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PURPA Dispute at FERC Raises New Questions for Co-Located Energy Storage

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Given the Commission's ongoing review of its PURPA regulations, the instant case provides FERC with an opportunity to clarify its limited precedent on PURPA's treatment of energy storage. FERC's ruling could thus have immediate impacts for project developers seeking to obtain QF status for co-located storage and renewable energy generation facilities.

PURPA's Treatment of Energy Storage

As we explained here, Congress enacted PURPA to promote the use of domestic renewable energy resources by establishing a class of qualifying "small power production" and "cogeneration" facilities eligible to receive special rate and regulatory treatment. A facility is eligible to be a "small power production" QF if its primary energy source is renewable (e.g., water, wind, or solar), biomass, waste, or geothermal, and its "power production capacity" does not exceed 80 MW, including the aggregated capacity of other small power production facilities that (i) use the same energy resource, (ii) are owned by the same person or its affiliates, and (iii) are located at the same site.[1] In determining whether two or more facilities are located at the same site, FERC's regulations specify that a facility "located within one mile of the facility for which [QF status] is sought"—as measured by the distance between the "electrical generating equipment" of the facilities—is deemed to be "located at the same site."[2] (This is commonly referred to as the "one-mile rule.")

Neither PURPA nor FERC's regulations explicitly mention energy storage as an energy resource type that can make a facility eligible for QF status. However, in *Luz Development and Finance Corp.* ("*Luz*"), the Commission clarified that a storage facility is eligible for QF status if its primary energy source (i.e., the source of the electric energy to be stored and delivered at a

later time) is "one of those contemplated by the statute . . . e.g., biomass, waste, renewable resources, geothermal resources or any combination thereof."[3]

NorthWestern's Petition

NorthWestern's Petition, styled as a "motion for revocation of qualifying facility status," responds to applications for QF certification of four 80 MW wind projects (collectively, "Beaver Creek") seeking to integrate energy storage batteries at each project site. In those filings, Beaver Creek states that the electro-chemical battery storage facilities—each of which would have a maximum capacity of 40 MW for a period of up to four hours—will "time shift the wind output" of the co-located generating facilities to provide dispatchable wind energy to NorthWestern, the purchasing utility.[4]

NorthWestern argues that Beaver Creek's integration of the storage facilities results in the wind farms exceeding the 80 MW capacity limit for QF status, which it contends is a statutory requirement that cannot be waived by FERC. NorthWestern claims that the "Beaver Creek Projects . . . treat the battery storage facilities as having no separate production capacity, despite the fact that they will use the battery storage as power production facilities in order to" sell their output under PURPA.[5] As such, NorthWestern explains that the wind projects and storage facilities should instead be treated as separate QFs, and each project's combined gross capacity would thus exceed the QF size limit, calculated using the Commission's one-mile rule, given their shared ownership.

NorthWestern also takes issue with Beaver Creek's assurance that the combined output of the wind and storage facilities "will be controlled by a wind turbine SCADA system" to ensure that the total output delivered to the grid will never exceed 80 MW.[6] Though Beaver Creek demonstrates that the Commission previously granted QF certification to facilities using control systems to limit a facility's output,[7] NorthWestern argues that such cases are irrelevant since they "did not involve facilit[ies] with a net capacity in excess of 80 MW."[8]

Implications and Next Steps

As the Edison Electric Institute (EEI) highlights in its comments on the Petition, the case raises new issues for PURPA's treatment of energy storage. EEI thus urges FERC to hold the case in abeyance until such issues are addressed in the context of a larger proceeding "to determine if, in light of the evolution in the energy markets, changes are needed to modernize the

Commission's regulations implementing PURPA." These include: (i) whether net production capacity is "still an appropriate interpretation of the phrase 'power production capacity'" given that co-located storage may increase a facility's available capacity beyond 80 MW; (ii) whether an assurance that no more than 80 MW will be injected onto the grid is sufficient to obtain QF status; and (iii) whether co-locating storage will create the potential for gaming the Commission's one-mile rule.[9]

NorthWestern's Petition underscores the need for additional FERC guidance on PURPA's treatment of advanced energy technologies, such as energy storage. In testimony before the Senate Committee on Energy and Natural Resources earlier this year, Chairman McIntyre noted that he has "directed FERC staff to re-initiate [a] review of FERC's policies under PURPA," which will "build on the record that the Commission already developed" and "allow for additional robust stakeholder input." It is unclear whether the Commission will address the issues EEI identified as part of its current PURPA inquiry or initiate a new proceeding focusing solely on energy storage. However, whatever the context, if the Commission agrees with NorthWestern that the 80 MW size limit for small power production QFs should include the capacity of co-located energy storage, Congressional action may be the only avenue for resolution of the issues raised by the instant case.

Comments on NorthWestern's Petition are due October 1, 2018.

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[1] 18 C.F.R. § 292.204(a)(1) (2018).

[2] *Id.* § 292.204(a)(2).

[3] 51 FERC ¶ 61,078, at 61,172 (1990).

[4] *See, e.g.*, Beaver Creek Wind II, LLC, Application for Certification of Qualifying Small Power Production Facility Status, Docket No. QF17-673-002, at 2 (filed Aug. 14, 2018) (Beaver Creek Wind II Application). Beaver Creek Wind I, LLC, Beaver Creek Wind III, LLC, and Beaver Creek Wind IV, LLC filed similar amended self-certifications for their projects. As Beaver Creek Wind II, LLC explains in its application, because "all four of the Beaver Creek Wind projects are technologically identical . . .[,] a determination by the Commission on this Application will apply to each of the Beaver Creek Wind projects." Beaver Creek Wind II Application at 4, n.4.

[5] NorthWestern Petition at 11.

[6] Beaver Creek Wind II Application at 4.

[7] *Id.* at 6 n. 6 (citing *Lyonsdale Biomass, LLC*, 116 FERC ¶ 61,133 (2006); *Maryland Solar, LLC*, 146 FERC ¶ 61,071 (2014)).

[8] NorthWestern Petition at 17.

[9] EEI Comments at 5.

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