



FERC Denies Waiver for Failure to File PURPA Qualifying Facility Self-Certification

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In cases such as Zeeland's, by which an entity without a FERC-approved tariff fails to self-certify its QFs, FERC requires that such entities refund the "time value" revenues collected for power sold during a noncompliance period.³ This outcome is typical of how FERC has handled noncompliance with QF regulations since the issuance of Order No. 671 in 2006.⁴ In that order, FERC stated that a facility should not "be able to claim QF status without having made any filing with [the] Commission" and required that all QFs file either a notice of self-certification or an application for Commission certification before selling power from that facility.⁵ Fortunately for Zeeland, no refunds were required, since its variable costs exceeded its revenues during its noncompliance period (i.e., it operated at a loss).⁶

The instant case serves as a reminder that projects must file FERC Form 556 if they intend to claim QF status and its associated regulatory exemptions. This also applies to other FERC forms from time to time applicable to QFs, such as the requirement to file FERC Form 561 (reporting interlocking officer positions). Utilities purchasing power from QFs should likewise make a point of ensuring that project owners and developers are aware of the regulatory requirements associated with QFs.

¹ 18 CFR 202.203(a) (2018).

² *Zeeland Farm Servs., Inc.*, 163 FERC ¶ 61,115, at P 4 (2018).

³ *Id.* at P 16.

⁴ *Revised Regs. Governing Small Power Production and Cogen. Facilities*, Order No. 671, FERC Stats. & Regs. ¶ 31,203, *order on reh'g*, Order No. 671-A, FERC Stats. & Regs. ¶ 31,219 (2006).

⁵ *Id.* at P 82.

⁶ *See* 163 FERC ¶ 61,115 at P 17; *see also* *Zeeland Farm Servs., Inc.*, Refund Report, Docket Nos. QF17-935-000, *et al.*, at 1 (filed Feb. 14, 2018); *Zeeland Farm Servs., Inc.*, Docket Nos. QF17-935-001, *et al.* (May 17, 2018) (unpublished letter order accepting refund report).

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