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Blog Post

FERC's *Broadview* Reversal Restores and Expands Opportunities for Qualifying Facilities under PURPA

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In a March 19, 2021, order,[1] the Federal Energy Regulatory Commission ("FERC") reversed, on rehearing, its September 2020 order in *Broadview Solar, LLC*.[2] The reversal restores longstanding FERC precedent for determining qualifying facility ("QF") eligibility pursuant to the Public Utility Regulatory Policies Act of 1978 ("PURPA") and extends it to projects with integrated battery energy storage.

Background

In general terms, PURPA limits the renewable QF capacity that may be located at any single site to no more than 80 MW. Prior to FERC's issuance of *Broadview I*, FERC's longstanding policy with respect to that limitation focused on the amount of power that a QF is able to send out to the interconnected electric utility, after accounting for the sizing of system components, line losses, parasitic loads, and certain other limitations or deductions. In 2016, Broadview Solar, LLC ("Broadview") initially certified its planned solar photovoltaic ("PV") facility as a QF. At that time, the facility was to include 104.25 MW of direct-current ("DC") solar PV panels and a net capacity of 80 MW. No party petitioned FERC to challenge Broadview's initial self-certification or any of several subsequent self-recertifications, including one in 2017 to add 50 MW of battery energy storage capacity or another in 2019 stating that energy storage would total 200 MWh, and therefore the

project obtained and retained QF status without controversy. In September 2019, however, Broadview applied to FERC for QF recertification (rather than self-recertifying) and stated that the facility would comprise 160 MW of PV panels on a DC basis, plus 200 MWh of battery energy storage, all of which would deliver power through DC-to-AC (alternating current) inverters that limit output to 80 MW to the interconnecting electric utility, after accounting for losses.

Broadview I

In *Broadview I*, FERC denied Broadview's application for certification and determined that the planned Broadview facility could not meet PURPA's requirements for QF status because its "power production capacity" would exceed PURPA's 80-MW limit.

Broadview I relied heavily on a textual analysis of both PURPA's terms and the field descriptors in FERC's Form No. 556 (used to certify QF status) to reconsider and revise FERC's nearly 40-year-old approach to determining QF capacity, which had emphasized a QF's "send-out" or "output" capability, rather than the nameplate ratings of individual components. In its place, FERC determined that "power production capacity" calculations could not permissibly account for inverters or other "output limiting devices," and the maximum gross power production capability provided on Form No. 556 must be calculated at the terminals of the PV panels, even though their DC output cannot be placed directly onto the AC electric grid.

Broadview I had implications for all QFs, but uniquely affected solar PV QFs, which typically utilize PV arrays with nameplate DC capacities that are significantly larger (typically 1.3 to 1.5 times) than the facilities' inverter-dependent AC outputs. This practice arose for a variety of operational and economic reasons, including improved capacity factors and more efficient use of inverter capability. Even so, Broadview's proposed 160-MW DC capacity is unusually large in this respect, although its approach to accounting for inverter limitations had been standard prior to *Broadview I*. FERC declined to address Broadview's battery energy storage capacity in

Broadview I because it determined that the facility was ineligible for QF status on the basis of power production capacity alone.

Broadview II

On March 18, 2021, FERC announced that it had overturned *Broadview I* and certified the Broadview facility as a QF. In *Broadview II*, FERC found that a facility's capacity available for delivery to the interconnecting utility is the appropriate test for whether it meets QF capacity requirements, which is consistent with FERC's longstanding "output" or "send-out" analysis. FERC emphasized that Broadview's PV DC capacity, even when combined with its planned 200 MWh of energy storage (capable of delivering up to 50 MW of power over four hours), would not at any time provide more than 80 MW to the interconnecting utility.

To support this determination, FERC concluded that PURPA was ambiguous with respect to how to measure a facility's power production capacity for purposes of applying the 80 MW statutory capacity limit, and proceeded to interpret "facility" as all parts of a facility, rather than any individual facility subcomponents. FERC recognized that Broadview's "inverters are an integral part of a solar PV facility's generation equipment," and therefore must be accounted for in determining power production capacity. The FERC majority also stated that Form No. 556 is a "flexible tool . . . . that does not supplant Commission precedent" in establishing eligibility for QF status.

Commissioner Danly issued a strongly worded dissent, dismissing the ambiguity identified by the majority as "merely a stratagem to permit the introduction of new standard." Commissioner Christie also dissented, while Chairman Glick, Commissioner Chatterjee and Commissioner Clements formed the majority. Commissioner Chatterjee's vote is notable because he (as then-Chairman) and Commissioner Danly formed the majority in *Broadview I*, with then-Commissioner Glick in dissent.

Looking Forward and Practical Effects

Interveners that opposed Broadview's QF certification, including Northwest Electric Corporation (the interconnecting electric utility) and the Edison Electric Institute, may now seek further rehearing or request review in the courts of appeals. Unless and until FERC or the courts take additional action, *Broadview II* restores FERC's QF precedent and creates a framework for QFs with integrated battery energy storage. The decision may breathe new life into some projects that stalled in response to *Broadview I* and potentially reduce concerns about regulatory uncertainty, while frustrating those advocates of PURPA reform who have argued that QF status provides unduly favorable treatment and leads to increasingly creative attempts to "game" FERC's regulations and policies.

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1. *Broadview Solar, LLC*, 174 FERC ¶ 61,199 (2021) ("*Broadview II*").↩

2. *Broadview Solar, LLC*, 172 FERC ¶ 61,194 (2020) ("*Broadview I*").↩

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