option under which Sunrun retains ownership. Sunrun states that it is concerned that the PV systems Sunrun owns will collectively, as a cluster, be deemed to be owned by the same person for purposes of the Commission's one-mile rule, under which QFs that are owned by the same entity or an affiliated entity and are located within one mile of each other are considered to be one QF.⁴

3. Sunrun states that, among the Sunrun-owned PV systems, "84.7 [percent] have nameplate capacity below 10 kW, and 99.5 [percent] have nameplate capacity below 20 kW."⁵ Sunrun adds that each of the PV systems is separately permitted under state and local law and separately interconnected to the local distribution utility.

4. Sunrun explains that, because it does not currently make Commission-jurisdictional sales from its owned systems, Sunrun has not sought waiver of the QF certification requirements previously because it has not needed to avail itself of exemptions from the Federal Power Act (FPA) and the Public Utility Holiday Company Act (PUHCA) that come with QF status.⁶ Sunrun states that it now seeks the waivers for three reasons: (1) it intends to pursue emerging opportunities for aggregated distributed energy resources to participate in organized wholesale electric markets, which will trigger the need for the FPA and PUHCA exemptions; (2) the concentration of its systems continues to grow, so it will not be able to continue to rely on the 1 MW filing exemption in certain parts of the country; and (3) Sunrun has received an increase in inquiries from lenders and investors regarding the PV systems' QF status and the FPA and PUHCA exemptions. Sunrun maintains that, without the waivers, it will be compelled to monitor the geographic concentration of its PV systems (currently numbering 202,000 in 22 states) and to generate a highly burdensome number of initial filings and continuously update them, resulting in voluminous and duplicative filings that provide little information of use to the Commission.⁷

5. On September 24, 2018, Sunrun filed the Petition requesting two waivers. First, Sunrun requests waiver of the QF certification filing requirements for separately-

⁴ *Id.* at 7-8. As discussed in greater detail below, the Commission's one-mile rule provides that a small power production facility located within one mile of another small power production facility that uses the same energy resource and has the same owner is considered to be the same facility for purposes of determining if the facility exceeds the 80 MW limit on a small power production QF. *See* 18 C.F.R. § 292.204(a) (2018).

⁵ *Id.* at 8.

⁶ *Id.*

⁷ *Id.* at 8-9.

(continued ...)

interconnected, individual residential rooftop solar PV systems and related equipment with maximum net power production of 20 kW or less that Sunrun provides financing for but which the homeowner has an option to purchase, where such 20 kW or less systems may aggregate to over 1 MW within a one-mile radius and thus may exceed the 1 MW exemption from the QF certification filing requirement. Second, Sunrun requests that, in a Form No. 556 submitted for a cluster of rooftop PV systems that exceeds 20 kW, the Commission waive the requirement in Item 8a of Form No. 556⁸ to include information regarding the facilities covered by the first requested waiver (i.e., 20 kW or less facilities), even if they are within one mile of the cluster that exceeds 20 kW that is being certified.⁹

6. Sunrun states that its first requested waiver is narrowly tailored to apply only (1) to small (20 kW or less), separately-interconnected, individual residential PV systems and related equipment, which the homeowner has an option to purchase, and (2) for the purpose of calculating whether the 1 MW filing exemption applies, not the 20 MW, 30 MW or 80 MW thresholds that determine eligibility for exemptions from the FPA and PUHCA or the right to sell energy and capacity to utilities under the Public Utility Regulatory Policies Act of 1978 (PURPA).¹⁰ Sunrun specifies that the requested waiver for PV systems 20 kW or less would apply to 158,737 systems, while the requested waiver for systems that exceed 20 kW would apply to 863 systems.¹¹

7. With respect to its first request, Sunrun contends that good cause exists to grant the waiver.¹² Specifically, Sunrun asserts that section 292.204(a)(3) allows the Commission to modify the application of the one-mile rule for good cause. In addition, Sunrun asserts that section 292.204(a)(2) applies only to the use of the one-mile rule for calculating the 80 MW maximum size for small power production facilities. However, Sunrun acknowledges that, in *SunE B9 Holdings, LLC* and *SunE M5B Holdings LLC*, the Commission found that the one-mile rule in section 292.204(a) applies as well to the 1 MW filing exemption.¹³ Sunrun avers that, if the Commission re-affirms its conclusion

⁸ See *supra* note 1.

⁹ Sunrun Petition at 11.

¹⁰ *Id.* at 1, 9-10.

¹¹ *Id.* at 10-11.

¹² *Id.* at 9.

¹³ *Id.* at 6 (citing *SunE B9 Holdings, LLC*, 157 FERC ¶ 61,044, at P 16 (2016) (*SunE B9*); *SunE M5B Holdings, LLC*, 157 FERC ¶ 61,045, at P 15 (2016) (*SunE M5B*)).

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that section 292.204(a)(2) should apply to the 1 MW filing exemption, it follows that the waiver authority in section 292.204(a)(3) should apply as well. In the alternative, Sunrun maintains that the Commission has authority under section 292.203(d)(2) to waive the QF certification filing requirements for good cause.

8. Additionally, Sunrun contends that, when the Commission created the 1 MW filing exemption in Order No. 732,¹⁴ the Commission did not contemplate that the one-mile rule would apply to the 1 MW filing exemption.¹⁵ Sunrun opines that, if the Commission had addressed the issue in Order No. 732, the Commission likely would have seen the possibility of residential solar portfolios exceeding 1 MW per mile as a problem for a future date. Sunrun argues that, now that the issue is ripe, the simplest and most effective way for the Commission to address this issue is to restore the initial intention by limiting which facilities within one mile must be aggregated.¹⁶ Sunrun points out that, in Order No. 732, the Commission sought to exclude residential-scale facilities from the burden of QF certification and to create a simple and streamlined electronic filing system.¹⁷ In this regard, Sunrun argues that, proportional to capacity, the burden of QF certifications for developers of large portfolios of residential PV systems would be far greater than for typical QFs. According to Sunrun, because (1) Item 8a of Form No. 556 requires identification of any facilities with electrical generating equipment located within one mile of the electrical generating equipment of the instant facility and (2) each residential PV system within a cluster of systems contains electrical generating equipment, “completion of this requirement would require identification of all other such facilities within one mile of *any facility within the cluster*.”¹⁸ Thus, Sunrun maintains that the requirement to complete Item 8a in Form No. 556 “will make the analysis needed to complete the filing far more complex and will substantially increase the scope of information that must be gathered and submitted with the filing.”¹⁹ Sunrun asserts that, given that the burden of QF certification for residential PV portfolios is far greater than for other QFs, the intent of Order No. 732 is maintained if this request is

¹⁴ *Revisions to Form, Procedures, and Criteria for Certification of Qualifying Facility Status for Small Power Production or Cogeneration Facility*, Order No. 732, 130 FERC ¶ 61,214 (2010).

¹⁵ Sunrun Petition at 12.

¹⁶ *Id.* at 13.

¹⁷ *Id.* at 14.

¹⁸ *Id.* at 15 (emphasis in original).

¹⁹ *Id.*

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granted and the burden of the requirement to file QF certifications and re-certifications is diminished.²⁰ As previously noted, Sunrun maintains that the information provided for self-certifying residential solar portfolios would be voluminous and duplicative and provide little information of use to the Commission.²¹

9. Further, Sunrun notes that, in evaluating past waiver requests under section 292.204(a)(3), the Commission has asked whether the facilities within a one-mile radius requesting the waiver are located at the same site (i.e., whether the areas where the facilities are located are in some manner distinct from one another).²² Sunrun points to the Commission determination in *Windfarms* that three wind farms within a mile of each other were not located at the same site because the three locations “had sufficiently distinct and identifiable topographical and energy resource-related characteristics so that each constituted a ‘separate site’ for purposes of determining the aggregate capacity of the small power production facility located at each site.”²³ Sunrun adds that the Commission observed that the clustering of wind sites along ridge lines was “not based on an attempt to circumvent the Commission’s Rules” but simply reflected the fact that wind resources were concentrated in those areas.²⁴

10. Sunrun contends that granting its requested waiver is consistent with *Windfarms* because here each residential PV facility is placed on the property of a different homeowner and is separately permitted, interconnected, and billed. Sunrun adds that, like in *Windfarms*, the clustering of Sunrun-owned residential solar PV systems is not an attempt to circumvent the Commission’s rules; rather, residential solar is naturally concentrated in residential neighborhoods with a high proportion of exposed rooftop space compared to undeveloped land.²⁵ Sunrun adds that, even if there was a reason to do so, residential solar developers like Sunrun would not be able to dictate precisely where their third-party owned facilities are located because the homeowner decides whether to have a PV system installed, which installer to use, when the system will be installed, and, within constraints, what the capacity of the PV system should be.

²⁰ *Id.* at 14-17.

²¹ *Id.* at 17-18.

²² *Id.* at 18-19 (citing *Windfarms, Ltd.*, 13 FERC ¶ 61,017, at 61,032 (1980) (*Windfarms*); *Windfarms, Ltd.*, 19 FERC ¶ 61,220 (1982)).

²³ *Id.* at 20 (quoting *Windfarms*, 13 FERC ¶ 61,017 at 61,033).

²⁴ *Id.*

²⁵ *Id.*

II. Notices and Responsive Pleadings

11. Notice of the Petition was published in the *Federal Register*, 83 Fed. Reg. 49,378-49,379 (2018), with protests or interventions due on or before October 24, 2018.

12. Ameren Services Company; American Public Power Association; Arizona Public Service Company; Edison Electric Institute (EEI); the Center for Biological Diversity; National Rural Electric Cooperative Association (NRECA); Portland General Electric Company; and Public Citizen, Inc. filed timely motions to intervene. EEI filed comments, and NRECA filed a protest.

13. On November 8, 2018 and November 13, 2018, respectively, Sunrun and the Center for Biological Diversity filed answers.

III. Comments and Protest

14. EEI and NRECA question Sunrun's use of a petition for declaratory order to determine broad policy issues related to implementation of PURPA and distributed energy resource aggregation. EEI asks the Commission to stay Sunrun's request until these issues are discussed as part of the Commission's review of the Commission's regulations implementing PURPA in Docket No. AD16-16-000²⁶ and pending examination of the operational and technical impacts of distributed energy resources' participation in wholesale markets in Docket No. RM18-9-000.²⁷ For similar reasons, NRECA asks the Commission to deny Sunrun's request, adding that it is not ripe for consideration because Sunrun does not cite an immediate need for the waiver.²⁸

15. EEI adds that the Commission cannot address Sunrun's request until the Commission defines "power production capacity," which is at issue in Beaver Creek Wind II, LLC's application for certification of QF status in Docket No. QF17-673-002

²⁶ EEI points out that issues related to self-certification of small power production facilities and the one-mile rule have been raised in that proceeding. EEI Comments at 8-10.

²⁷ EEI states that Sunrun's request raises issues related to ownership of the excess energy generated from residential PV systems and associated interconnection issues, compensation, dual participation, participation criteria, eligibility and notification of which program(s) the individual facility, retail customer and aggregator use, which were addressed in comment to the notice of proposed rulemaking regarding distributed energy resources. *Id.* at 11-12.

²⁸ NRECA Protest at 3-4.

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(and the related motion for revocation of QF status filed by NorthWestern Corporation in Docket No. EL18-195-000) in which a QF is adding a battery storage system, because that definition impacts the size of the possible aggregation.²⁹ EEI also argues that if Sunrun is seeking the authority for an aggregator to sell energy or capacity from a group of 20 kW or less PV facilities under PURPA, then the issue should instead be addressed before the state commissions.³⁰

IV. Answers

A. Sunrun

16. In response to EEI's and NRECA's concerns regarding the waiver of the QF certification and recertification filing requirements, Sunrun notes that neither entity objects to the request on the merits, adding that they do not suggest any reason why their members would be harmed by the absence of these QF certification and recertification filings. Sunrun reiterates that this waiver request only impacts the 1 MW filing exemption, thus only impacting how much paperwork Sunrun must file with the Commission.³¹ Sunrun states that its requested waivers has no bearing on the calculation of the 20 MW or 80 MW thresholds under PURPA and, thus, has no bearing on any utility's mandatory purchase obligation.³² Sunrun also contends that, not only has the 1 MW filing exemption not arisen as an issue under consideration in either of the referenced rulemaking proceedings (i.e., PURPA or distributed energy resources rulemakings), but also, if it had, it would be unreasonable to deny or delay resolution of its petition based on the possibility that the Commission might address the issue in a future rulemaking. Sunrun adds that, contrary to NRECA's assertion, an immediate need for this requested waiver does exist here because the need for certification filings has already arisen, pointing to its November 5, 2018 self-certification filings related to six separate clusters of residential PV systems.³³

17. To accommodate EEI's and NRECA's concerns, Sunrun states that it would not object if the Commission places reasonable limits on the requested waiver beyond those

²⁹ EEI Comments at 10-11.

³⁰ *Id.* at 6-7.

³¹ Sunrun Answer at 3.

³² *Id.* at 3-4.

³³ *Id.* at 5 (citing Sunrun Filings, Docket Nos. QF19-271-000, QF19-272-000, QF19-273-000, QF19-274-000, QF19-275-000, QF19-276-000 (filed Nov. 5, 2018)).

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proposed in the petition.³⁴ First, if the Commission later generically addresses the 1 MW filing exemption to materially reduce the filing burden facing residential solar developers, Sunrun would not oppose any such change superseding the requested waiver. Second, Sunrun would not oppose the Commission imposing a time limit on the requested waiver (e.g., five years) to provide the Commission the opportunity to revisit the issues raised here after it completes any upcoming PURPA rulemaking, including rehearing and judicial review.

B. Center for Biological Diversity

18. The Center for Biological Diversity filed an answer in support of the Petition, noting the importance of removing regulatory barriers to the development of residential PV systems and other distributed energy resources critical to addressing climate change.³⁵ The Center for Biological Diversity maintains that relieving Sunrun of this administrative burden not only reaps immediate practical benefits for the company and its residential PV customers but also provides larger and long-term benefits related to distributed energy resource adoption in the country (such as environmental, public health and safety and socio-economic benefits).³⁶

V. Commission Determination

A. Procedural Matters

19. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), the timely unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

20. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2)(2018), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We accept Sunrun's and the Center for Biological Diversity's answers because they have provided information that assisted us in our decision-making.

³⁴ *Id.* at 4.

³⁵ Center for Biological Diversity Answer at 1-5, 6-7.

³⁶ *Id.* at 5-7.

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B. Substantive Matters

21. The Commission's regulations require a facility to file a Form No. 556 for self-certification or an application for Commission certification³⁷ in order to be a QF that is eligible for exemptions from the FPA, PUHCA, and certain state laws and regulations and eligible to sell energy and capacity to utilities pursuant to PURPA.³⁸ As noted above, the regulations also contain what is commonly referred to as the one-mile rule, under which a small power production facility located within one mile of another small power production facility that uses the same energy resource and has the same owner is considered to be the same facility for purposes of determining if the facility exceeds the 80 MW limit on a small power production QF.³⁹

22. For generating facilities with net power production capacities of 1 MW or less, Order No. 732 created an exemption, such that those facilities are not required to file either a notice of self-certification or an application for Commission certification in order to qualify as a QF.⁴⁰ Order No 732 also codified the Commission's authority to waive the QF certification requirement for good cause.⁴¹ Subsequently, in *SunE B9* and *SunE M5B*, the Commission found that the one-mile rule should also be used to determine whether the exemption from the QF certification filing requirement is applicable for QFs that are 1 MW or less.⁴²

³⁷ The owner of the facility is also required to inform the Commission via a supplemental filing to recertify the QF in the event of any changes or in the event of relinquishment of QF status.

³⁸ 18 C.F.R. §§ 292.203(a)(3), 292.203(b)(2); *see also* 18 C.F.R. §§ 292.303(a), 292.601-02.

³⁹ 18 C.F.R. § 292.204(a); *see also* 18 C.F.R. § 292.204(a)(2) (Method of Calculation) (“(i) For purposes of this paragraph, facilities are considered to be located at the same site as the facility for which qualification is sought if they are located within one mile of the facility for which qualification is sought (ii) For purposes of making the determination in clause (i), the distance between facilities shall be measured from the electrical generating equipment of a facility.”).

⁴⁰ Order No. 732, 130 FERC ¶ 61,214 at P 3.

⁴¹ *Id.*

⁴² *SunE B9*, 157 FERC ¶ 61,044 at P 16; *SunE M5B*, 157 FERC ¶ 61,045 at P 15.

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23. We grant Sunrun waiver of the QF certification filing requirements for separately-interconnected, individual residential rooftop solar PV systems and related equipment with maximum net power production of 20 kW or less for which Sunrun provides financing, where such 20 kW or less systems may aggregate to over 1 MW within a one-mile radius and thus may exceed the 1 MW exemption from the QF certification filing requirement. We also grant Sunrun waiver of the requirement in Item 8a of Form No. 556 to include in a certification filing for clusters of rooftop PV systems above 20 kW information regarding the facilities covered by the first requested waiver (i.e., 20 kW or less facilities), even if the facilities of 20 kW or less are within one mile of the cluster exceeding 20 kW that is being certified.

24. We find that granting Sunrun's first requested waiver is consistent with Order No. 732. In Order No. 732, the Commission noted that "for facilities that are comparatively small, such as solar generation facilities installed at residences or other relatively small electric consumers such as retail stores, hospitals, or schools ... there may not be as compelling a need for filings with the Commission for QF status."⁴³ The Commission thus found that, consistent with PURPA's mandate, a 1 MW threshold for the exemption encourages cogeneration and small power production QFs by eliminating the burden of filing.⁴⁴

25. Although the Commission did not address the specific case of rooftop residential PV systems with third-party financing, as presented by Sunrun, this type of third-party financing for residential solar was less common at the time of Order No. 732. Granting Sunrun's requested waiver aligns with the purpose of the 1 MW filing exemption, which was set forth to ease the administrative burden for both the Commission⁴⁵ and small scale QFs. Individual homeowners' decisions to use Sunrun's third-party financing option to support the installation of PV systems on their homes should not result in the need for Sunrun to continuously monitor the concentration of these individual residential facilities and then file numerous certifications and re-certifications for QF systems of 20 kW or less, which would otherwise be far too small individually to cross the 1 MW threshold for filing but for this third-party financing arrangement. If Sunrun were required to file a new Form No. 556 every time a new client homeowner elected Sunrun financing or every time an existing client homeowner decided to exercise its option to buy the PV system

⁴³ *Id.* P 34.

⁴⁴ *Id.* P 35.

⁴⁵ In Order No. 732, the Commission noted that QF certification filings from facilities 1 MW or less represented only approximately one half of one percent of QF capacity certified, but 48 percent of all QF filings. Order No. 732, 130 FERC ¶ 61,214 at P 35.

from Sunrun, the resulting filing burden on Sunrun and the Commission would be significant and without any obvious counterbalancing benefit.

26. We also find that, consistent with the Commission's finding in *Windfarms*, Sunrun's request is not designed in a manner to circumvent the Commission's regulations. Rather, the geographic concentration of residential PV systems financed by Sunrun, and the fact that individual homeowners make these location and financing decisions based solely on individual homeowners' personal preferences, create the need for the requested waiver.

27. Likewise, we observe that the facts in the Petition are distinguishable from the facts in *SunE B9* and *SunE M5B*, in which the Commission did not grant waiver.⁴⁶ Unlike Sunrun's thousands of 20 kW or less residential PV systems, *SunE B9* involved a large, non-residential PV system with 18 500 kW inverters within one mile of each other. Also, *SunE M5B* involved six 500 kW inverters within one mile of each other, with each inverter selling its output under a separate power purchase agreement. Complying with the certification filing requirements under those circumstances was not unduly burdensome. Given the significantly larger number of individual residential PV system sites at issue here, however, and also the nature and size of these systems (i.e., residential systems with net capacities of 20 kW or less), as well as the fact that new residential customers may be added at any time and existing homeowners have the right to purchase the facilities subsequently, the administrative burden that Sunrun faces in order to remain in compliance with the Commission's regulations would be significantly greater in comparison to the burden faced in *SunE B9* and *SunE M5B*.

28. Finally, we grant Sunrun's second requested waiver so that, when Sunrun must complete a Form No. 556 for Sunrun-owned clusters of residential PV systems greater than 20 kW, Sunrun will not be required to identify in Item 8a any affiliated residential PV systems of 20 kW or less located within one mile. The same reasoning that justifies the Commission granting the first waiver request also supports granting the second waiver request. In particular, given the already substantial and growing number of PV systems of 20 kW or less in Sunrun's portfolio, coupled with the fact that new client homeowners are added frequently and existing client homeowners may at any time exercise their option to purchase their 20-or-less kW PV systems, the need to continuously update the Form No. 556 for these changes would place a significant burden on Sunrun and the Commission without any obvious benefit.

29. As part of granting these waivers, we direct Sunrun to maintain sufficient records of the residential PV portfolio that it owns through third-party financing arrangements to

⁴⁶ *SunE B9*, 157 FERC ¶ 61,044; *SunE M5B*, 157 FERC ¶ 61,045.

(continued ...)

determine at any relevant point of time that its aggregated residential PV solar resources have not surpassed any of the other PURPA-related thresholds.⁴⁷

30. We are not persuaded by EEI's and NRECA's request to reject or postpone action on the waiver requests. The issues presented in this Petition are limited in application. The Petition is based on specific facts that do not implicate broader PURPA reform or the distributed energy resource proceeding currently underway. The requested waivers do not apply to the MW thresholds that impact eligibility to make PURPA avoided cost rate sales, which means that Sunrun must still adhere to those thresholds. In addition, if any new requirements are placed on distributed energy resource aggregations participating in wholesale organized markets as a result of the distributed energy resource proceeding, those requirements would apply to Sunrun's aggregated resources irrespective of the outcome of this proceeding addressing Sunrun's particular PURPA-related waiver requests.

The Commission orders:

Sunrun's Petition is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁴⁷ See, e.g., 18 C.F.R §§ 292.204(a), 292.309 (d)(1), 292.601, and 292.602.