

179 FERC ¶ 61,105
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
James P. Danly, Allison Clements,
Mark C. Christie, and Willie L. Phillips.

Dalreed Solar LLC

Docket No. QF20-1037-002

ORDER REVOKING STATUS AS A QUALIFYING SMALL POWER PRODUCTION
FACILITY

(Issued May 13, 2022)

1. On January 14, 2022, Dalreed Solar LLC (Dalreed Solar) filed a Form No. 556 self-recertification of Dalreed Solar Facility's (Facility)¹ status as a small power production qualifying facility (QF) pursuant to the Public Utility Regulatory Policies Act of 1978 (PURPA)² and section 292.207(b) of the Commission's regulations.³ On February 14, 2022, Portland General Electric Company (PGE) filed a protest to Dalreed Solar's Form No. 556 self-recertification. As discussed below, we revoke the Facility's status as a QF.

I. Background

A. Dalreed Solar's Form No. 556 Self-Certification, Self-Recertifications, and Affiliated QFs

2. On June 10, 2020, Dalreed Solar filed a Form No. 556 self-certification for a 40 MW net power capacity solar QF in Docket No. QF20-1037-000, located in Gilliam County, Oregon.⁴ Dalreed Solar identified Pacific Power & Light (PacifiCorp) as the

¹ Dalreed Solar LLC, Form No. 556, Docket No. QF20-1037-002 (January 14, 2022) (2022 Recertification).

² 16 U.S.C. §§ 796(17), 824a-3.

³ 18 C.F.R. § 292.207(b) (2021).

⁴ Dalreed Solar LLC, Form No. 556, Docket No. QF20-1037-000 (filed June 10, 2020) (Original Certification).

interconnecting utility.⁵ On January 15, 2021, Dalreed Solar filed a self-recertification in Docket No. QF20-1037-001 (2021 Recertification),⁶ changing the Facility's net power production capacity from 40 MW to 20 MW.

3. On January 14, 2022, Dalreed Solar filed the 2022 Recertification at issue here. In the 2022 Recertification, Dalreed Solar changed the Facility's net power production capacity from 20 MW to 40 MW and changed the interconnecting utility to PGE.⁷

4. The 2022 Recertification explained that, as of the date of the filing, the Facility and two affiliated QFs (described below) are not yet operational or constructed, and none of the three facilities holds an interconnection agreement or a fully executed power purchase agreement. Dalreed Solar explained in the 2022 Recertification that it changed the interconnecting utility because of difficulties with PacifiCorp over interconnection and power purchase agreements.⁸

5. The 2022 Recertification also identified the two affiliated solar QFs, Dalreed Solar II LLC (Dalreed Solar II)⁹ and Pamian Solar LLC (Pamian Solar)¹⁰ (collectively, Affiliated QFs) located 1.75 miles and 6.26 miles, respectively, from Dalreed Solar, each with a net power capacity of 80 MW.¹¹ Dalreed Solar and the Affiliated QFs all list Energy of Utah, LLC (Energy of Utah) as the direct owner, and PGE as the interconnecting utility in their latest Form No. 556s.¹²

⁵ Original Certification, Item 4a.

⁶ Dalreed Solar LLC, Form No. 556, Docket No. QF20-1037-001 (filed January 15, 2021) (2021 Recertification).

⁷ 2022 Recertification, Items 4a, 7g.

⁸ *Id.* Item 8b.

⁹ Dalreed Solar II LLC, Form No. 556, Docket No. QF20-1038-000 (filed June 10, 2020) (Dalreed Solar II Form No. 556).

¹⁰ Pamian Solar LLC, Form No. 556, Docket No. QF20-1276-000 (filed August 13, 2020) (Pamian Solar Form No. 556).

¹¹ 2022 Recertification, Item 8a.

¹² *See id.* Items 4a, 5a; Dalreed Solar II Form No. 556, Items 4a, 5a; Pamian Solar Form No. 556, Items 4a, 5a.

II. Responsive Pleadings

6. On February 14, 2022, PGE filed a motion to intervene and protest of the 2022 Recertification, arguing that Dalreed Solar's self-recertification of QF status should be revoked because the net power production capacity of the Facility exceeds 80 MW when the Facility is considered at the same site as the Affiliated QFs. PGE argues the Facility therefore exceeds the 80 MW statutory power production capacity under PURPA and should not have QF status.¹³

7. On March 16, 2022, Dalreed Solar filed a response.¹⁴ On April 5, 2022, PGE filed a motion for leave to answer and answer to Dalreed Solar's Response.¹⁵ On April 20, 2022, Dalreed Solar filed an answer to PGE's motion.¹⁶ On May 5, 2022, Pamian Solar filed a motion to intervene and response to PGE's answer.¹⁷ On May 5, 2022, Dalreed Solar II filed a motion to intervene and response to PGE's answer.¹⁸ On May 5, 2022, Dalreed Solar filed a motion for leave to answer and answer.¹⁹

¹³ PGE Protest at 1-3.

¹⁴ Dalreed Solar LLC March 16, 2022 Response (Dalreed Solar Response).

¹⁵ Portland General Electric Company April 5, 2022 Motion for Leave to Answer and Answer (PGE Answer).

¹⁶ Dalreed Solar LLC April 20, 2022 Answer to Motion of Portland General Electric Company (Dalreed Solar Answer).

¹⁷ Pamian Solar LLC May 5, 2022 Motion to Intervene and Answer to PGE's Answer (Pamian Solar Answer).

¹⁸ Dalreed Solar II LLC May 5, 2022 Motion to Intervene and Answer to PGE's Answer (Dalreed Solar II Answer).

¹⁹ Dalreed Solar LLC May 5, 2022 Motion for Leave to Answer and Answer (Dalreed Solar Second Answer).

A. PGE Protest

1. Substantive Change

8. PGE asserts that its protest is permissible under the Commission's rules and regulations and Order No. 872²⁰ because the 2022 Recertification contains four substantive changes to Dalreed Solar's previous self-recertification of the Facility.

9. First, PGE states that the 2022 Recertification changes the Facility's net power production capacity from 20 MW to 40 MW, which meets the criteria for a substantive change set forth in Order No. 872. PGE argues that, although Dalreed Solar believes the Facility did not change its net power production capacity when compared to the Original Certification, the Commission's rules for determining whether a substantive change occurs in a self-recertification require that the 2022 Recertification be compared to the existing certification, here the 2021 Recertification, which results in a 20 MW increase in net power production capacity.²¹

10. Second, PGE argues that the change in interconnecting utility from PacifiCorp to PGE is a substantive change because, if it is not considered a substantive change, PGE would need to proactively review and protest the self-certification for any QF that might possibly interconnect with or sell to PGE even if PGE is not currently listed as the off-taking utility in that QF's Form No. 556.²²

11. Third, PGE states that Dalreed Solar lists the Affiliated QFs located within ten miles for the first time in its 2022 Recertification, which constitutes a substantive change.²³ PGE states that the existence of the Affiliated QFs implicates the rebuttable presumption regarding facilities located between one and ten miles of another QF and the

²⁰ *Qualifying Facility Rates & Requirements Implementation Issues Under the Pub. Util. Regul. Policies Act of 1978*, Order No. 872, 172 FERC ¶ 61,041, *order on reh'g*, Order No. 872-A, 173 FERC ¶ 61,158 (2020).

²¹ PGE Protest at 5 (citing 18 C.F.R. 292.207(c)(1) ("Any person...who opposes either a self-certification or self-recertification making substantive change *to the existing certification* ... may file a protest")).

²² *Id.* at 5-6.

²³ *Id.* at 6.

right to protest. PGE adds that the inclusion of this information alters whether the Facility is eligible for QF status.²⁴

12. Fourth, PGE argues that Dalreed Solar's change in the geographic coordinates for the Facility in its 2022 Recertification such that it is now located 1.5 miles north of the location stated in its 2021 Recertification impacts the same-site analysis and therefore also constitutes a substantive change.²⁵

2. Same Site Analysis

13. PGE requests that the Commission find that the Facility's QF status should be revoked because it is located at the "same site" as the Affiliated QFs, and their combined power production capacity exceeds 80 MW.²⁶ PGE argues that not revoking the Facility's QF status is contrary to PURPA's language and intent, and that in Order No. 872 the Commission implemented the rebuttable presumption for facilities more than one mile but less than ten miles apart to better ensure compliance with the statutory requirement that small power production facilities located at the same site are in fact below the 80 MW limit set by statute. PGE argues that the Commission found that this change was necessary to discourage QF developers from disaggregating facilities that exceed the 80 MW cap in order to take advantage of PURPA's benefits, such as the mandatory purchase obligation.²⁷ PGE argues that the Commission should find that these facilities are located at the same site based on the physical characteristics and other factors that the Commission listed in Order No. 872 that the Commission may consider when a protestor seeks to rebut the presumption that facilities located more than one mile but less than ten miles of one another are at separate sites.²⁸

14. Regarding physical characteristics, PGE asserts that the Facility and the Affiliated QFs are all solar photovoltaic facilities, share a common off-taking utility (PGE), and are all located on property owned by Threemile Canyon Farms, LLC (Threemile Canyon Farms). Additionally, PGE asserts that the Facility and the Affiliated QFs share the same 200 MW interconnection request with PGE, and they share busses, step-up transformers,

²⁴ *Id.*

²⁵ *Id.* at 7.

²⁶ *Id.* at 3.

²⁷ *Id.* at 12.

²⁸ *Id.* at 7.

relays, and other interconnection facilities.²⁹ PGE states that it appears that the Facility will be closely integrated with the Affiliated QFs and that their output will be combined before reaching the grid. PGE adds that, although it does not have specific information regarding access and easements amongst the Affiliated QFs, it is reasonable to assume that the facilities will share common access and easements because they are all being developed by Energy of Utah. Similarly, PGE argues, it is reasonable to assume that the Affiliated QFs will share other common infrastructure in addition to the interconnection facilities described because the three facilities are physically close together and closely intertwined.³⁰

15. Regarding ownership and other characteristics, PGE argues that the Facility and the Affiliated QFs are owned, operated, and maintained by the same entity, Energy of Utah. PGE states that the Affiliated QFs both executed Power Purchase Agreements (PPAs) with PGE on January 3, 2022, and Dalreed Solar recently requested to begin PPA negotiations for the Facility's output. PGE expects that these negotiations will conclude within the year, at which point all three facilities will have executed a PPA within 12 months of each other. PGE adds that it is reasonable to assume that the Facility and the Affiliated QFs are to be constructed within 12 months of each other, given that the PPAs for the Affiliated QFs contain scheduled commercial operation dates of December 31, 2023, and the Facility has an expected commercial operation date of September 1, 2024.³¹ PGE states that it requested information regarding Dalreed Solar's financing plans and engineering and procurement contracts for the Facility, and Dalreed Solar did not respond. PGE adds that Dalreed Solar did not preemptively provide separate financing arrangements or engineering or procurement contracts.³²

16. PGE states that on February 9, 2022, it requested information from Dalreed Solar about permitting plans for the Facility and the Affiliated QFs, financing plans for the facilities, and plans regarding engineering and procurement contracts. PGE explains that Dalreed Solar did not respond.

²⁹ *Id.* at 9.

³⁰ *Id.* at 8-9.

³¹ *Id.* at 10.

³² *Id.* at 11-12.

B. Dalreed Solar Response**1. Substantive Change**

17. Dalreed Solar argues the protest should be dismissed on the procedural grounds that no substantive changes were made in the 2022 Recertification. Dalreed Solar explains that Order No. 872 distinguished between “administrative” and “substantive” changes and explained that protests are not permissible when a QF makes “administrative only” changes. Furthermore, Dalreed Solar notes that on rehearing, in Order No. 872-A, the Commission characterized “substantive” changes as those where a facility “is no longer the same facility as it was before.”³³ Dalreed Solar argues that attempting to interconnect and sell the output of the same facility to PGE rather than PacifiCorp is not a substantive change. Dalreed Solar states that, at most, a change in interconnecting utility could present good cause for the Commission to grant a late-filed protest to some earlier filing.³⁴

18. Dalreed Solar argues that identifying Affiliated QFs on the Form No. 556 is an administrative rather than substantive change. Dalreed Solar also argues that the Commission declined in Order No. 872-A to require existing QFs to recertify due to a change in the information it has previously reported regarding its affiliated small power production QFs that are more than one mile but less than ten miles away, explaining that such reporting would be overly burdensome.

19. Dalreed Solar argues that, although a QF changing its size or location would be substantive changes, Dalreed Solar did not meaningfully change the Facility’s size or location. Dalreed Solar argues that initially the Facility was a 40 MW facility with electrical generating equipment at one GPS coordinate, and that Dalreed Solar then sought to develop its 40 MW facility in two 20-MW phases to accommodate PacifiCorp’s interconnection process changes (as described below), but that now the Facility is still a 40 MW facility but with all of its electrical generating equipment at one GPS coordinate at the same location, and it hopes to develop the Facility in a single phase.³⁵

20. Dalreed Solar states that PGE’s references to information it asked for from Dalreed Solar regarding certain factors about which Dalreed Solar did not respond is not relevant, and PGE’s requests were inappropriate. Dalreed Solar acknowledges that it did not respond within three business days, i.e., before PGE notified Dalreed Solar that PGE had reached a final decision to file its protest, but Dalreed Solar had no

³³ *Id.* at 27-28 (citing Order No. 872, 172 FERC ¶ 61,041 at P 550).

³⁴ Dalreed Solar Response at 29-31.

³⁵ *Id.* at 31.

obligation to respond. Dalreed Solar argues that the Commission in Order No. 872 specifically considered whether to allow utilities like PGE to ask QFs for information, and the Commission declined to do so. Dalreed Solar argues that PGE is responsible for making a *prima facie* case, PGE did not provide sufficient time for Dalreed Solar to respond, and Dalreed Solar had no obligation to answer PGE's discovery requests.³⁶

2. Same Site Analysis

21. Dalreed Solar disagrees with PGE that the Facility should be considered at the same site as the Affiliated QFs. Dalreed Solar asks that the Commission consider the unique development history, including litigation histories, of the Facility compared to the Affiliated QFs. Dalreed Solar states that this history was raised in the 2022 Recertification and is therefore an appropriate factor to consider.³⁷

22. Dalreed Solar disputes PGE's claims that it shares many common physical characteristics with the Affiliated QFs. Dalreed Solar explains that Threemile Canyon Farms, the common property owner for Dalreed Solar and the Affiliated QFs, operates a farm in Oregon spanning approximately 145 square miles. Dalreed Solar states that it owns a lease to land in Gilliam County, Oregon, whereas the Affiliated QFs hold two individual land leases in Morrow County, Oregon. Dalreed Solar argues that since different parcels of land, located in different counties, are involved, the Commission should find that property ownership does not indicate that Dalreed Solar is proposed to be

³⁶ *Id.* at 32-33.

³⁷ *Id.* at 33 (citing 2022 Recertification, Item 8b in which Dalreed Solar stated):

Applicant has changed the transacting utility for applicant's facility specifically because of difficulties in transacting with the original utility for interconnection and power purchase contracts. *See* Oregon PUC Docket No. UM 2108, Order No. 20-334 (Sept. 28, 2020) (refusing to order PacifiCorp to honor Dalreed Solar's executed Feasibility Study Agreement) and Oregon PUC Docket No. UM 2182, Order No. 21-097) (declining to penalize PacifiCorp for refusing to negotiate PPA with Dalreed Solar until Dalreed Solar has interconnection study demonstrating commercial operations were possible within 3 years); *see also* PacifiCorp, Cluster Study Report, https://www.oasis.oati.com/woa/docs/PPW/PPWdocs/TCA7C_S.pdf (indicating Dalreed Solar's interconnection would cost \$77 million and take 10 years).

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at the same site as the Affiliated QFs. Dalreed Solar adds that each facility is pursuing its own agreement for access and easement purposes.³⁸

³⁸ *Id.* at 38.

23. Dalreed Solar argues that the date the property lease agreements were executed is irrelevant because lease agreements are notarized and it is reasonable to expect representatives of businesses like Energy of Utah and Threemile Canyon Farms to seek to minimize the number of notary appointments they must make.³⁹

24. Dalreed Solar argues that PGE's assertion that Dalreed Solar shares the same 200 MW interconnection request as the Affiliated QFs ignores the multiple interconnection requests previously filed by Dalreed Solar with PacifiCorp and for the Affiliate QFs with PGE. Dalreed Solar states that PGE has not processed some interconnection requests to connect at the step-up transformer of the now-closed Boardman coal plant. Dalreed Solar states that this request is still under consideration. Dalreed Solar states that the reason Dalreed Solar shares the interconnection request with the Affiliated QFs is that Dalreed Solar's first interconnection request with PacifiCorp was unsuccessful, Dalreed Solar II's 80 MW interconnection request with PGE was cost prohibitive, and PGE did not process alternative requests, like Pamian Solar's, to interconnect at the now-closed Boardman facility's step-up transformer. Dalreed Solar argues that, if these primary requests for the different facilities had been successful, then there would be no shared interconnection facilities between all three facilities.⁴⁰

25. Dalreed Solar argues that the Commission should decline to consider interconnection equipment or shared connection to the grid as dispositive or indicative with regard to QF siting restrictions. Dalreed Solar contends that the Commission has found that QFs may share an interconnection and remain at separate sites.⁴¹ In support of this contention, Dalreed Solar explains that the Commission's rules state that the distance between QFs is measured from electrical generating equipment,⁴² that the Commission has held that multiple QFs may share interconnection equipment,⁴³ and that the

³⁹ *Id.* at 37.

⁴⁰ *Id.* at 38-39.

⁴¹ *Id.* at 40. We disagree with Dalreed Solar's statement that interconnection equipment "is not relevant to FERC's analysis of 'same site' issues," as discussed further below.

⁴² *Id.* at 39 (citing 18 C.F.R. § 292.204(a)(ii) (2021)).

⁴³ *Id.* at 40 (citing *Gamma Mariah, Inc.*, 44 FERC ¶ 61,442 (1988) (*Gamma Mariah*)).

Commission has previously recognized a shared connection to the grid between two QFs as acceptable without serving to demonstrate that the two QFs were co-located.⁴⁴

26. Dalreed Solar acknowledges that all three facilities are solar QFs and share common ownership, but states that these are dispositive factors which, if not true, would make PGE's entire protest moot since the rebuttable presumption set forth in section 292.204(a)(2) of the Commission's regulations only applies to affiliated small power production facilities that use the same energy resource. Regarding permitting, Dalreed Solar states that it is pursuing a conditional use permit and cannot rely on the permits issued for the Affiliated QFs because permits are at the county level and thus will need to be separately permitted. Dalreed Solar states that part of the separate permitting process required Dalreed Solar to conduct a separate soil study and a separate wildlife mitigation plan for the Facility.⁴⁵

27. Dalreed Solar states that it is currently unknown who the owners of Dalreed Solar and the Affiliated QFs will be when they come online. Dalreed Solar states that the Commission has previously stated for purposes of QF certification that the critical date is the date the facility first produces electrical energy, and whether the facility satisfies the statutory and regulatory requirements of QF status before the facility produces electric energy is irrelevant. Similarly, Dalreed Solar states that it currently expects that separate companies will provide operation and maintenance services for the Facility and Affiliated QFs, and that the financing and construction arrangements for the facilities are not yet known.⁴⁶

28. Dalreed Solar also states that the Facility's expected commercial operation date is more than 12 months after the commercial operation dates of the Affiliated QFs.⁴⁷ Furthermore, Dalreed Solar states that construction "by the same entity" is not yet known. Regarding the timing of PPA execution, Dalreed Solar argues that it made substantial efforts to negotiate and execute a PPA with PacifiCorp in 2020, which is more than 12 months earlier than the execution of the PPAs for the Affiliated QFs. Additionally, Dalreed Solar states that there was a financial advantage to placing a solar facility in service by January 1, 2024, until Congress extended the financial investment tax credit, which pushed that deadline to 2026. Dalreed Solar notes that construction of the Facility will still need to begin in 2023. Dalreed Solar states that, now that the law

⁴⁴ *Id.* at 42 (citing *Coso Energy Devs*, 45 FERC ¶ 61,003, at 61,005 (1988) (*Coso Energy*)).

⁴⁵ *Id.* at 43-44.

⁴⁶ *Id.* at 45.

⁴⁷ *Id.* at 44-47.

has changed and it is pursuing a PPA with PGE, it no longer expects the Facility to be commercially operational within the same year as the Affiliated QFs.⁴⁸

3. Interconnection History

29. Dalreed Solar argues that the Commission must consider the facts specific to the Facility.⁴⁹ Dalreed Solar explains that Energy of Utah's business model relies on third-party financing, including the sale of a facility or development rights, and states that obtaining reasonable financing is not possible until after certain milestones have been met, such as Energy of Utah establishing that a project has a decent chance of success.

30. Dalreed Solar states that that area of northern-central Oregon is attractive for solar renewable energy development because it has strong solar potential, and the area is generally more electrically developed and accessible than Oregon's other sunny regions, primarily the rural southeast of the state. Dalreed Solar states there are four different Bonneville Power Administration (BPA) transmission lines near the Facility and the Affiliated QFs, but fewer BPA assets in other areas of southeastern Oregon, that PacifiCorp has two substations nearby, and PGE has one substation. Dalreed Solar also notes that PGE's 550 MW coal-fired Boardman Generating Station, which PGE closed in 2020, is also located nearby.

31. Dalreed Solar states that it began the interconnection process with PacifiCorp in March 2020, after which Dalreed Solar submitted an interconnection request indicating two potential requested points of interconnection, and PacifiCorp executed a Feasibility Study Agreement. Dalreed Solar states that PacifiCorp never provided the contracted-for feasibility study and would not negotiate a QF PPA for the Facility until Dalreed Solar first obtained such a feasibility study from PacifiCorp. Dalreed Solar states that, on July 15, 2020, the Oregon Public Utility Commission (Oregon PUC) approved PacifiCorp's request to change its serial queue process to a cluster study process. Dalreed Solar states that interconnection customers in PacifiCorp's existing queue had until October 15, 2020 to opt into PacifiCorp's cluster study process. Dalreed Solar states that PacifiCorp refused to study the Facility with two different points of interconnection, as it had agreed to under the feasibility study agreement. Dalreed Solar explains that it then pursued two 20 MW interconnection applications, with different points of interconnection.⁵⁰ Dalreed

⁴⁸ *Id.* at 48.

⁴⁹ *Id.* at 9.

⁵⁰ *Id.* at 16-18. Dalreed Solar states that the challenges faced in PacifiCorp's interconnection process led Dalreed Solar to self-recertify as a 20 MW QF in Docket No. QF20-1037-001, thereby breaking up its original 40 MW QF into two 20 MW QFs (the other 20 MW QF filed in Docket No. QF21-446-000).

Solar states that it disputed the results of the study, which had an estimated cost of \$77.02 million and an estimated time to interconnect of 10 years for one of the 20 MW interconnection applications. Dalreed Solar states that it sought to get PacifiCorp to agree to assume the use of third-party transmission under an energy resource interconnection study approach, but both 20 MW projects were ultimately withdrawn from the queue. Dalreed Solar explains that, in contrast, the Affiliated QFs have filed interconnection applications only with PGE and BPA. Dalreed Solar states that PacifiCorp's actions leading to Dalreed Solar submitting two separate 20 MW requests were obstructionist and should not be rewarded.

32. Dalreed Solar argues that the Facility was self-certified as a QF prior to Order No. 872, and the Facility qualifies for QF status under the Commission's pre-Order No. 872 one-mile rule that established an irrebuttable presumption that QFs more than one mile from other affiliated QFs are at separate sites. Dalreed Solar contends that the Facility is grandfathered and that revoking the Facility's QF status based on the Commission's new one-to-ten-mile rule would amount to retroactive rulemaking that is arbitrary and capricious, and potentially unconstitutional as applied to Dalreed Solar.⁵¹

4. Request for waiver

33. Dalreed Solar requests that the Commission find that good cause exists to grant a waiver of the size of a facility if the Commission declines to find that the Facility's QF status is grandfathered, that PGE's protest is procedurally invalid, or that the factors demonstrate that Dalreed Solar is at a separate site than the Affiliated QFs. Dalreed Solar argues that it seeks to develop a solar facility in an area with high solar potential and characteristics particularly attractive for development in the near-term. Thus, Dalreed Solar argues that its case is similar to previous cases considered by the Commission where the Commission found that the location of the facilities was specifically selected based on the availability of the resource.⁵² Dalreed Solar argues that the purpose of the revision to the one-mile rule was to address allegations of improper circumvention of the one-mile rule, thus Dalreed Solar believes it is appropriate for the Commission to consider that Dalreed Solar's site was not chosen with the intent of circumventing the Commission's rules.⁵³

⁵¹ *Id.* at 25-26.

⁵² *Id.* at 49 (citing *Windfarms, Ltd.*, 13 FERC ¶ 61,017 (1980) (*Windfarms*); *Windfarms, Ltd.*, 19 FERC ¶ 61,220 (1982) (*Windfarms II*)).

⁵³ *Id.* at 51-52.

C. PGE's Answer to Dalreed Solar's Response

34. PGE states that, in adopting the rebuttable presumption for QFs between one and ten miles apart, the Commission sought to discourage developers from disaggregating one large facility into several smaller QFs. PGE states that, in Oregon, there is significant renewable development taking place outside PURPA and that, in these circumstances, it is appropriate for the Commission to strictly enforce PURPA's size limitation by applying the same-site rule.⁵⁴

35. PGE states that, although Dalreed Solar argues that the Facility should be grandfathered, the Commission carefully considered which QFs should be grandfathered and found that QFs like Dalreed Solar making substantive changes to their facilities must comply with the new rule. PGE argues that Dalreed Solar's challenges interconnecting with and selling to another utility are unproven and irrelevant to the same-site analysis.⁵⁵

36. PGE states that it was not involved in the disputes between Dalreed Solar and PacifiCorp. PGE argues that Dalreed Solar's past development efforts, interconnection efforts, and litigation history have no bearing on whether Dalreed Solar and the Affiliated QFs are located at the same site and is therefore irrelevant. PGE argues that the same site analysis concerns the facilities and does not inquire into the motivations or causes for the configuration or design of the facilities.⁵⁶

37. PGE states that, although Dalreed Solar claims that a different interconnection request it submitted to PGE is still under discussion, PGE never accepted this request into its queue and that PGE does not consider the requested point of interconnection to be valid.⁵⁷

38. PGE states that Dalreed Solar's argument that shared interconnection equipment is permissible, and not relevant to the same-site analysis, relies on cases that are more than

⁵⁴ PGE Answer at 2-3.

⁵⁵ *Id.* at 3-4.

⁵⁶ *Id.* at 8-11.

⁵⁷ *Id.* at 11-12. PGE states that Energy of Utah withdrew its interconnection request before PGE could begin a system impact study because Energy of Utah determined the interconnection costs at its chosen location were too high. *Id.* at 11 n.50.

three decades old and ignores the Commission's recent guidance in Order No. 872, which, over protests, included interconnection facilities as a factor.⁵⁸

39. PGE argues that the hypothetical future ownership of Dalreed Solar is irrelevant, and the Commission should not permit Dalreed Solar to avoid a same-site finding by asserting that its ownership may change in the future. PGE argues that Dalreed Solar has the option to wait until its final ownership is determined before seeking QF status.⁵⁹

40. PGE states that, although Dalreed Solar moved its proposed commercial operation date by six months after PGE filed its protest, such that Dalreed Solar now intends for its Facility to come online approximately 14 months after the Affiliated QFs' scheduled commercial operation date, this minor change should not affect the same-site analysis since the Facility will still be developed on a similar timeline as the Affiliated QFs.⁶⁰

41. PGE argues that Dalreed Solar's request for waiver on the grounds that Dalreed Solar's location is an attractive development site is not appropriate because, if Energy of Utah believes Gilliam and Morrow counties are favorable for solar facilities above 80 MW, then it can bid its project into a utility's competitive solicitation and not develop as a QF.⁶¹ PGE argues that Commission precedent does not support Dalreed Solar's requested waiver because, in both the cases Dalreed Solar cites, the Commission found good cause to grant a waiver for wind farms that were to be built on specific ridges where the wind resource was concentrated. PGE argues that these cases are very different from the present situation, as the sun is consistently available throughout the area where Energy of Utah plans to site the facilities – not just in certain limited areas.⁶² PGE argues that Dalreed Solar's situation is similar to the cases where the Commission has denied a waiver after finding that “the optimum use of the assets and the economic efficiency in co-locating facilities do not alone provide a justification for waiving the one-mile rule.”⁶³

⁵⁸ *Id.* at 12.

⁵⁹ *Id.* at 13-14.

⁶⁰ *Id.* at 14.

⁶¹ *Id.* at 16.

⁶² *Id.* at 17 (citing *Windfarms*, 13 FERC ¶ 61,017; *Windfarms II*, 19 FERC ¶ 61,220).

⁶³ *Id.* (citing *Vulcan/BN Geothermal Power Co.*, 52 FERC ¶ 61,095 (1990)).

D. Dalreed Solar's Answer to PGE's Answer

42. Dalreed Solar states that PGE's answer attempts to update its prior expert's opinion regarding an interconnection request that PGE is reviewing that could serve Dalreed Solar but adds no new facts. Dalreed Solar argues that PGE's statement in its answer that the interconnection request to BPA is significantly larger than Dalreed Solar's size is already apparent from Dalreed Solar's response, but Dalreed Solar's response only discusses the BPA request in discussing the interconnection efforts of Dalreed Solar II, not Dalreed Solar.⁶⁴ Dalreed Solar states that PGE claims in its answer that Dalreed Solar has the option to wait until final ownership is determined before seeking QF status. However, Dalreed Solar argues that its business model precludes it from seeking QF status after final ownership is determined, and that PGE will not negotiate a QF PPA until after a facility receives QF status.⁶⁵ Furthermore, Dalreed Solar states that PGE's claims that Dalreed Solar can develop its projects outside of PURPA is not relevant to the question of whether Dalreed Solar qualifies as a QF.⁶⁶

43. Dalreed Solar argues that the Commission's protest procedures for Form No. 556 self-recertifications do not allow PGE's answer because, according to Dalreed Solar, the Commission specifically authorized the QF to have the last word by allowing QFs to file answers to protests.⁶⁷

E. Responses of the Affiliated QFs

44. The Affiliated QFs filed responses to PGE's Answer arguing that PGE's Answer could be viewed as a protest to the QF status of the Affiliated QFs and, therefore, the Affiliated QFs have a right to respond. The Affiliated QFs contend that this case concerns only the self-recertification of the Facility and that the QF status of the Affiliated QFs is not at issue. However, according to the Affiliated QFs, PGE appears to be asking the Commission to find that all three QFs are located at the same site. The Affiliated QFs respond that their QF status is grandfathered under Order No. 872. The Affiliated QFs also argue that, because PGE's Answer appears to contest the QF status of

⁶⁴ Dalreed Solar Answer 6-7.

⁶⁵ *Id.* at 8-9.

⁶⁶ *Id.* at 10.

⁶⁷ *Id.* at 15 (citing Order No. 872, 172 FERC ¶ 61,041 at P 558).

the Affiliated QFs, the Commission should decline to consider PGE's Answer because it is beyond the scope of this proceeding.⁶⁸

F. Dalreed Solar's Second Answer

45. In response to PGE's Answer, Dalreed Solar argues, like the Affiliated QFs, that this proceeding is solely about the Facility, and not the QF status of the Affiliated QFs. Dalreed Solar further argues that PGE incorrectly characterizes items in the record, including the Facility's developmental history as two 20 MW facilities due to challenges with interconnecting to PacifiCorp; the relevance to this proceeding and importance of the PacifiCorp interconnection history (Dalreed Solar argues that prior interconnection and litigation history are relevant factors to consider); Dalreed Solar's interactions with PacifiCorp; the Oregon PUC's decisions concerning Dalreed's interconnection to and PPA negotiations with PacifiCorp; unresolved disputes regarding potential alternative interconnection requests to PGE, and the Facility's updated commercial operation date, which Dalreed Solar asserts PGE incorrectly characterizes as a delay. Moreover, Dalreed Solar explains that interconnection costs were not the sole obstacle to interconnecting its Facility with PacifiCorp.⁶⁹ Dalreed Solar further argues that PGE offers arguments that are not relevant here, including that Dalreed Solar should wait to certify the Facility until final ownership is known, which Dalreed Solar argues is not a realistic option. Dalreed Solar explains that its preference is to not file a Form No. 556 until it begins delivery of its net output, which is when the Commission has stated a facility must be certified as a QF. However, Dalreed Solar asserts, it is PGE's corporate policy to require QFs to provide a Form No. 556 or similar documentation before PGE will provide indicative pricing or negotiate a QF power purchase agreement, which is necessary for a QF to obtain financing.⁷⁰ Dalreed Solar states that it anticipates that it will have entirely different ownership at the time it begins selling electricity, and that the Commission could uphold the Facility's QF status subject to the condition that ownership must change prior to commercial operations.⁷¹

⁶⁸ Pamian Solar Answer at 1-6; Dalreed Solar II Answer at 1-6.

⁶⁹ Dalreed Solar Second Answer at 12-13.

⁷⁰ *Id.* at 22-23.

⁷¹ *Id.* at 31-32.

III. Discussion

A. Procedural Matters

46. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2021), PGE's timely, unopposed motion to intervene serves to make it a party to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d), we grant Pamian Solar and Dalreed Solar II's late-filed motions to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

47. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2021), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We accept the answers filed in this proceeding because they have provided information that assisted us in our decision-making process.⁷²

B. Substantive Matters

1. Whether PGE's Protest is Permissible

48. As discussed below, we find that PGE's protest is permitted because Dalreed Solar made a substantive change to its 2022 Recertification by doubling the power production capacity of the Facility.

49. Order No. 872 amended the Commission's regulations to allow an interested person or entity to seek to intervene and to file a protest of a self-certification or self-recertification of a QF, and not have to file a petition for declaratory order and pay the filing fee for petitions.⁷³ Existing QFs that file for recertification due to substantive changes are subject to their recertifications being protested.⁷⁴ In Order No. 872, the Commission also specifically explained that "[s]ubstantive changes that may be subject to protest include, for example, a change in electrical generating equipment that increases

⁷² Dalreed Solar's assertions that, pursuant to Order No. 872, protesters are entitled to have the last word is an inaccurate reading of Order No. 872. Rather, Order No. 872 states that the applicant's response to a protest will be allowed under 18 C.F.R. § 385.213(a)(2). Order No. 872, 172 FERC ¶ 61,041 at P 558. And, the traditional approach to answers to protests and to answers would apply.

⁷³ Order No. 872, 172 FERC ¶ 61,041 at P 547; *see* 18 C.F.R. § 292.207(c)(1)-(2).

⁷⁴ Order No. 872-A, 173 FERC ¶ 61,158 at P 326.

power production capacity by the greater of 1 MW or 5 percent of the previously certified capacity of the QF....”⁷⁵

50. In the 2022 Recertification, Dalreed Solar indicates that the Facility will have a net power production capacity of 40 MW. When compared to Dalreed Solar’s 2021 Recertification, which indicated a 20 MW net power production capacity, its 2022 Recertification represents a doubling of net power production capacity,⁷⁶ i.e., both a 20 MW increase and a 100% increase compared to the existing certification, and thus is a substantive change given the guidance provided by the Commission in Order No. 872.⁷⁷ We find that Dalreed Solar’s change in net power production capacity of its Facility is a substantive change to the existing certification and therefore find that PGE may protest Dalreed Solar’s self-recertification under section 292.207(c)(1) of the Commission’s regulations.

51. Additionally, although Dalreed Solar argues that the 2022 Recertification did not make a substantive change compared to the Original Certification, the correct comparison is between the 2022 Recertification and the 2021 Recertification, which is the *existing certification*, as set forth in sections 292.207(c)(1) and (2) of the Commission’s regulations. Likewise, corresponding changes that Dalreed Solar made in Docket No. QF21-446-000 for the purpose of splitting the Facility into two 20 MW facilities do not affect whether substantive changes to the Facility in this proceeding are present that allow PGE to file a protest.

52. We need not decide here whether the other changes set forth by PGE would be considered, in and of themselves, substantive changes. As explained in Order No. 872, “[t]he Commission can determine, on a case-by-case basis, whether the evidence presented represents a substantive change or whether the change is non-substantive and thus not subject to protests.”⁷⁸ The Commission further explained that “[w]e continue to believe that conducting a case-by-case analysis is the best way to determine whether the change that prompted recertification is substantive.”⁷⁹

⁷⁵ Order No. 872, 172 FERC ¶ 61,041 at P 550.

⁷⁶ Compare 2022 Recertification (listing 124,800 solar panels with a total maximum net power production capacity of 40 MWs), with 2021 Recertification (listing 62,400 solar panels with a total maximum net power production capacity of 20 MWs).

⁷⁷ See Order No. 872, 172 FERC ¶ 61,041 at P 550.

⁷⁸ Order No. 872-A, 173 FERC ¶ 61,158 at P 326.

⁷⁹ *Id.*

53. We disagree with Dalreed Solar that the Facility is grandfathered under the pre-Order No. 872 rules. Order No. 872's rules do apply to the 2022 Recertification because Dalreed Solar made substantive changes to the Facility in the 2022 Recertification and filed the 2022 Recertification after the effective date of Order No. 872, and thus protests are permissible.⁸⁰ The Commission specifically rejected arguments that Order No. 872 amounts to retroactive rulemaking, finding that the rule is prospective since the new rule applies "only if and when new facts" prompt a recertification.⁸¹ As the Commission explained in Order No. 872-A, when an existing QF makes a substantive change, it is no longer the same facility it was before, and the new regulations apply.⁸² Additionally, we do not agree that applying the rules set forth in Order No. 872 to the Facility amounts to an "unconstitutional taking."⁸³ Dalreed Solar does not explain how applying the rules in this context would constitute a taking, nor, we add, is a property right being taken away.

2. Whether the Facility is located at the Same Site as the Affiliated QFs

54. As discussed below, we find that the Facility is located at the same site as the Affiliated QFs and therefore that the Facility's net power production capacity exceeds the 80 MW limit on small power production QFs. We, therefore, revoke the Facility's QF status. PGE has met its burden of rebutting the presumption that the Facility is at a separate site from the Affiliated QFs, because PGE made a compelling showing, based on several relevant factors, that the Facility should be considered to be at the same site as the Affiliated QFs and thus the Facility does not qualify for QF certification as a *small* power production facility.⁸⁴

55. Order No. 872 revised the Commission's regulations in 18 C.F.R. § 292.204(a)(2)(i)(C) to state that there is a *rebuttable* presumption that affiliated QFs that use the same energy resource and are located more than one mile and less than ten miles

⁸⁰ Order No. 872, 172 FERC ¶ 61,041 at PP 469, 548; 18 C.F.R. § 292.207(c).

⁸¹ Order No. 872-A, 173 FERC ¶ 61,158 at P 324 (disagreeing with commenters that "the new rebuttable presumption for affiliated facilities more than one mile but less than 10 miles apart will have retroactive effect when applied to existing facilities seeking recertification. The new regulations do not apply to an existing facility unless and until it must recertify because of changes to the material facts and representations").

⁸² *Id.*

⁸³ Dalreed Solar Response at 26.

⁸⁴ *See* 16 U.S.C. § 796(17).

from the facility seeking certification or recertification are located at separate sites.⁸⁵ Order No. 872 also provided a number of factors that the Commission may consider as relevant indicia regarding whether a facility is or is not, in fact, located at the same site as an affiliated QF.⁸⁶ The Commission explained that no individual factor is dispositive.

⁸⁵ 18 C.F.R. § 292.204(a)(2)(i)(C). The Commission opined in Order No. 872 that “ownership by a single entity of multiple small power production QFs in close proximity to each other that together exceed a power production capacity of 80 MW, and whether this improperly circumvents the Commission’s regulations, is precisely what the new rebuttable presumption is seeking to address.” Order No. 872, 172 FERC ¶ 61,041 at P 493.

⁸⁶ The examples of the factors that the Commission may consider included:

Physical characteristics, including such common characteristics as: infrastructure, property ownership, property leases, control facilities, access and easements, interconnection agreements, interconnection facilities up to the point of interconnection to the distribution or transmission system, collector systems or facilities, points of interconnection, motive force or fuel source, off-take arrangements, connections to the electrical grid, evidence of shared control systems, common permitting and land leasing, and shared step-up transformers.

Ownership/Other Characteristics, including such characteristics as whether the facilities in question are: owned or controlled by the same person(s) or affiliated persons(s), operated and maintained by the same or affiliated entity(ies), selling to the same electric utility, using common debt or equity financing, constructed by the same entity within 12 months, managing a power sales agreement executed within 12 months of a similar and affiliated small power production qualifying facility in the same location, placed into service within 12 months of an affiliated small power production QF project’s commercial operation date as specified in the power sales agreement, or sharing engineering or procurement contracts.

Order No. 872, 172 FERC ¶ 61,041 at P 472 and P 509; *see also* Order No 872-A at P 203 (“We again stress that, in the final rule, the Commission stated that the factors in the list were merely ‘examples of the factors the Commission may consider.’”) (citing Order No. 872, 172 FERC ¶ 61,041 at P 509).

Rather, it will conduct a case-by-case analysis, weighing the evidence for and against.⁸⁷ The Commission stated that the more compelling the showing that affiliated small power production QFs should be considered to be at the same site as the particular small power production facility seeking QF status, the more likely the Commission will be to find that the facilities in question are located at the same site. The Commission thus looks at the factors relevant to each particular case and weighs the evidence to determine whether affiliated QFs using the same energy resource are at the same site and thus should be treated as one QF to determine whether its power production capacity exceeds 80 MW.⁸⁸ That is, while the presumption is that affiliated QFs located more than one mile and less than ten miles from the facility seeking certification or recertification are located at separate sites,⁸⁹ this presumption may be overcome where the record sufficiently demonstrates that the relevant facilities are located at the same site.

56. Here, we find that PGE has provided sufficient evidence to meet its burden to overcome the rebuttable presumption because the Facility and the Affiliated QFs demonstrate many of the physical and ownership characteristic factors indicating that the Facility is at the same site as the Affiliated QFs. Record evidence shows that the Facility and the Affiliated QFs, which are solar plants that have the same energy resource, are owned by the same entity (Energy of Utah) and have the same operator.⁹⁰ The Facility and the Affiliated QFs share a common off-taking utility (PGE), share a common 200 MW interconnection request with PGE, and common interconnection facilities, including shared busses, step-up transformers, and relays.⁹¹ As PGE notes, it appears, as shown by the one-line diagram,⁹² the Facility and the Affiliated QFs would likely share an interconnection point to deliver their output to the grid. The Facility and the Affiliated

⁸⁷ Order No. 872, 172 FERC ¶ 61,041 at P 511.

⁸⁸ Order No. 872-A, 173 FERC ¶ 61,158 at P 277 (“We reiterate that no single factor is dispositive and the factors are included as examples of facts that the Commission may consider on a case-by-case basis.”).

⁸⁹ Order No. 872, 172 FERC ¶ 61,041 at P 492 (“[T]here is still a presumption that they are at separate sites, though the Commission today makes that presumption a rebuttable presumption.”).

⁹⁰ PGE Protest, Ex. E.

⁹¹ *Id.* Ex. G, 2022 Recertification.

⁹² PGE Protest, Ex. H.

QFs are also located on land owned by the same landowner.⁹³ Additionally, the Affiliated QFs established PPAs with PGE in early 2022, and PGE is currently in PPA negotiations with Dalreed Solar.⁹⁴

57. Dalreed Solar does not dispute these facts, but rather offers reasons why the Commission should discount this evidence. We are not persuaded by the arguments that Dalreed Solar offers to discount the evidence in the record. While Dalreed Solar argues that the Commission should consider its Facility's unique interconnection history with PacifiCorp, the Commission considers most relevant to its determination the evidence as it exists now, as presented in the 2022 Recertification and other record evidence.⁹⁵ Namely that, although Dalreed Solar could have had a different off-taker, a separate interconnection request, and a different PPA *if* its negotiations with PacifiCorp had been successful, that did not occur. Under the currently pending 2022 Recertification, the Facility shares a number of common interconnection characteristics with the Affiliated QFs, which weighs in favor of a same site determination. Similarly, Dalreed Solar acknowledges that currently Energy of Utah is the sole owner and manager of the Facility and the Affiliated QFs, but contends that in the future there may be a different owner/operator for each facility.⁹⁶ Yet, the 2022 Recertification is before the Commission in this proceeding, and under the facts of the 2022 Recertification, the Facility is currently owned and managed by the same entity as the Affiliated QFs, and thus current shared ownership is another factor in favor of finding that the Facility is at the same site as the Affiliated QFs. Additionally, we disagree that the Commission can conditionally affirm QF status for the Facility based upon one of the factors changing before the Facility reaches commercial operation. Upon submitting Form No. 556, a small power production facility at that time either meets the requirements to qualify as a QF under PURPA and the Commission's regulations⁹⁷ or it does not. There is no precedent or regulation that allows the Commission to conditionally affirm QF status based on what may happen in the future.

⁹³ *Id.* Ex. D.

⁹⁴ PGE Protest at 11.

⁹⁵ *Cf.* Order No. 872, 172 FERC ¶ 61,041 at P 469 (requiring any protest to be adequately supported, that general allegations and unsupported assertions will not provide a basis for denial of a recertification or certification).

⁹⁶ Dalreed Solar Response at 45.

⁹⁷ *See, e.g.*, 18 C.F.R. § 292.207 (procedures for obtaining qualifying status, including submitting the FERC Form No. 556).

58. Dalreed Solar's reliance on *Coso Energy*⁹⁸ and *Gamma Mariah*,⁹⁹ to support its argument that the Commission should not consider interconnection factors here is misplaced. Neither case supports Dalreed Solar's proposition. In *Coso Energy*, the Commission applied the then-effective, pre-Order No. 872 one mile rule to determine that two QFs were not located within one mile of each other because the distance between two facilities is measured by the distance between the electric generating equipment of the facilities, and that a transmission line connecting two facilities was not considered electric generating equipment and therefore not relevant to the analysis.¹⁰⁰ In *Gamma Mariah*, the issue was whether QFs can collectively own undivided interests in a transmission line and the Commission found that the interests in the transmission facilities could be part of the individual QFs.¹⁰¹ Here, on the other hand, PGE seeks to rebut the presumption that the Facility is at a separate site as the Affiliated QFs using the factors set forth in Order No. 872, which specifically deems potentially relevant an analysis of physical, ownership, and other characteristics, including common interconnection facilities.¹⁰²

59. Dalreed Solar argues that the locations of the Facility and the Affiliated QFs were chosen because north central Oregon has particularly good solar resource potential and is more electrically developed and accessible than Oregon's other sunny regions, with three potential utilities to which to interconnect.¹⁰³ Although Dalreed Solar points to evidence to suggest there may be commercial advantages to siting in this general location, it offers no energy resource-based factor or operational considerations to justify the relative proximity of the Facility and the Affiliated QFs or why the facilities were clustered the way they are. Based on the record before the Commission, there is nothing unique about this particular location that would explain why the Facility site was selected or why the Facility and the Affiliated QFs need to be located in this particular configuration.

60. In sum, Dalreed Solar's argument as to why its Facility should not be found to be at the same site as the Affiliated QFs, notwithstanding the above record evidence, is that the locations of the Facility and the Affiliated QFs are in separate (but adjacent) counties, and thus face separate land permitting and leasing requirements. However, these limited

⁹⁸ *Id.* at 42 (citing *Coso Energy*, 45 FERC at 61,005).

⁹⁹ *Id.* at 40 (citing *Gamma Mariah*, 44 FERC at 62,398).

¹⁰⁰ *Coso Energy*, 45 FERC at 61,005.

¹⁰¹ *Gamma Mariah*, 44 FERC at 62,399.

¹⁰² Order No. 872, 172 FERC ¶ 61,041 at PP 472, 509.

¹⁰³ Dalreed Solar Response at 13-15.

facts are not adequate to prevent PGE from rebutting the presumption that the Facility and the Affiliated QFs are not located at the same site, given the compelling evidence presented by PGE, as discussed above; the facilities are, after all, still less than 10 miles apart and face separate permitting and leasing only by the fact that the land involved crosses two counties.

61. Based on the factors presented, and after weighing the evidence, we find that the Facility is located at the same site as the Affiliated QFs.¹⁰⁴ We therefore revoke the Facility's QF status.

62. We reiterate that this finding is the result of a case-by-case analysis and does not necessarily indicate that any certain factors are dispositive. Additionally, we note that our finding does not preclude Dalreed Solar from developing the Facility; rather, the finding precludes Dalreed Solar from selling the Facility's output pursuant to PURPA at an avoided cost rate. Additionally, we note that if the circumstances underlying the Commission's findings here change such that, for example, Dalreed Solar is no longer affiliated with the Affiliated QFs, the Facility could seek to re-file for QF status.

3. Dalreed Solar's Request for Waiver

63. In the alternative, Dalreed Solar requests waiver, under section 292.204(a)(3) of the Commission's regulations,¹⁰⁵ "of the method of calculating the size of a facility so as to reach the conclusion that Dalreed Solar is a 40 MW QF and does not exceed PURPA's 80 MW limit."¹⁰⁶ Dalreed Solar argues three reasons that good cause exists for granting waiver, because Dalreed Solar's proposed location: (1) has high solar potential and is "particularly attractive for development in the near-term."¹⁰⁷ (2) will be located on different parcels and distinguishable from the Affiliated QFs; and (3) was not chosen with the intent of circumventing Commission same site rules.

64. We do not find that good cause exists here to grant Dalreed Solar's requested waiver. In a prior case, the Commission found good cause to grant waiver of the same site rule for windfarms that were to be built on three separate and specific ridges where

¹⁰⁴ We agree with Pamian Solar and Dalreed Solar II that their status as QFs is not before us in this proceeding.

¹⁰⁵ 18 C.F.R. § 292.204(a)(3).

¹⁰⁶ Dalreed Solar Response at 49.

¹⁰⁷ *Id.* at 52-53 (citing *Windfarms*, 13 FERC at 61,032 (granting waiver of the same site rule for three windfarms due to nature of the renewable resource and topography)).

the energy resource was shown to be particularly concentrated and the wind velocity was thus greatest.¹⁰⁸ Here, Dalreed Solar has not demonstrated that due to, for example, the unique topography of the planned location for the Facility, the solar resource is uniquely more concentrated at Dalreed Solar's proposed location than any other location within north central Oregon. Further, as discussed above, we find that the parcels of land for the Facility are not sufficiently, uniquely distinguishable from those of the Affiliated QFs to justify granting waiver.¹⁰⁹ On balance we do not find good cause to grant Dalreed Solar's requested waiver.¹¹⁰

4. Other Issues

65. As noted above, PGE, in its protest, states that on February 8, 2022, it requested that Dalreed Solar provide certain information relating to whether the Facility should be considered at the same or a separate site as the Affiliated QFs and Dalreed Solar did not respond. We agree with Dalreed Solar that it owed no obligation to PGE to respond to such information requests.¹¹¹

¹⁰⁸ *Windfarms II*, 19 FERC at 61,435.

¹⁰⁹ *See supra* P 58.

¹¹⁰ With our findings on the first two points, a discussion as to Dalreed Solar's intentions – whether or not it sought to improperly circumvent the siting rule – is unnecessary.

¹¹¹ Order No. 872, 172 FERC ¶ 61,041 at P 557 (“Just as public utilities are typically not subject to discovery with regard to their rate filings under section 205 of the FPA prior to the Commission's instituting trial-type evidentiary hearings, we similarly decline to make QFs subject to discovery requests when they self-certify or self-recertify.”).

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The Commission orders:

The Facility's QF status is hereby revoked, as discussed in the body of this order.

By the Commission.

(S E A L)

Debbie-Anne A. Reese,
Deputy Secretary.

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