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Revisions to Form, Procedures, and Criteria for Certification of Qualifying Facility Status for a Small Power Production or Cogeneration Facility; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 131 and 292

[Docket No. RM09–23–000; Order No. 732]

Revisions to Form, Procedures, and Criteria for Certification of Qualifying Facility Status for a Small Power Production or Cogeneration Facility

Issued March 19, 2010.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is revising its regulations, which prior to this Final Rule provided the FERC Form No. 556 that is used in the certification of qualifying status for an existing or proposed small power production or cogeneration facility. The adopted revisions remove the contents of the Form No. 556 from the regulations, and, in their place, provide that an applicant seeking to certify qualifying facility (QF) status of a small power production or cogeneration facility must complete, and electronically file, the Form No. 556 that is in effect at the time of filing. We also revise and reformat the Form No. 556 to clarify the content of the form and to take advantage of newer technologies that will reduce both the filing burden for applicants and the processing burden for the Commission. We also adopt an exemption, for generating facilities with net power production capacities of 1 MW or less, from the requirement that a generating facility, to be a QF, file either a notice of self-certification or an application for Commission certification, and codify the Commission's authority to waive the QF certification requirement for good cause. Finally, we clarify, simplify or correct certain sections of the regulations relating to certifying QF status.

DATES: *Effective Date:* This rule will become effective June 1, 2010.

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SUPPLEMENTARY INFORMATION:

Before Commissioners: Jon Wellinghoff, Chairman; Marc Spitzer, Philip D. Moeller, and John R. Norris.

I. Introduction

1. In this Final Rule, the Commission is removing from § 131.80 of its regulations [1] the contents and general instructions of the Form No. 556 used in the certification of qualifying status for an existing or proposed small power production or cogeneration facility, and, in their place, providing that an applicant seeking to certify qualifying facility (QF) status of a small power production or cogeneration facility must complete and file the Form No. 556 that is in effect at the time of filing (which will be made available for download from the Commission's QF Web site).[2] The Commission also is requiring that the Form No. 556 be submitted to the Commission electronically.

2. The Commission also is revising and reformatting the Form No. 556 to clarify the content of the form and to take advantage of newer technologies to reduce both the filing burden for applicants and the processing burden for the Commission.

3. Additionally, the Commission is revising the procedures, standards and criteria for QF status provided in Part 292 of its regulations to accomplish the following: (1) Exemption of generating facilities with net power production capacities of 1 MW or less from the requirement that a generating facility, to be a QF, must file either a notice of self-certification or an application for Commission certification; (2) codification of the Commission's authority to waive the QF certification requirement for good cause; (3) extension to all applicants for QF certification the requirement (currently applicable only to applicants for self-certification of QF status) to serve a copy of a filed Form No. 556 on the affected utilities and state regulatory authorities; (4) elimination of the requirement for applicants to provide a draft notice suitable for publication in the **Federal Register**; and (5) clarification, simplification or correction of certain sections of the regulations.[3]

4. Finally, the Commission is changing the exemption of QFs from the Federal Power Act,[4] and to the exemption of QFs from the Public Utility Holding Company Act of 2005 (PUHCA) and certain State laws and regulations [5] to make clear that certain small power production facilities that satisfy the criteria of section 3(17)(E) of the Federal Power Act qualify for those exemptions.

5. The Commission is adopting the revisions described above, as they will: (1) Make the Form No. 556 easier and less time consuming to complete and submit; (2) decrease opportunities for confusion and error in completing the form; (3) improve consistency and quality of the data collected by the form; (4) decrease Commission resources dedicated to managing errors and omissions in submitted forms; and (5) clarify and correct the regulations governing the requirements for obtaining and maintaining QF status.

6. The revisions to the Form No. 556 and the procedures for filing the Form No. 556 are informed by the Commission's experience both with administering the Form No. 556 and with new technologies for electronic data collection that have become available since the Form No. 556 was first established by Order No. 575 in 1995.[6] The changes will increase the effectiveness of the Commission's policies encouraging cogeneration and small power production, as required by section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA).[7]

II. Background

7. When the Commission first implemented section 201 of PURPA, it provided two paths to QF status: Self certification (which, as discussed below, required no filing with the Commission) and Commission certification.[8] The procedures for self-certification are contained in § 292.207(a) of the

[1] 18 CFR 131.80.

[2] *http://www.ferc.gov/QF*.

[3] 18 CFR Part 292.

[4] 18 CFR 292.601.

[5] 18 CFR 292.602.

[6] *Streamlining of Regulations Pertaining to Parts II and III of the Federal Power Act and the Public Utility Regulatory Policies Act of 1978,* Order No. 575, 60 FR 4831 (Jan. 25, 1995), FERC Stats. & Regs. ¶ 31,014, *order on reh'g,* Order No. 575–A, 71 FERC ¶ 61,121 (1995).

[7] 16 U.S.C. 824a–3.

[8] There is no fee for self-certification; there is, however, a fee for Commission certification. 18 CFR 381.505. The Commission will not process an application for Commission certification without receipt of the applicable fee.

Commission's regulations.[9] When a small power production facility or cogeneration facility self-certifies (or self-recertifies),[10] it certifies that it satisfies the requirements for QF status. The Commission does not formally review the self-certification. Instead, the self-certification is assigned a docket number, and Commission staff looks at the filing to determine that the self-certifier has provided the information required by the regulations.

8. Self-certification was an essential part of the Commission's implementation of PURPA, and was intended, in part, to make the certification process quick and not unduly burdensome. Thus, when the Commission first implemented section 201 of PURPA in Order No. 70,[11] the Commission rejected a proposal to adopt a case-by-case Commission certification requirement for all QFs, but instead provided that facilities that met the requirements for QF status need only furnish notice to the Commission of QF status.[12] This notice (the self-certification) was purely for informational purposes and to help the Commission monitor the market penetration of QFs. QF status, however, was established by meeting the requirements for such status and did not depend on the filing. Indeed, the Commission noted that QFs and purchasing utilities could agree that a generating facility met the requirements for QF status, and the facility would qualify for the benefits of PURPA without making any filing with the Commission.

9. The Commission recognized, however, that the self-certification process would not always satisfy all those interested in a particular facility's status. Accordingly, the Commission also established, in § 292.207(b) of the regulations,[13] an "optional procedure" for QF status. Under this optional procedure, an entity may file an application for a determination by the Commission that a facility meets the requirements for QF status. Such an application requires a filing fee.[14] After receiving an application for Commission certification and the required fee, the Commission assigns the filing a docket number and notices the filing in the **Federal Register**, providing an opportunity for interventions and protests. The Commission's regulations provide that it will act on an application within 90 days of the filing (or of its supplement or amendment). The process gives those that need assurance of a facility's QF status (or lack of such status) a Commission order certifying (or denying) QF status. This optional procedure is commonly known as an application for Commission certification. In its original regulations, the Commission also provided that, once a facility was certified by the Commission, its qualifying status could be revoked by the Commission, upon the Commission's own motion, or upon the motion of any person.[15] This combination of encouraging self-certifications, while providing for both Commission-certification and an opportunity to seek revocation of QF status, would assure, the Commission believed, that only those generation facilities that meet the criteria for QF status would receive and retain that status.

10. As noted above, the Commission, when it first enacted its regulations, had hoped that self-certifications would be the primary means for obtaining QF status, but recognized that there would be instances in which a Commission ruling on QF status would be desirable. While the Commission later, in Order No. 575, required QFs to provide more detailed information about self-certifying QFs, through Form No. 556, the Commission continued to encourage self-certification, but also recognized that there would be reasons that a QF may want or need Commission certification (including the requirement of some lenders, electric utilities, or state regulators that a generator seeking QF status and the benefits of PURPA be Commission-certified). The Commission thus sought to make the self-certification process more informative about the nature of the self-certified QFs while keeping the process relatively simple.

11. Following the enactment of the Energy Policy Act of 2005 (EPAct 2005), which imposed new requirements for QF status for "new" cogeneration facilities,[16] the Commission issued Order No. 671,[17] which implemented those new requirements. As part of that implementation, for the first time, notices of self-certifications for new cogeneration facilities were required to be published in the **Federal Register**; self-certifications, other than for new cogeneration facilities, are not published in the **Federal Register.** In addition, as noted above, for the first time, the Commission required the filing of a notice of self-certification or an application for Commission certification as a requirement for QF status.[18]

III. Revisions to Regulations

A. General

NOPR Proposal

12. The Commission proposed in the NOPR[19] to revise its regulations and the Form No. 556 to improve and simplify the QF certification process. In particular, the Commission proposed to remove the contents of the Form No. 556 from the regulations, and, in their place, to provide that an applicant seeking to certify QF status of a small power production or cogeneration facility must complete, and electronically file, the Form No. 556 that is in effect at the time of filing. The Commission also proposed to revise and reformat the Form No. 556 to clarify the content of the form and to take advantage of newer technologies that will reduce both the filing burden for

[9] 18 CFR 292.207(a).

[10] Because recertification is a type of certification, policies applicable to self-certification and application for Commission certification also apply to self-recertification and application for Commission recertification.

[11] *Small Power Production and Cogeneration Facilities—Qualifying Status,* Order No. 70, FERC Stats. & Regs., Regulations Preambles 1977–1981 ¶ 30,134 (1980), *order on reh'g,* Order Nos. 69–A and 70–A, FERC Stats. & Regs., Regulations Preambles 1977–1981 ¶ 30,160 (1980), *aff'd in part and vacated in part, American Electric Power Service Corp.* v. *FERC,* 675 F.2d 1226 (D.C. Cir. 1982), *rev'd in part, American Paper Institute, Inc.* v. *American Electric Power Service Corp.,* 461 U.S. 402 (1983).

[12] Order No. 70, FERC Stats. & Regs. ¶ 30,134 at 30,954. As discussed below, the Commission, in 2005, added a requirement that a cogeneration facility or small power production facility either self-certify or receive Commission certification to have QF status. *See* 18 CFR 292.203(a)(3), (b)(2).

[13] 18 CFR 292.207(b).

[14] 18 CFR 381.505.

[15] *See* 18 CFR 292.207(d)(ii). A similar opportunity for the Commission to revoke the QF status of a self-certified facility on the Commission's own motion, or on the motion of another party, was not expressly provided in the regulations; the Commission, however, allowed others to seek the revocation of a self-certified QF by filing a petition for declaratory order. In Order No. 671, *infra* note 17, the right to file a motion seeking revocation of a self-certification was added to the Commission's regulations. A motion seeking revocation requires a filing fee as a declaratory order. *Chugach Electric Association, Inc.,* 121 FERC ¶ 61,287, at P 51–54 (2007). The filing fee for a declaratory order is provided in 18 CFR 381.302.

[16] A "new" cogeneration facility is defined as any cogeneration facility that was either not a qualifying cogeneration facility on or before August 8, 2005, or that had not filed a notice of self-certification, self-recertification or an application for Commission certification or Commission recertification as a qualifying cogeneration facility prior to February 2, 2006. 16 U.S.C. 824a–3(n)(2)(B); 18 CFR 292.205(d).

[17] *Revised Regulations Governing Small Power Production and Cogeneration Facilities,* Order No. 671, 71 FR 7852 (Feb. 15, 2006), FERC Stats. & Regs. ¶ 31,203 (2006), *order on reh'g,* Order No. 671–A, 71 FR 30585 (May 30, 2006), FERC Stats. & Regs. ¶ 31,219 (2006).

[18] *See* 18 CFR 292.203(a)(3), (b)(2).

[19] *Revisions to Form, Procedures, and Criteria for Certification of Qualifying Facility Status for a Small Power Production or Cogeneration Facility,* Notice of Proposed Rulemaking (NOPR). 74 FR 54,503 (Oct. 22, 2009), FERC Stats. & Regs. ¶ 32,648 (2009).

applicants and the processing burden for the Commission. The Commission also proposed to exempt generating facilities with net power production capacities of 1 MW or less from the QF certification requirement, and to codify the Commission's authority to waive the QF certification requirement for good cause. Finally, the Commission proposed to clarify, simplify or correct certain sections of the regulations.

Comments

13. Seven parties filed comments in response to the NOPR.[20] The following sections provide a detailed discussion of the parties' comments, however, commenters generally express support for the Commission's proposals regarding the Form No. 556 and to clarify, simplify or correct certain sections of the regulations. In particular, most of the commenters support the Commission's proposal to remove the contents of the Form No. 556 from the regulations and require applicants to electronically file the Form No. 556 that is in effect at the time of filing, with the exception of certain concerns expressed by Interstate Renewable and objections raised by Southern. Commenters also generally support the Commission's proposal to revise and reformat the Form No. 556 to clarify the content of the form and to take advantage of newer technologies.

14. The issue most-discussed in parties' comments is the proposed exemption of generating facilities with a net power production capacity of 1 MW or less from the requirement to file a Form No. 556 in order to be a QF. Most of the commenters agree in concept with the Commission's proposal to establish a threshold at or below which generating facilities would be exempt from the requirement to make a filing in order to be a QF. However, the parties differ on the appropriate size of such a threshold.

Commission Determination

15. The Commission adopts the NOPR proposals to: (1) Remove the contents of the Form No. 556 from the regulations, and, in their place, to provide that an applicant seeking to certify the QF status of a small power production or cogeneration facility must complete, and electronically file, the Form No. 556 that is in effect at the time of filing; (2) revise and reformat the Form No. 556 to clarify the content of the form and to take advantage of newer technologies; (3) exempt generating facilities with net power production capacities of 1 MW or less from the QF certification requirement; (4) codify the Commission's authority to waive the QF certification requirement for good cause; (5) extend to all applicants for QF certification the requirement (currently applicable only to applicants for self-certification of QF status) to serve a copy of a filed Form No. 556 on the affected utilities and state regulatory authorities; (6) eliminate the requirement for applicants to provide a draft notice suitable for publication in the **Federal Register**; (7) clarify, simplify or correct certain sections of the regulations; and (8) change to the exemption of QFs from the Federal Power Act,[21] and to the exemption of QFs from the Public Utility Holding Company Act of 2005 (PUHCA) and certain State laws and regulations [22] to make clear that certain small power production facilities that satisfy the criteria of section 3(17)(E) of the Federal Power Act qualify for those exemptions.

16. The revisions to the Form No. 556 and the procedures for filing the Form No. 556 are informed by the Commission's experience both with administering the Form No. 556 and with new technologies for electronic data collection that have become available since the Form No. 556 was first established by Order No. 575 in 1995.[23] The changes will increase the effectiveness of the Commission's policies encouraging cogeneration and small power production, as required by section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA).[24]

B. Revisions to 18 CFR 131.80

NOPR Proposal

17. Currently, § 131.80 of the Commission regulations contains the text of Form No. 556 as well as instructions on how to complete the form. In the NOPR, the Commission proposed that § 131.80 of the Commission's regulations will no longer contain Form No. 556. In place of the current language, we proposed to require in § 131.80(a) that any person seeking to certify a facility as a QF must complete and electronically file the Form No. 556 then in effect and in accordance with the instructions then incorporated in that form.

18. The Commission also proposed to require, through proposed § 131.80(c), that applicants submit their QF applications (whether initial certifications or recertifications, and whether self-certifications or applications for Commission certification) electronically via the Commission's eFiling Web site.

Comments

19. Most commenters support the Commission's proposal to remove the contents of the Form No. 556 from the regulations and to require applicants to electronically file the Form No. 556 that is in effect at the time of filing.

20. Interstate Renewable supports the proposal that future changes to the form not require a rulemaking, but would be reviewed by the Office of Management and Budget following a solicitation of comments from the public on any proposed changes, but requests assurance that the parties interested in commenting on future proposed changes to Form No. 556 would receive the same notice and opportunity to comment that they would have under a formal rulemaking. Southern requests the Commission not make future changes to Form No. 556 without a formal rulemaking proceeding, arguing that if Form No. 556 can be revised without a formal rulemaking it could harm QFs and applicants by creating confusion.

Commission Determination

21. The Commission adopts its proposal to remove the contents of the Form No. 556 from its regulations, and, in their place, to provide that an applicant seeking to certify QF status of a small power production or cogeneration facility must complete, and electronically file, the Form No. 556 that is in effect at the time of filing. Revising § 131.80, as proposed, will make it easier to clarify and correct the form, should such changes prove necessary or appropriate in the future. Future changes to the form would be reviewed by the Office of Management and Budget following a solicitation of comments from the public on proposed changes, but would not require a formal rulemaking. This treatment is consistent with how a number of other Commission information collections are managed, including FERC Form Nos. 1, 1–F, 3–Q, 60, 80, 714, and 715, as well

[20] Interstate Renewable Energy Council and SolarCity (Interstate Renewable); Sun Edison LLC (Sun Edison); The National Rural Electric Cooperative Association (NRECA); Edison Electric Institute (EEI); U.S. Clean Heat & Power Association (U.S. Clean Heat & Power); Southern Company, Inc. (Southern); and Tayrn Rucinski (an individual). Southern filed on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company.

[21] 18 CFR 292.601.

[22] 18 CFR 292.602.

[23] *Streamlining of Regulations Pertaining to Parts II and III of the Federal Power Act and the Public Utility Regulatory Policies Act of 1978,* Order No. 575, 60 FR 4831 (Jan. 25, 1995), FERC Stats. & Regs. ¶ 31,014, *order on reh'g,* Order No. 575–A, 71 FERC ¶ 61,121 (1995).

[24] 16 U.S.C. 824a–3.

as the FERC Form No. 580 Interrogatory.[25]

22. An electronic filing process will be faster, easier, less costly and less resource-intensive than hardcopy filing. An applicant filing electronically will receive an acknowledgement that the Commission has received the application and a docket number for the submittal much more quickly than it would by filing in hardcopy format. Also, electronic filing will allow the Commission to electronically process QF applications, dramatically reducing required staff resources and human error, and allowing the Commission to identify patterns of reporting errors and noncompliance that would be difficult to detect through manual processing. Finally, electronic filing of QF applications will facilitate the compilation of QF data that could be made available to the public. Each year Commission staff fields a number of requests for QF certification data from private organizations, researchers and other government agencies. Requiring applicants to file in electronic format will make it possible to respond to many more such requests, and/or to publish compiled QF data on the Commission's Web site.

23. In response to Interstate Renewable's comments, we note that parties will have an opportunity in response to a solicitation for comments under the Paperwork Reduction Act to comment on any future proposed revisions to the Form No. 556. We note that this is similar to the comment procedures currently provided under the Commission's rulemaking process. For this reason, we also deny Southern's request to maintain the Form No. 556 in the regulations and to continue to require a Commission rulemaking for any changes to the form.

C. Revisions to 18 CFR 292.203

NOPR Proposal

24. Section 292.203 of our regulations[26] lists the general requirements for QF status. For a qualifying small power production facility, those requirements currently state that the facility must meet the maximum size criteria specified in § 292.204(a), meet the fuel use criteria specified in § 292.204(b), and must have filed a notice of self-certification or an application for Commission certification that has been granted. For a qualifying cogeneration facility, those requirements currently state that the facility must meet any applicable operating and efficiency standards provided in § 292.205(a) and (b), and that the facility must have filed a notice of self-certification or an application for Commission certification that has been granted.

25. In the NOPR, the Commission proposed to correct an inadvertent error in § 292.203(b)(1) of our regulations.[27] Order No. 671 implemented additional technical requirements for certain cogeneration facilities in § 292.205(d), but § 292.203(b)(1) was not updated to reflect that a facility must comply with these new requirements (if applicable) in order to be a qualifying cogeneration facility. The Commission proposed to add the reference to § 292.205(d) in § 292.203(b). Because the technical requirements of § 292.205(d) are not "operating and efficiency standards," the Commission proposed to amend § 292.203(b) to delete the phrase "operating and efficiency standards" and to replace it with the phrase "standards and criteria."

26. Finally, the Commission sought comments on whether to add a § 292.203(d) which would (1) exempt certain small facilities from the requirement to make a filing for qualifying status, and (2) would make explicit the Commission's authority to grant waiver of the filing requirement upon a showing of good cause.[28]

27. The Commission also proposed a Form No. 556 exemption with a 1 MW threshold. The Commission explained that, while electronic filing of QF certifications has many benefits, some of the parties submitting applications for certification of QF status are small entities that consider the cost of legal representation to be burdensome and/or that lack access to the computer facilities necessary to make an electronic filing. To address this concern, the Commission proposed to amend § 292.203 to exempt the applicants with a net power production capacity of 1 MW or less, from the requirement to make any filing with the Commission in order to be a QF.

Comments

28. No commenters oppose codifying the Commission's authority to waive the QF certification requirement for good cause.

29. Commenters generally agree in concept with the Commission's proposal to establish a net power production capacity threshold at or below which generating facilities would be exempt from a filing requirement in order to be a QF. However, they differ on what threshold the Commission should establish. NRECA agrees with the proposal to set a threshold of 1 MW for solar, wind, and hydropower facilities. However, NRECA requests the Commission establish a 50 kW threshold for facilities relying on other resources that are subject to significant requirements covering the type of fuel used as a primary energy source, fuel efficiency, and/or the fundamental use of the energy produced. Sun Edison and Interstate Renewables request a higher threshold of 2 MW to (among other things) conform with the Commission's Small Generator Interconnection Procedures (SGIP) "Fast Track" threshold, and, according to Sun Edison to cover all retail solar installations. Also, Interstate Renewables seeks clarification that the Commission will allow small power production facilities to file an application for Commission certification notwithstanding the proposed exemption.

30. EEI and Southern request the Commission to establish the threshold at 100 kW. EEI argues that the 1 MW threshold is too high and does not accurately reflect the typical production capacity of the small residential generation technologies the Commission appears to be targeting. EEI suggests on-site residential power generation technologies (such as solar panels) are typically on the order of 5 kW output. Southern argues that most residential generators (*e.g.,* solar panels on houses), for which this exemption may be appropriate, have a nameplate capacity of 10 kW or less and that an exemption up to 1 MW could allow many businesses which should have access to the legal representation and computer facilities needed to electronically file a Form No. 556 to avoid the QF certification process. Taryn Rucinski also requests that the Commission significantly decrease the proposed 1 MW threshold, if the Commission's intention is to exempt residential or truly small facilities.

31. Southern requests the following clarifications: (1) QFs that are exempt from filing a Form No. 556 may still be required to provide notice or attestation to the relevant electric utilities that the facility is in fact a QF; (2) a utility may rely upon such a notice or attestation; and (3) an exempt QF should be required to provide important information to the electric utility, including principal components of the facility (electric generators, transformers, switchyard equipment), fuel type, maximum gross and net output, expected installation and

[25] 18 CFR 366.23.

[26] 18 CFR 292.203.

[27] 18 CFR 292.203(b)(1).

[28] *Citing Ashland Windfarm, LLC,* 124 FERC ¶ 61,068 (2008) (Commission granted waiver of the filing requirement for QF status).

operation dates as required to determine the impact of the QF on the safety and reliability of the electric system.

32. EEI also requests clarification on a number of matters related to an exemption threshold. Specifically, EEI requests the Commission also provide the following: (1) Clarification that utilities and/or state commissions may require proof that a facility meets the requirements to become a QF and may still require the facility to provide "necessary technical design information" through "another form of attestation" that the facility meets the eligibility requirements to be a QF; (2) clarification that disputes regarding the QF eligibility of facilities that are not required to submit filings may be brought to the Commission for resolution; (3) clarification that a utility may terminate or otherwise abrogate the QF contract of a facility that is exempt from filing requirements if it finds that the facility in fact does not meet the criteria to be considered a QF, or the facility owner made fraudulent or false representations regarding its satisfaction of QF eligibility criteria; (4) that any increase in power production capacity requires a new Interconnection Request and that certain changes other than power production capacity increase also may trigger the Material Modification provisions of the Commission's Interconnection Procedures; (5) revision to § 292.310 of the Commission's regulations to require a utility that is seeking relief from PURPA mandatory purchase obligations to provide only the name and address of any QF that is exempt from filing with the Commission to obtain QF status.[29]

Commission Determination

33. The Commission adopts the NOPR proposal to update § 292.203(b) to reflect that a qualifying cogeneration facility must comply with any applicable requirements in § 292.205(d), and to make explicit the Commission's authority to grant waiver of the filing requirement upon a showing of good cause.

34. The Commission also adopts the NOPR proposal to add a § 292.203(d) to exempt facilities with a net power production capacity of 1 MW or less from the requirement to make a filing with the Commission in order to be a QF. The Commission notes that, until the effective date of Order No. 671, no filing, either of a self-certification or an application for Commission certification, was needed for a facility to claim QF status.[30] In instituting a filing requirement for QF status in Order No. 671, the Commission, among other things, explained that requiring a filing would help ensure that a "new" cogeneration facility would not be able to claim QF status without making a filing;[31] the Commission believed that the Congressional mandate to tighten the standards for cogeneration facilities required that a filing, either a self-certification or an application for Commission certification, be made by an entity claiming QF status.[32] However, 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 (and, in fact, many of the filings received in recent years involve just such small solar and wind-powered facilities), there may not be as compelling a need for filings with the Commission for QF status.

35. The Commission adopts the originally-proposed 1 MW filing threshold for exemption from the requirement to make a filing for QF status. We find that a 1 MW threshold, consistent with PURPA's mandate,[33] encourages QFs—both cogeneration and small power production—by eliminating the burden of filing. And a 1 MW threshold appropriately balances the competing claims of those seeking a lower threshold and those seeking a higher threshold. A lower threshold, while perhaps exempting facilities installed at residences, would nevertheless continue to impose a requirement to file on facilities, such as facilities installed at retail stores, hospitals, or schools, that are among the small facilities that PURPA was equally intended to promote. Facilities larger than 1 MW, however, represent a significant departure from the smallest generation (residential, retail, hospitals, schools, *etc.*) and such larger facilities should not find the filing requirement for QF status to represent an undue burden. Facilities over 1 MW would typically require a significant capital outlay, on the order of hundreds of thousands or millions of dollars, and the additional burden, both financial and otherwise, of filing with the Commission will be comparatively minimal. Moreover, looking at QF filings for the last five years, we see that a substantial portion of such QF filings are from smaller facilities. QF certification filings from facilities 1 MW or smaller represented approximately 48 percent of all QF filings. The filings from these facilities, however, represented only a small percentage of the total capacity being certified as QFs; filings from facilities 1 MW or smaller represented only approximately one half of one percent of QF capacity certified. Given these figures, the need for filings from such facilities is equally small; such facilities, whether or not they are required to file a Form 556, would rarely, if ever, not be in compliance with the standards and criteria for QF status.

36. We see no significant benefit to NRECA's suggestion that we adopt a 1 MW threshold for facilities fueled by renewable resources but a separate, lower threshold for facilities fueled by other resources. In this regard we note that from 2006 to date there were 2,142 Form 556 filings made by facilities 1 MW and smaller. Of those, only three percent were made by cogeneration facilities, with the rest being small power production facilities, and 90 percent were made by solar-powered and wind-powered small power production facilities (the rest were made by other small power production facilities). Thus, the vast majority of the 1 MW and smaller QFs are the solar-powered and wind-powered facilities that NRECA agrees should have a 1 MW threshold. To the extent that NRECA and others believe that small facilities fueled by other resources should be subject to the higher level of scrutiny that a Form 556 filing enables, we discuss below means to monitor compliance with the criteria for QF status that are available to purchasing utilities.

37. In exempting smaller generating facilities from the requirement to file a Form 556 in order to obtain QF status, the Commission is simply reverting, for these 1 MW and below facilities only, back to the policy that existed prior to Order No. 671, where QF status did not depend on such a filing. At that time, a facility's QF status was dependent only on whether the facility met the technical criteria for QF status, and was not dependent upon the applicant having

[29] EEI notes that § 292.310 information collection is the subject of the Commission's current request for OMB renewal of FERC–912 in Docket IC09–912–000.

[30] While not required, a facility seeking to claim QF status had the option of filing a self-certification or an application for Commission certification, and many facilities chose to do so. Here, as we explain below, we are adopting an exemption from the requirement to file for facilities with a net power production capacity of 1 MW or less. As before, though, while not required, a facility with a net power production capacity of 1 MW or less seeking to claim QF status has the option of filing a self-certification or an application for Commission certification should it choose to do so.

[31] As noted below, over the last five years, the percentage of facilities that are cogeneration facilities 1 MW or smaller filing for QF status has proven to be comparatively small.

[32] Order No. 671, FERC Stats. & Regs. ¶ 31,203 at P 81.

[33] *See* 16 U.S.C. 824a–3(a).

made a certification filing with the Commission.

38. A transacting utility, of course, needs necessary technical information from a QF in order to safely and reliably interconnect and transact with the QF, and we would expect a QF to provide such information.[34] And a purchasing electric utility currently may contest a facility's QF status if it does not agree with the facility's claim to that status. Thus, utilities currently may file a petition for revocation of QF status for any facility that holds itself out as a QF but which the utility reasonably believes does not meet the requirements for QF status,[35] just as they could prior to Order No. 671. The Commission has not proposed to change these regulations in this proceeding.

39. Electric utilities, however, may not refuse to purchase electric energy from a QF that is exempt from the requirement that it file a Form 556, or unilaterally terminate or otherwise abrogate a legally enforceable obligation or a contract with a QF that is exempt from the requirement that it file a Form 556, absent a favorable finding by the Commission in response to a petition for revocation of QF status.

40. The Commission agrees with Interstate Renewables that facilities exempt from the QF filing requirement for QF status may (at their option) file a self-certification or an application for Commission certification notwithstanding the exemption.

41. The Commission declines to address, as beyond the scope of this proceeding, EEI's requests (1) to modify 18 CFR 292.310 to require a utility that is seeking relief from PURPA mandatory purchase obligations to provide only the name and address of any QF that is exempt from filing with the Commission to obtain QF status,[36] and (2) for the Commission to remind QFs that "any increase in MW requires a new Interconnection Request and that certain changes other than MW increase also may trigger the Material Modification provisions of the Commission's Interconnection Procedures."

D. Revisions to 18 CFR 292.204

NOPR Proposal

42. Section 3(17)(E) of the Federal Power Act provides that an "eligible solar, wind, waste or geothermal facility" is a facility which produces electric energy solely by the use, as a primary energy source, of solar energy, wind energy, waste resources or geothermal resources, but only if such facility meets certain criteria for dates of certification and construction. Section 3(17)(A) of the Federal Power Act provides that any eligible solar, wind, waste, or geothermal facility is a small power production facility, regardless of its size. The Commission implemented these sections of the Federal Power Act in § 292.204(a), including the statement that there are no size limitations for "eligible" solar, wind or waste facilities,[37] as defined by section 3(17)(E) of the Federal Power Act. The regulation then states that, for "a non-eligible facility," the size limitation for a qualifying small power production facility is 80 MW.

43. In the NOPR, the Commission explained that the wording of § 292.204(a) has created confusion for many applicants. Applicants not familiar with section 3(17)(A) or (E) of the Federal Power Act frequently confuse the statutory concept of "eligibility" with more general questions of whether a facility is eligible for QF status. They often assume that an "eligible facility" is any facility that is eligible for qualifying status. In an attempt to reduce such confusion, the Commission proposed to revise § 292.204(a) to be more clear (avoiding using the term "eligible") while achieving the same regulatory outcome as the current § 292.204(a).

Comments

44. No comments were received on the Commission's proposal to clarify the wording of § 292.204(a). However, EEI requests that the Commission revisit the "one-mile rule" used to determine whether two facilities are part of the same QF for purposes of § 292.204(a), and asks that the Commission adopt a rebuttable presumption that facilities on sites located more than one mile apart are independent for purposes of QF certification, but that utilities would be allowed to rebut this presumption upon a showing that the facilities, although located more than a mile apart, are "part of a common enterprise" and should thus be considered as a single entity, not entitled to more separate certifications of QF status.

Commission Determination

45. The Commission adopts the NOPR proposal to revise § 292.204(a) to be more clear (avoiding using the term "eligible") while achieving the same regulatory outcome. The Commission declines, as beyond the scope of this proceeding, the request by EEI to adopt a presumption that facilities on sites located more than one mile apart are independent for purposes of QF certification, and that such presumption be rebuttable based on considerations EEI enumerates.[38]

E. Revisions to 18 CFR 292.205

NOPR Proposal

46. In the NOPR, the Commission explained that the text of § 292.205(d) of the Commission's regulations [39] contains an error in the description of the new cogeneration facilities that are subject to the requirements of §§ 292.205(d)(1) and (2). Section 292.205(d) provides that the following facilities are subject to these requirements:

> any cogeneration facility that was either not *certified as* a qualifying cogeneration facility on or before August 8, 2005, or that had not filed a notice of self-certification, self-recertification or an application for Commission certification or Commission recertification as a qualifying cogeneration facility under § 292.207 of this chapter prior to February 2, 2006, and which is seeking to sell electric energy pursuant to section 210 of the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 824a–1.[40]

47. From this language, the criteria for QF status include whether or not a cogeneration facility was "certified as" a qualifying cogeneration facility by August 8, 2005.[41] However, the text of section 210(n)(2) of PURPA states that the Commission's prior cogeneration requirements shall continue to apply to any facility that "*was* a qualifying cogeneration facility on [August 8,

[34] Such information would include principal components of the facility (electric generators, transformers, switchyard equipment), fuel type, maximum gross and net output, expected installation and operation dates as required to determine the impact of the QF on the safety and reliability of the electric system. A purchasing utility may also ask a QF that has not filed a Form 556 to provide the utility an attestation that the QF meets the requirements for QF status.

[35] 18 CFR 292.207(d).

[36] We note, however, that the Commission does not expect a utility to provide, in a PURPA section 210(m) filing, a QF docket number for a potentially-affected QF that has not filed, or not yet filed, for QF status. Similarly, in a PURPA section 210(m) filing, where the potentially affected QF's plans are not sufficiently definite such that the QF does not, in fact, know the information required for the filing so that a filing utility does not have information required by section 292.310 of our regulations, the filing utility may state that it does not have the information and state why the information is not available.

[37] The Commission pointed out in the NOPR that "geothermal" was inadvertently omitted when the regulation was written. However, the Commission explained that the proposed changes obviate the need to correct this omission.

[38] We note that the one-mile rule has been part of the Commission's regulations since the initial implementation of PURPA.

[39] 18 CFR 292.205(d).

[40] *Id.* (emphasis added).

[41] The significance of August 8, 2005 is that it is the date on which the Energy Policy Act of 2005 was signed into law.

2005]."[42] Furthermore, at the time of enactment of EPAct 2005, the Commission's regulations did not require that a facility that complied with the requirements for QF status be self or Commission certified in order to be a QF.[43] As such, there were many facilities that were QFs on August 8, 2005, even though they were not self or Commission certified as QFs by that date. To correct this error, the Commission proposed to strike the words "certified as" from the first sentence of § 292.205(d).

48. Section 210(n)(2) of PURPA also states that the Commission's prior cogeneration requirements will continue to apply to any facility that "had filed with the Commission a notice of self-certification, self recertification or an application for Commission certification under 18 CFR 292.207 prior to [February 2, 2006]."[44] The Commission implemented this provision in § 292.205(d) by not applying the new cogeneration requirements to any cogeneration facility that had filed "a notice of self-certification, self-recertification or an application for Commission certification or Commission recertification as a qualifying cogeneration facility under § 292.207 of this chapter prior to February 2, 2006." Because any facility that had recertified (either by self-recertification or application for Commission recertification) prior to February 2, 2006 must necessarily have made its original certification prior to February 2, 2006, the Commission proposed in the NOPR that the inclusion of "self-recertification" and "application for Commission recertification" in this provision is unnecessary. The Commission proposed to simplify § 292.205(d) to state that the new cogeneration requirements will not apply to any facility that had filed "a notice of self-certification or an application for Commission certification as a qualifying cogeneration facility under § 292.207 of this chapter prior to February 2, 2006."

Comments

49. No comments were filed on this proposal.

Commission Determination

50. The Commission adopts the NOPR proposals to strike the words "certified as" from the first sentence of § 292.205(d) and to simplify § 292.205(d) to state that the new cogeneration requirements will not apply to any facility that had filed "a notice of self-certification or an application for Commission certification as a qualifying cogeneration facility under § 292.207 of this chapter prior to February 2, 2006." The proposed revisions achieve the intended regulatory result of the existing regulatory text while decreasing the complexity of the regulatory text, and thus the opportunities for confusion.

F. Revisions to 18 CFR 292.207

1. Elimination of Pre-Authorized Commission Recertification

NOPR Proposal

51. In the NOPR, the Commission proposed to eliminate the procedure for pre-authorized Commission recertification contained in § 292.207(a)(2).[45] That procedure was established to give applicants for facilities that have been certified under the procedures for Commission certification in § 292.207(b) a list of insubstantial alterations and modifications that would not result in the revocation of QF status previously granted by the Commission. Section 292.207(a)(2)(ii) also requires those making the changes listed in § 292.207(a)(2)(i) to notify the Commission and each affected utility and State regulatory authority of each such change.

52. The Commission explained in the NOPR that the pre-authorized Commission recertification process did not require the use of Form No. 556, and that historically the very few applicants that filed pre-authorized Commission recertifications did so in the form of a letter describing the changes to their facilities. The Commission further explained that, in this rulemaking, we were implementing procedures to require that self-certifications or applications for Commission certification be made through the electronic submission of a Form No. 556, and that removing the pre-authorized recertification option ensures that all QF certification filings will be made electronically using a Form No. 556. The Commission explained that it could opt to revise the procedure for the pre-authorized Commission recertification to require such filings to be made electronically using a Form No. 556, but that such a revised procedure would be essentially identical to the procedure for self-certification. The Commission explained that having such a duplicative procedure appeared unjustified, particularly given the increase in complexity to the Form No. 556 and the Commission's regulations that would result from such a procedure.

53. The Commission further noted that the types of changes listed in § 292.207(a)(2)(i) were somewhat misleading, as a strict reading of that list implied that almost any change to a QF, no matter how small, would require notice to the Commission and to the affected utilities and State regulatory authorities. In reality, the Commission explained, changes falling below a certain level of importance were not significant enough to justify the burden on the applicant of the recertification requirement.

Comments

54. EEI and Southern support the proposal to eliminate the procedure for pre-approved Commission reauthorization.

55. Sun Edison, on the other hand, requests that the Commission retain a list of pre-approved QF changes that would not require QF recertification, and otherwise clarify the trigger threshold for recertification. In this regard, Sun Edison requests clarification of what the Commission meant in the NOPR by its statement that "changes falling below a certain level of importance are not significant enough to justify the burden on the applicant of the recertification requirement."[46] In particular, Sun Edison argues that changes in ownership should not trigger a re-filing requirement. Sun Edison suggests that, if the Commission does not eliminate the reporting requirement for ownership information as requested by Sun Edison and addressed below, the Commission consider requiring that the applicant only provide ownership information once in Form No. 556 and that no subsequent change in QF ownership require a refiling of Form No. 556, or that, for subsequent change in QF ownership, the applicant only provide the Commission with a list of affected QF dockets, rather than submit an entire new Form No. 556 for each QF in which it owns an interest. Finally, Sun Edison requests that for all or some small power QFs, especially those without fuel or size limitations, the Commission grant a "continued presumption" of QF status as long as such facilities continue to comply with the criteria for QF status (other than the

[42] 16 U.S.C. 824a–3(n)(2)(A) (emphasis added).

[43] *See* Order No. 671, FERC Stats. & Regs. ¶ 31,203 at P 81.

[44] 16 U.S.C. 824a–3(n)(2)(B).

[45] 18 CFR 292.207(a)(2).

[46] NOPR *Revision to Form, Procedures, and Criteria for Certification of Qualifying Facility Status for a Small Power Production or Cogeneration Facility,* 74 FR 54503 (Oct. 22, 2009), FERC Stats. & Regs. ¶ 32,648 at P 28.

filing requirements) and do not change their essential nature.

Commission Determination

56. The Commission will adopt the proposal to eliminate pre-authorized Commission certification. The procedure was little used. Moreover, because pre-authorized recertifications were usually filed in letter format, and the Commission is in this rulemaking requiring that all self-certifications and Commission certifications be made through an electronic submission of a Form No. 556, removal of the pre-authorized recertification option ensures that all QF certification filings will be made electronically using a Form No. 556.

57. The Commission declines Sun Edison's request to include a list in the regulations of specific changes that would not require QF recertification. Section 292.207(d) of the Commission's regulations provides that "if a qualifying facility fails to conform with any material facts or representations presented by the cogenerator or small power producer in its submittals to the Commission, the [applicant's certification] may no longer be relied upon." This standard will continue to provide the basis for when recertification of facilities is necessary, *i.e.,* when facilities fail to conform with any material facts or representations presented in an applicant's previous certification.[47] This standard has been in place for decades and, in our experience, has provided the guidance needed to QFs to decide whether to make a recertification filing; in the absence of any evidence that the process requires modification, we decline to do so at this time.[48]

58. The Commission also denies Sun Edison's request that the Commission consider requiring that applicants need only provide ownership information in the initial certification filing, and that no subsequent changes in QF ownership need be reported. The Commission notes that the Commission determined in Order No. 671 that, despite the elimination in EPAct 2005 of the ownership restrictions, ownership information assists the Commission in monitoring potential discrimination in the provision of service to customers and assists the Commission in reviewing the extent to which various QFs should continue to be exempt from various provisions of the FPA and state laws.[49] Although the revised Form No. 556 adopted in this Final Rule relaxes, to some extent, when a QF is required to disclose its owners,[50] the Commission's finding in Order No. 671 about the usefulness of ownership information continues to be true today. Thus, we will continue the QF ownership reporting requirement, including the requirement that any change in material facts and representations triggers a recertification requirement. We clarify, however, that the Commission will not consider a change in ownership to be a change in material facts and representations made in the previous filing if no owner increases their equity interest by at least 10 percent from the equity interest previously reported.[51]

59. We also decline Sun Edison's request that applicants be allowed, in recertifications reporting ownership changes, to only provide the Commission with a list of affected QF dockets rather than submit a new Form No. 556 for each QF in which it owns a reportable interest. The Commission may, however, on a case-by-case basis, choose to waive requirement to file Form No. 556.

2. Elimination of Procedures for Referring to Information From Previous Certifications

NOPR Proposal

60. Section 292.207(a)(1)(iii) provides that subsequent notices of self-recertification for the same facility may reference prior self-certifications or prior Commission certifications, and need only refer to changes which have occurred with respect to the facility since the prior notice or the prior Commission certification. In the NOPR, the Commission proposed to delete this provision, and, as a result, to change the Commission's policy so that applicants are required to provide all of the information for their facility in each Form No. 556 they submit with a self-recertification or an application for Commission recertification.

Comments

61. EEI concurs with the Commission's proposal to delete § 292.207(a)(1)(iii) and suggests the Commission also require all currently-certified QFs to re-file their information electronically within two years after a final rule becomes effective.

62. On the other hand, U.S. Clean Heat & Power disagrees with the NOPR proposal, and requests that the Commission retain the ability to reference prior notices or prior Commission certifications and to refer only to changes which have occurred with respect to the facility since the prior notice or certification. U.S. Clean Heat & Power argues that, although the Commission characterizes the submission of all of the required information as a "small, one-time burden," for many applicants compiling such information would require a significant amount of time.

Commission Determination

63. The Commission adopts the NOPR proposal to require applicants to provide all of the information for their facility in each Form No. 556 they submit with a self-recertification or an application for Commission recertification. The Commission adopts the NOPR proposal to delete the provision in § 292.207(a)(1)(iii) that provides that subsequent notices of self-recertification for the same facility may reference prior self-certifications or prior Commission certifications, and need only refer to changes which have occurred with respect to the facility since the prior notice or the prior Commission certification.

64. This proposed change will result in greater transparency: During the processing of routine QF petitions and periodic compliance reviews of self-certifications, the Commission frequently finds that the original certification data for some facilities (particularly facilities originally certified in the 1980s) can be difficult to obtain. Notwithstanding U.S. Clean Heat & Power's claim, requiring the provision of full data in a recertification would be a small, one-time burden for applicants, because applicants may, after their first recertification subsequent to a Final Rule implementing this proposal, simply download their previous electronically-filed Form No. 556 from eLibrary and update the relevant responses to generate their new Form No. 556. Given the significant benefit and the small, one-time burden, deletion of § 292.207(a)(1)(iii) is appropriate.

[47] In response to Sun Edison's request, we clarify that this standard also establishes the "certain level of importance" (referred to in P 28 of the NOPR) of a change below which the burden on the applicant of the recertification requirement is not justified. NOPR at P 28.

[48] We note that Commission staff may be contacted by QFs for informal guidance whether a particular change to a QF may require a recertification.

[49] Order No. 671 at P 110.

[50] While the Commission found that utility owners should be disclosed, *see id.,* the Form No. 556 adopted in this Final Rule does not require disclosure of any owners with less than a 10 percent equity interest in the facility.

[51] To avoid any confusion, we note that the addition of an owner not previously reported and that holds an equity interest of 10 percent or more would be a material change that would require recertification.

65. We disagree with U.S. Clean Heat & Power's assessment of the time requirements associated with adopting this proposal, and find that, for most facilities that are properly monitoring their compliance with the relevant QF standards, the burden even of recreating the most complex cogeneration portions of the Form No. 556 is not unreasonable.[52] Qualifying cogeneration facilities are, after all, required to comply with operating and efficiency standards for both the 12-month period beginning with the date the facility first produces electric energy, and any calendar year subsequent to the year in which the facility first produces electric energy.[53] Applicants properly monitoring compliance with the QF requirements should have the data necessary to complete the Form No. 556 reasonably accessible. We clarify, to the extent necessary, that applicants which have archived their original filings need not necessarily undertake extensive searches for those original filings, or undertake extensive efforts to recreate the data in those original filings. Rather, current operating data can (and should) be used when recertifying a facility, particularly if any material changes have been made to the operation of the facility.

66. For small power production facilities the burden on applicants should be minimal, and we note that no parties representing the interests of small power production facilities have objected to this proposal.

67. We will not, however, impose the requirement, suggested by EEI, that existing QFs not seeking recertification nevertheless be required to file a new Form 556 within two years of the issuance of the Final Rule; where recertification is neither necessary nor sought, the burden of such a filing is unjustified.

3. Elimination of Requirement To Provide a Draft Notice Suitable for Publication in the Federal Register

NOPR Proposal

68. Section 292.207(a)(1)(iv) of our regulations[54] currently requires that notices of self-certifications and self-recertifications for new cogeneration facilities be published in the **Federal Register**. Similarly, § 292.207(b)(4) of our regulations[55] requires that notices of applications for Commission certification or recertification be published in the **Federal Register**. For these applications that require publication of notices in the **Federal Register,** §§ 292.207(a)(1)(iv) and (b)(4) require that applicants provide with their filing a draft notice suitable for publication in the **Federal Register** on electronic media.

69. In the NOPR, the Commission proposed to continue to publish notices of self-certification and self-recertification for new cogeneration facilities and applications for Commission certification and recertification in the **Federal Register,** and included that requirement in the proposed § 292.207(c). However, the Commission proposed to delete §§ 292.207(a)(1)(iv) and (b)(4) in order to eliminate the requirement that applicants for those types of filings provide a draft notice suitable for publication in the **Federal Register.**

Comments

70. No comments were received on this issue.

Commission Determination

71. The Commission adopts the NOPR proposal to delete §§ 292.207(a)(1)(iv) and (b)(4) in order to eliminate the requirement that applicants for those types of filings provide a draft notice suitable for publication in the **Federal Register.** The Commission will be able to automatically generate **Federal Register** notices directly from the electronic Form No. 556 data, without requiring a draft notice be submitted by the applicant.

4. Requirement To Serve a Copy of a Form No. 556 on Affected Utilities and State Commissions

NOPR Proposal

72. Currently applicants for self-certification are required to serve a copy of their QF self-certification filings on each electric utility with which they expect to interconnect, transmit or sell electric energy to, or purchase supplementary, standby, back-up and maintenance power from, and the State regulatory authority of each state where the facilities and each affected electric utility is located.[56] No such requirement currently exists for applications for Commission certification.

73. In the NOPR, the Commission proposed to amend the regulations to require that any applicant filing a self-certification, self-recertification, application for Commission certification or application for Commission recertification must serve a copy of its filing on each affected electric utility and State regulatory authority.

Comments

74. Interstate Renewables suggests exempting small QFs that will be exempt under proposed § 202.203(d)(1) from the requirement to file a Form 556 from the notice requirements contained in proposed § 292.207(c)(2).

75. Interstate Renewables also requests that proposed § 292.207(c)(2) be modified to provide that a utility is not required to purchase electric energy from a facility until 5 days (rather than 90 days) after the facility meets the notice requirements in section (c)(1) of this section.

Commission Determination

76. The Commission adopts the proposal to require that any applicant filing an application for Commission certification, or an application for Commission recertification, in addition to those filing for self-certification or self-recertification, must serve a copy of its filing on each affected electric utility and State regulatory authority. We see no justification for those filing an application for Commission certification or Commission certification to be exempt from this requirement.

77. The Commission denies Interstate Renewables's request to decrease the time provided in § 292.207(c)(2) for an electric utility to begin purchasing electric energy from 90 days to 5 days; 90 days has long been part of the Commission's regulations and we are not persuaded to change it. However, we instead adopt in § 292.207(c)(2) the regulatory text more closely aligned with that § 292.207(c), so that § 292.207(c)(2) will read as follows:

(2) *Facilities of 500 kW or more.* An electric utility is not required to purchase electric energy from a facility with a net power production capacity of 500 kW or more until 90 days after the facility notifies the utility that it is a qualifying facility, or 90 days after the facility meets the notice requirements in paragraph (c)(1) of this section.

As a result of adopting this language, § 292.207(c)(2) will maintain the current policy that the 90-day requirement can be satisfied with notification to the utility, instead of tying it to a filing with the Commission. In light of this change, we also decline Interstate Renewables' proposal to begin § 292.207(c)(2) with the phrase "Except for a facility exempt under § 202.203(d)(1)." Because, as explained above, a facility will be able to notify the electric utility without necessarily having to make a Form No. 556 filing with the Commission, we see

[52] U.S. Clean Heat & Power, representing the interests of combined heat and power facilities, is presumably concerned with the relatively complex operating and efficiency data that must be reported for qualifying cogeneration facilities.

[53] 18 CFR 292.205(a)(1), (a)(2) and (b); Order No. 671 at P 51.

[54] 18 CFR 292.207(a)(1)(iv).

[55] 18 CFR 292.207(b)(4).

[56] 18 CFR 292.207(a)(ii).

no reason to modify this 500 kW threshold.

5. Other Proposed Changes

NOPR Proposal

78. In the NOPR, the Commission proposed to remove reference to "pre-authorized Commission recertification" in the title of § 292.207(a) and in the text of § 292.207(d)(1)(i). The Commission also proposed to delete the current § 292.207(a)(1), and to replace it, in § 292.207(a), with a procedure for self-certification that incorporates clear reference to proposed § 131.80 and to the notice requirements in § 292.207(c).

Comments

79. No comments were received on this issue.[57]

Commission Determination

80. The Commission adopts the NOPR proposal to remove reference to "pre-authorized Commission recertification" in the title of § 292.207(a) and in the body text of § 292.207(d)(1)(i). The Commission also adopts the NOPR proposal to delete the current § 292.207(a)(1), and to replace it, in § 292.207(a), with a procedure for self-certification that incorporates clear reference to proposed § 131.80 and to the notice requirements in § 292.207(c).

G. Revisions to 18 CFR 292.601

NOPR Proposal

81. In the NOPR, the Commission proposed to amend § 292.601(a) of its regulations[58] to make clear the exemption from the specified Federal Power Act sections is applicable to any facility that meets the definition of an "eligible solar, wind, waste or geothermal facility" under section 3(17)(E) of the Federal Power Act. Section 4 of the Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990 (Incentives Act)[59] provides that "eligible facilities" shall not be subject to the size limitations contained in § 292.601(b) of the Commission's regulations, unless the Commission otherwise specifies. The Commission there explained that it had found that the size limitation for eligibility for the exemptions contained in §§ 292.601 and 292.602, otherwise applicable to other small power production facilities, does not apply to "eligible facilities."[60]

Comments

82. No comments were filed on this proposal.

Commission Determination

83. The Commission adopts the NOPR proposal to amend § 292.601(a) of its regulations to make clear the exemption from the specified Federal Power Act sections is applicable to any facility that meets the definition of an "eligible solar, wind, waste or geothermal facility" under section 3(17)(E) of the Federal Power Act.

84. We note that, because § 292.602(a) states that the exemption from the PUHCA and State laws and regulations provided by that section applies to any QF described in § 292.601(a), and because the QFs described by § 292.601(a) include all QFs other than those described by § 292.601(b), the Incentives Act's exemption of "eligible facilities" from the size limitation contained in § 292.601(b) also has the effect of making such facilities eligible for the exemptions from PUHCA and State laws and regulations.

H. Revisions to 18 CFR 292.602

NOPR Proposal

85. In the NOPR, the Commission proposed to amend § 292.602(c)(1) to clarify that it is only the QFs described in paragraph (a) of that section that may take advantage of the exemptions provided in § 292.602, and to correct a typographical error. Finally, the Commission proposed to correct a typographical error in the title of § 292.602.

Comments

86. No comments were filed on this proposal.

Commission Determination

87. The Commission adopts the NOPR proposal to amend § 292.602(c)(1) to clarify that it is only the QFs described in paragraph (a) of that section that may take advantage of the exemptions provided in § 292.602, and to correct a typographical error. The Commission also adopts the NOPR proposal to correct a typographical error in the title of § 292.602.

IV. Proposed Revisions to the Form No. 556

A. General

NOPR Proposal

88. In the NOPR, the Commission proposed to make a number of changes to the content and organization of the Form No. 556. The proposed revised Form No. 556 was made available for download from the Commission's QF Web site, and was published in the **Federal Register**.[61] As discussed above, the Commission did not propose to include the content of the Form No. 556 in the Commission's regulations. Rather, the Commission proposed that the changed Form No. 556, once approved, will become "the Form No. 556 then in effect" for purposes of proposed § 131.80. The Commission therefore gave notice of its proposed changes to Form No. 556, and explained that it intended to submit the revised Form No. 556 for OMB approval pursuant to the provisions of the Paperwork Reduction Act,[62] after receiving and considering comments on those changes.

89. In addition to the structure of the proposed Form No. 556, the Commission proposed to include in the Final Rule version of the form data controls, automatic calculations, error handling and other programmatic features to assist applicants and maintain data quality.

90. The Commission explained that most of the proposed changes to the Form No. 556 were intended to make use of new electronic data structuring. The Commission further explained that while, in most cases, it proposed to collect the same data that is currently collected in the Form No. 556, the new form would allow the Commission to more efficiently administer the QF program. The Commission explained that staff spends a significant amount of time working with applicants that either misunderstand the current form, pay insufficient attention to the informational requirements on the current form, or both. The Commission explained that, by making Form No. 556 easier to understand, it would make the submission of Form No. 556 less burdensome to applicants.

91. The Commission further explained that its experience had been that the open-ended nature of the current Form No. 556 data collection—where applicants are able to type any answer or no answer in response to an

[57] Sun Edison did file comments, summarized and discussed above, opposing the elimination of the pre-authorized Commission recertification procedure from the regulations; however, in the current section the Commission addresses only the editorial revisions to the regulations to accommodate the policy determinations made by the Commission above.

[58] 18 CFR 292.601(a).

[59] Pub. L. 101–575, 104 Stat. 2834 (1990), *as amended by* Pub. L. 102–46, 105 Stat. 249 (1991).

[60] *Cambria Cogen Co.*, 53 FERC ¶ 61,459, at 62,619 (1990).

[61] *http://www.ferc.gov/QF*. The revised Form No. 556, as adopted, will not be attached to the Microsoft Word version of this Final Rule, but will be published in the **Federal Register.**

[62] 44 U.S.C. 3507(d).

item—often resulted in applicants incorrectly answering or skipping items or portions of items that they mistakenly feel do not apply to them. The Commission proposed to implement improved instructions, use a greater number of questions which are individually narrower in scope, and use certain electronic data controls and validation options, such as checkboxes and data entry fields that only accept data formatted in the appropriate way to minimize these problems.

Comments

92. No comments were filed on this proposal.

Commission Determination

93. We will adopt the new revised Form No. 556, as proposed in the NOPR, with minor clarifications and corrections. As explained in the NOPR, we expect that the revised form both will be less burdensome to those filling out the form and will provide the Commission with information that is more accurate and readily accessible.

B. Name of Form

NOPR Proposal

94. In Order No. 575, the Commission adopted San Diego Gas and Electric Company's suggestion to title the Form No. 556 to make clear that it applies to proposed as well as to existing facilities.[63] In the NOPR, the Commission did not propose to change the applicability of the form to proposed and existing facilities; however, as part of its attempt to make the Form No. 556 as simple and clear as possible, the Commission proposed to shorten the name of the form to "Certification of Qualifying Facility (QF) Status for a Small Power Production or Cogeneration Facility."

Comments

95. No comments were filed on this proposal.

Commission Determination

96. The Commission adopts the NOPR proposal to shorten the name of the Form No. 556 to "Certification of Qualifying Facility (QF) Status for a Small Power Production or Cogeneration Facility."

C. Geographic Coordinates

NOPR Proposal

97. In the NOPR, the Commission explained that, over the years, it had received a number of inquiries from the public seeking certain information about QFs. Many of these inquiries were from academics, research organizations or other government entities performing studies of the effectiveness of PURPA and the Commission's regulations implementing PURPA. Often such inquiries have involved the locations of the QFs. The Commission explained that, currently, location information is collected only through the street address of the facility, even though some facilities in rural or wilderness areas do not have a street address.

98. The Commission explained that it may be useful to researchers (as well as the public in general, and affected electric utilities and State regulatory authorities in particular) to have specific locational data for QFs, even for facilities that do not have street addresses. The Commission explained that, in addition to having value for researchers, such specific locational data would also provide a transparent means of determining compliance with the size requirement for small power production facilities, which is based in part on the distance between adjacent generating facilities. As such, the Commission proposed to include a new line 3c that will require applicants for facilities without a street address to provide the geographic coordinates (latitude and longitude) of their facilities.

Comments

99. Southern supported this proposal. No other comments were filed on this proposal.

Commission Determination

100. The Commission adopts the NOPR proposal to include a new line 3c that will require applicants for facilities without a street address to provide the geographic coordinates (latitude and longitude) of their facilities. The text of line 3c directs applicants to the Geographic Coordinates section of the instructions on page 4 which discusses several different ways through which applicants might obtain the geographic coordinates of their facilities: Through certain free online map services (with links available through the Commission's QF Web site); a GPS device; Google Earth; a property survey; various engineering or construction drawings; a property deed; or a municipal or county map showing property lines. Applicants are directed in line 3c to provide their geographic coordinates to three decimal places, and are given a simple formula for how to convert degrees, minutes and seconds to decimal degrees.

D. Ownership

NOPR Proposal

101. In Order No. 671, the Commission eliminated the limitation on electric utility and electric utility holding company ownership of QFs, but maintained the requirement that applicants provide ownership information in the Form No. 556.[64]

102. In the NOPR, the Commission explained that the wording of item 1c of the current Form No. 556 has proven confusing with respect to the collection of ownership information. In particular, the Commission explained that item 1c did not specify the amount of equity interest in the facility above which the applicant is required to identify the owner. For facilities with many owners, this can prove burdensome, particularly if the ownership changes frequently.

103. The Commission also explained that experience had shown that the current wording of item 1c proves confusing to applicants with respect to which types of owners (direct or upstream) they are supposed to identify.

104. The Commission proposed to clarify both the level of ownership above which applicants are required to identify owners, and which information must be provided for direct and upstream owners. First, while maintaining the current requirement that applicants indicate the percentage of direct ownership held by any electric utility[65] or holding company,[66] the Commission proposed to clarify in line 5a of the proposed Form No. 556 that an applicant need only provide information for direct owners that hold at least 10 percent equity interest in the facility.[67] Second, the Commission proposed to require in line 5b that applicants identify all upstream owners that both (1) hold at least a 10 percent equity interest in the facility and (2) are electric utilities or holding companies.

Comments

105. EEI and Southern support the Commission's clarification of level of ownership. As discussed above, Sun Edison requests the Commission

[63] Order No. 575, 60 FR 4831 (Jan. 13, 1995), FERC Stats. & Regs. ¶ 31,014, at 31,282 and 31,285.

[64] Order No. 671, FERC Stats. & Regs. ¶ 31,203 at P 110.

[65] As defined in section 3(22) of the Federal Power Act. 16 U.S.C. 796(22).

[66] As defined in section 1262(8) of the Public Utility Holding Company Act of 2005. 42 U.S.C 16451(8).

[67] The Commission explained in the NOPR that the 10 percent ownership threshold was proposed to be consistent with the 10 percent ownership thresholds used in the definition of a "holding company" in section 1262(8) of the Public Utility Holding Company Act of 2005, 42 U.S.C. 16451(8), and in the definition of "affiliate" in 18 CFR 35.36(a)(9).

consider the legal basis for requiring that ownership be tracked by the Commission and asks that changes in ownership not trigger a re-filing requirement, or that the Commission consider requiring that the QF owner only provide ownership information once in the original Form No. 556 and that no subsequent change in QF ownership require a refiling of Form No. 556, or that, for a subsequent change in QF ownership, the QF owner only provide the Commission with a list of affected QF dockets, rather than submit an entire new Form No. 556 for each QF in which it owns an interest.

Commission Determination

106. The Commission adopts the NOPR proposal to clarify the level of ownership above which applicants are required to identify owners, and which information must be provided for direct and upstream owners. Specifically, the Commission, while maintaining the requirement that applicants indicate the percentage of direct ownership held by any electric utility [68] or holding company,[69] the Commission adopts the NOPR proposal to clarify in line 5a of Form No. 556 that an applicant need only provide information for direct owners that hold at least 10 percent equity interest in the facility. Also, the Commission adopts the NOPR proposal to require in line 5b that applicants identify all upstream owners that both (1) hold at least a 10 percent equity interest in the facility and (2) are electric utilities or holding companies.

107. We deny Sun Edison's requests that we either not collect this information, or collect it only in connection with the original Form No. 556, or otherwise narrow the collection of this information, for the reasons stated earlier in this Final Rule.

E. Fuel Use for Small Power Production Facilities

NOPR Proposal

108. Section 292.204(b) of the Commission's regulations [70] allows small power production facilities to use oil, natural gas or coal in amounts up to and including 25 percent of the total energy input to the facility as calculated during the 12-month period beginning with the date the facility first produces electric energy and any calendar year subsequent to the year in which the facility first produces electric energy. Such use of oil, natural gas or coal is limited to certain purposes specified in section 3(17)(B) of the Federal Power Act as implemented in § 292.204(b)(2) of the Commission's regulations.[71]

109. Item 7 of the current Form No. 556 requires applicants to describe "how fossil fuel use will not exceed 25 percent of the total annual energy input limit," and "how the use of fossil fuel will be limited to the following purposes to conform to Federal Power Act section 3(17)(B): Ignition, start-up, flame stabilization, control use, and minimal amounts of fuel required to alleviate or prevent unanticipated equipment outages and emergencies directly affecting the public." In the NOPR, the Commission explained that experience with this item had indicated two problems. First, because applicants have significant latitude in how they respond in the current Form No. 556, they often make statements which do not, on their face, commit themselves to fuel use that would meet the Commission's requirements for qualifying small power production facilities. While these responses are unlikely to represent an intentional attempt on the part of applicants to circumvent the Commission's regulations for fuel use, the statements could make enforcement of the Commission's regulations more difficult.

110. On the other hand, the Commission explained, applicants who were very specific in their response to item 7 may have felt that they have committed themselves to only engage in the particular uses they specified in their Form No. 556, despite the fact that the Commission's regulations may permit more flexibility in the use of fossil fuel.

111. The Commission thus proposed a simpler method of certifying compliance with the Commission's fuel use requirements for small power production facilities, one intended to avoid these problems. Rather than requiring applicants to describe how they will comply, the Commission proposed to simply state what the fuel use requirements are, and to require the applicant to certify, by checking a box next to each requirement, that they will comply. The Commission explained that this proposal will obligate the applicant to comply with the stated requirements, while not creating an impression that the applicant must limit its fuel use to some standard which is more stringent than that established in the Commission's regulations.

Comments

112. No comments were received on this issue.

Commission Determination

113. Rather than continuing to require applicants to describe how they will comply with the fuel use, the Commission adopts the NOPR proposal that Form No. 556 will simply state what the fuel use requirements are, and require the applicant to certify, by checking a box next to each requirement, that they will comply.

F. Mass and Heat Balance Diagrams for Cogeneration Facilities

NOPR Proposal

114. Item 10 of the current Form No. 556 requires applicants for qualifying cogeneration facility status to provide a mass and heat balance diagram depicting average annual hourly operating conditions. As part of item 10, applicants are required to provide the following on their mass and heat balance diagrams: All fuel flow inputs in Btu/hr. specified using lower heating value, separately indicating fuel inputs for supplementary firing; average net electric output in kW or MW; average net mechanical output in horsepower; number of hours of operation used to determine the average annual hourly facility inputs and outputs; and working fluid flow conditions at input and output of prime mover(s) and at delivery to and return from each useful thermal application. Working fluid flow conditions required to be provided include the following: Flow rates in lbs./hr.; temperature in °F; pressure in psia; and enthalpy in Btu/lb.

115. In the NOPR, the Commission explained that some applicants had complained that, for relatively simple cogeneration facilities, some of the information required is meaningless or not known. For example, small diesel generators utilizing jacket water cooling systems to capture waste heat were often certified as qualifying cogeneration facilities. Such systems typically have no steam at any point in the system, and instead use pressurized water or an antifreeze solution to recover the waste heat and transport it to the useful thermal application. For such systems, applicants had complained that specifying pressure has no significance, since the effect of pressure on enthalpy (a measure of thermal energy content) is negligible for liquids at standard conditions. Likewise, applicants had complained that, since pressure in all-liquid systems is not an important design variable, it

[68] As defined in section 3(22) of the Federal Power Act. 16 U.S.C. 796(22).

[69] As defined in section 1262(8) of the Public Utility Holding Company Act of 2005. 42 U.S.C 16451(8).

[70] 18 CFR 292.204(b).

[71] 18 CFR 292.204(b)(2).

was often not known to any degree of accuracy in such systems.

116. The Commission also explained that some applicants had pointed out that, in systems which were all liquid water, the extra effort required to determine and specify enthalpy was not necessary. Since enthalpy in liquid water is a nearly linear function of temperature (because the specific heat of water does not vary significantly under standard conditions), specification of temperature at each required location and a specification of the specific heat of the working fluid (usually water) is all that is necessary to describe the energy balance of the cogeneration facility.

117. Agreeing with these points, the Commission proposed in the NOPR to include language in new line 10b of the Form No. 556 indicating that, for systems where the working fluid is liquid only (no vapor at any point in the cycle) and where the type of liquid and specific heat of that liquid is clearly indicated on the diagram or in the Miscellaneous section of the Form No. 556, only mass flow rate and temperature (not pressure and enthalpy) need be specified.

118. The Commission explained that its experience had shown that a relatively high level of deficiency and rejection letters for QF applications were a result of noncompliance with the requirements for the mass and heat balance diagram. The Commission stated that this was likely due to a combination of the fact the requirements for the mass and heat balance diagram were long, technical and not always clear, and the fact that some applicants did not put sufficient effort and attention into ensuring compliance. To improve reporting and to decrease future noncompliance, the Commission proposed to require applicants for qualifying cogeneration facility status to certify compliance with each of the requirements for the mass and heat balance diagram by checking a box next to each written requirement. The Commission expected that, by requiring applicants to proceed box by box through the individual requirements, which would be stated more clearly than in the current Form No. 556, reporting would improve and noncompliance would drop dramatically.

Comments

119. No comments were filed on this proposal.

Commission Determination

120. The Commission adopts the NOPR proposal to include language in new line 10b of the Form No. 556 indicating that, for systems where the working fluid is liquid only (no vapor at any point in the cycle) and where the type of liquid and specific heat of that liquid is clearly indicated on the diagram or in the Miscellaneous section of the Form No. 556, only mass flow rate and temperature (not pressure and enthalpy) need be specified.

121. The Commission also adopts the NOPR proposal to require applicants for qualifying cogeneration facility status to certify compliance with each of the requirements for the mass and heat balance diagram by checking a box next to each written requirement. This should improve reporting and decrease noncompliance.

G. EPAct 2005 Cogeneration Facilities

NOPR Proposal

122. In response to EPAct 2005, the Commission implemented in Order No. 671 additional requirements for new cogeneration facilities selling power pursuant to section 210 of PURPA.[72] The Commission implemented the "productive and beneficial" and "fundamental use" requirements of EPAct 2005 through the inclusion of a new section in the Form No. 556 that required applicants to respond to the text of the statute, providing applicants space to demonstrate compliance with EPAct 2005's requirements. In the NOPR, the Commission explained that, in practice, Form No. 556 had not provided sufficient guidance to applicants whether their facilities enjoy a presumption of compliance under § 292.205(d)(4) of the Commission's regulations, or whether such facilities fall within the safe harbor established by the "fundamental use test" in § 292.205(d)(3).

123. The Commission noted in the NOPR that, in implementing the "productive and beneficial" requirement of EPAct 2005, the Commission essentially maintained its long-standing "usefulness" standard, except that what it deemed as presumptively useful was now rebuttable.[73] The Commission explained that the current Form No. 556 requirement that applicants demonstrate compliance both with the "productive and beneficial" standard (in item 15) and the "useful" standard (in items 12, 13 and/or 14) could be condensed and streamlined without degrading the information provided or the level of Commission and public oversight of the QF program. The Commission proposed to consolidate these requirements into the portion of the proposed Form No. 556 where applicants demonstrate the "usefulness" of the thermal output (lines 12a, 12b, 14a, and 14b of the proposed form).

124. The Commission explained that the "fundamental use" requirement for EPAct 2005 cogeneration facilities, on the other hand, involved data collection that was specific to EPAct 2005 facilities. As such, the Commission proposes to implement a new section of the Form No. 556 entitled "EPAct 2005 Requirements for Fundamental Use of Energy Output from Cogeneration Facilities." This section would replace the current "For New Cogeneration Facilities" section. The Commission proposed this new section to facilitate an applicant's determination, in accordance with the applicable regulations (1) whether the EPAct 2005 cogeneration requirements apply to its facility, given the date on which the facility was originally a QF or originally filed for QF certification; (2) whether (if applicable) its pre-EPAct 2005 facility is subject to EPAct 2005 by virtue of changes to the facility which essentially make it a "new" EPAct 2005 facility; (3) whether its facility is excluded from the "fundamental use" requirement by virtue of the fact that power will not be sold from the facility pursuant to section 210 of PURPA; (4) whether its facility enjoys a rebuttable presumption of compliance with the "fundamental use" requirement by virtue of its small electric output; and/or (5) whether its facility complies with the fundamental use requirement by virtue of meeting the fundamental use test established in § 292.205(d)(3) of the Commission's regulations. If an applicant's facility is found to be subject to the EPAct 2005 requirements, but to fail the fundamental use test, then the applicant is instructed by line 11d of the proposed Form No. 556 to provide a narrative explanation of and support for why its facility meets the requirement that the electrical, thermal, chemical and mechanical output of an EPAct 2005 cogeneration facility is used fundamentally for industrial, commercial, residential or institutional purposes and is not intended fundamentally for sale to an electric utility, taking into account technological, efficiency, economic, and

[72] Congress in EPAct 2005, and the Commission in implementing EPAct 2005, referred to the facilities subject to the EPAct 2005 requirements as "new" cogeneration facilities. 16 U.S.C. 824a–3(n); 18 CFR 292.205(d). To avoid confusion that this "new" label will create as time passes and such facilities are not "new" anymore (except with respect to the date of the implementation of EPAct 2005), we will refer in the Form No. 556 to such facilities as "EPAct 2005 cogeneration facilities."

[73] Order No. 671, FERC Stats. & Regs. ¶ 31,203 at P 17.

variable thermal energy requirements, as well as state laws applicable to sales of electric energy from a QF to its host facility.

125. Additionally, in proposed line 11c, applicants are required to provide information to be used in determining whether a modification to a pre-EPAct 2005 cogeneration facility might be so significant that the facility should be considered a new facility that would be subject to the additional requirements (if applicable) for EPAct 2005 cogeneration facilities. In Order No. 671, the Commission established a rebuttable presumption that a pre-EPAct 2005 cogeneration facility does not become an EPAct 2005 cogeneration facility merely because it files for recertification; however, the Commission cautioned that "changes to an existing cogeneration facility could be so great (such as an increase in capacity from 50 MW to 350 MW) that what an applicant is claiming to be an existing facility should, in fact, be considered a 'new' cogeneration facility at the same site." [74] The Commission explained in the NOPR that it will continue this rebuttable presumption, but also that it was proposing to require that an applicant filing a self-recertification or an application for Commission recertification for a pre-EPAct 2005 cogeneration facility provide sufficient information about any changes to the facility to evaluate whether in fact the changes are so significant that the facility should be considered an EPAct 2005 cogeneration facility.

126. Thus, under the Commission's proposal, an applicant for recertification of a pre-EPAct 2005 cogeneration facility which intends to rely upon the rebuttable presumption that recertification of its existing facility does not make the facility subject to EPAct 2005's requirements must provide a description of the relevant changes to the facility, including the purpose of the changes, and an explanation why the facility should not be considered an EPAct 2005 cogeneration facility.

Comments

127. EEI requests clarifications regarding the threshold above which changes to a facility would be deemed significant enough to render a facility "new" for the purposes of the new cogeneration requirements. Specifically, EEI requests that a facility be found to be "new" if (1) there has been a material change in the electrical characteristics (such as size and/or number of generators), or (2) there has been a material change in the utilization of thermal energy (such as reduction in useful thermal output). EEI recommends that the Commission consider establishing a rebuttable presumption that a 20 percent or greater sustained change in electrical or thermal output of a QF is a material change that would render it an EPAct 2005 cogeneration facility, but that an existing certified cogeneration facility would have the opportunity to provide evidence to rebut this presumption.

Commission Determination

128. The Commission adopts the NOPR proposal to consolidate the requirements for the "productive and beneficial" use of thermal output into that portion of the proposed Form No. 556 where applicants demonstrate the "usefulness" of the thermal output (lines 12a, 12b, 14a, and 14b of the form).

129. The Commission also adopts the NOPR proposal to implement a new section of the Form No. 556, entitled "EPAct 2005 Requirements for Fundamental Use of Energy Output from Cogeneration Facilities." However, we reject requests to specify exactly what types of changes would make an existing facility a "new" facility for the purposes of the additional EPAct 2005 requirements in § 292.205(d). The Commission finds EEI's requests for clarifications and EEI's related proposals with respect to the threshold above which changes to a facility would render a facility "new" for the purposes of the § 292.205(d) requirements to be beyond the scope of this rulemaking.

130. The Commission, in its NOPR proposal, intended only to ensure that adequate information is being sought to make an informed decision regarding a QF's status as a new or existing cogeneration facility. The Commission did not propose to modify, and does not modify here, the standard for making that determination. The Commission indicated in Order No. 671 that such determinations would be made on a case-by-case basis, considering the extent of each individual change. There will be cases where the correct determination is not obvious, and hence a case-by-case approach will continue to be used. However, we note that, in the four years that Order No. 671 has been in effect, the current standards have not presented a problem with respect to the determination of whether an existing cogeneration facility has been so substantially changed that it now constitutes a "new cogeneration facility."

131. If an applicant's facility is found to be subject to the EPAct 2005 requirements, but to fail the fundamental use test, then the applicant is instructed by line 11d of the Form No. 556 to provide a narrative explanation of and support for why its facility meets the requirement that the electrical, thermal, chemical and mechanical output of an EPAct 2005 cogeneration facility is used fundamentally for industrial, commercial, residential or institutional purposes and is not intended fundamentally for sale to an electric utility, taking into account technological, efficiency, economic, and variable thermal energy requirements, as well as state laws applicable to sales of electric energy from a QF to its host facility.

132. The Commission adopts the NOPR proposal to continue the rebuttable presumption that a pre-EPAct 2005 cogeneration facility does not become an EPAct 2005 cogeneration facility merely because it files for recertification, but also to require that an applicant filing a self-recertification or an application for Commission recertification for a pre-EPAct 2005 cogeneration facility provide sufficient information about any changes to the facility to evaluate whether in fact the changes are so significant that the facility should be considered an EPAct 2005 cogeneration facility. Going forward, an applicant for recertification of a pre-EPAct 2005 cogeneration facility which intends to rely upon the rebuttable presumption that recertification of its existing facility does not make the facility subject to the EPAct 2005 requirements must provide a description of the relevant changes to the facility, including the purpose of the changes, and an explanation why the facility should not be considered an EPAct 2005 cogeneration facility. We stress that not every facility that has undergone a change should be considered an EPAct 2005 cogeneration facility; however, an applicant filing a self-recertification or an application for Commission recertification for a pre-EPAct 2005 cogeneration facility must provide enough information about any changes to the facility to allow the Commission and the public to evaluate the changes. The Commission finds EEI's requests for clarifications and EEI's related proposals to be beyond the scope of this rulemaking, concerning the threshold above which changes to a facility would be deemed significant enough to render a facility "new" for the purposes of the new cogeneration requirements.

V. Information Collection Statement

133. The collection of information contained in this Final Rule has been

[74] *Id.* P 115.

submitted to the Office of Management and Budget for review under section 3507(d) of the Paperwork Reduction Act.[75] The Commission solicited comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the burden estimates, ways to enhance the quality, utility and clarity of the information to be collected or retained, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

Estimated Annual Burden

134. The Commission has previously broken down its estimated annual burden for completing the Form No. 556 by filing type (self-certification or Commission certification). We believe that breaking down the filings by facility type (small power production facility or cogeneration facility) in addition to filing type will result in a significantly improved burden estimate. Using this method, the total estimated annual time for the collection of information associated with the Form No. 556 is 2,156 hours, calculated as follows:

Facility type	Filing type	Number of respondents	Hours per respondent	Total annual hours
cogeneration facility > 1 MW	self-certification	100	8	800
cogeneration facility > 1 MW	application for Commission certification	3	50	150
small power production facility > 1 MW	self-certification	400	3	1,200
small power production facility > 1 MW	application for Commission certification	1	6	6

Information Collection Costs: In response to the NOPR, the Commission received no comments concerning its estimates for burden and costs and will use those estimates here in the Final Rule. As almost all of the regulation changes are intended to make seeking certification easier, and because we are exempting applicants for facilities not greater than 1 MW from the certification requirement, the Commission estimates that the collection costs associated with the new form will be less burdensome than with the existing form. Although the length of the form has increased, this is a result of the proposal to change the form to more effectively "walk" applicants through the certification and compliance determinations that they currently have to research and process on their own.

135. *Title:* FERC Form No. 556, "Certification of qualifying facility (QF) status for small power production or cogeneration facility."

Action: Information collection.

OMB Control No. 1902–0075.

Respondents: Residences, businesses or other for profit entities, and government agencies.

Frequency of responses: On occasion.

Necessity of the information: The Form No. 556 was originally established in Order No. 575 to allow an applicant to self-certify that or to request the Commission to determine that a facility meets the criteria for qualifying small power production or cogeneration status under the Commission's regulations, and thus whether the applicant is eligible to receive the benefits available to it under PURPA.

Internal review: The Commission has reviewed its proposed changes to the requirements pertaining to the certification of qualifying small power production and cogeneration facilities and determined the proposed changes appear to decrease the existing burden on applicants. These proposed requirements conform to the Commission's plan for efficient information collection, communication and management within the energy industry.

136. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Ellen Brown, Office of the Deputy Chief Information Officer, phone: (202) 502–8663, fax: (202) 273–0873, e-mail: *DataClearance@ferc.gov*]. Comments concerning the collection of information and the associated burden estimates, should be sent to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–4638; fax: (202) 395–7285].

VI. Environmental Analysis

137. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[76] No environmental consideration is needed for the promulgation of a rule that addresses information gathering, analysis, and dissemination.[77] This Final Rule involves information gathering, analysis, and dissemination. Consequently, neither an Environmental Impact Statement nor Environmental Assessment is required.

VII. Regulatory Flexibility Act

138. The Regulatory Flexibility Act of 1980 (RFA)[78] requires rulemakings to contain either a description or analysis of the effect that the rule will have on small entities or a certification that the rule will not have a significant economic impact on a substantial number of small entities. In this Final Rule, we implement three different types of regulatory changes, and we address each in turn.

139. First, we clarify and streamline the Form No. 556. These changes make the form easier for applicants, whether large or small, to complete, because the new form leads applicants step-by-step through the compliance determinations.

140. Second, we require certain limited additional disclosures of information. In particular, we implement (1) collection of the geographic coordinates of facilities that do not have a street address, and (2) collection of certain information used to determine applicability of the EPAct 2005 cogeneration requirements that was not previously explicitly required to be included in Form No. 556.

141. The requirement to report in line 3g geographic coordinates is applicable only to those facilities that do not have a street address and is therefore not generally applicable to all applicants. Moreover, in most cases, geographic coordinates can be obtained from a simple web search (with help provided by the instructions and the Commission's Web site); a GPS device (including some cellular phones); the use of free computer programs (such as Google Earth); or the review of certain documents, such as a property survey, various engineering or construction drawings, a property deed, or a

[75] 44 U.S.C. 3507(d).

[76] *See Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987).

[77] *See* 18 CFR 380.4(a)(5).

[78] 5 U.S.C. 601–12.

municipal or county map showing property lines.

142. The new information to be collected from applicants for cogeneration facilities serves to guide the applicants through the determination whether the EPAct 2005 cogeneration requirements apply to their facilities. The process of completing lines 11a through 11f replicates, but in a clearer and more concise manner, the process that such applicants already have to go through in completing the current form. Completing lines 11a through 11f should substantially decrease the burden of complying with the EPAct 2005 cogeneration requirements for most or all applicants for cogeneration facilities. In the absence of this step-by-step guide adopted in lines 11a through 11f, applicants (particularly small applicants) must independently research the requirements and determine compliance with the relatively complex EPAct 2005 cogeneration requirements.

143. Third, we require applicants for certification of QF status to submit their Forms No. 556 electronically, via the Commission's eFiling Web site. However, we also exempt applicants for facilities with net power production capacities of 1 MW and smaller from any filing requirement. Thus, the electronic filing requirement does not apply to applicants for relatively small QFs. We believe that any applicant for a facility larger than 1 MW should have access to the resources needed to make an electronic filing.

VIII. Document Availability

144. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's home page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

145. From the Commission's home page on the Internet, this information is available in the Commission's document management system, eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

146. User assistance is available for eLibrary and the Commission's Web site during normal business hours. For assistance, please contact FERC Online Support at 1–866–208–3676 (toll free) or 202–502–6652 or e-mail at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email at *public.referenceroom@ferc.gov*.

IX. Effective Date

147. These regulations are effective June 1, 2010. The Commission has determined, with the concurrence of the Adminstrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a "major rule" as defined in section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. The Commission will submit the Final Rule to both houses of Congress and the General Accounting Office.

List of Subjects

18 CFR Part 131

Electric power, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 292

Electric power, Electric power plants, Electric utilities.

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

■ In consideration of the foregoing, the Commission amends parts 131 and 292 of Title 18 of the *Code of Federal Regulations,* as set forth below:

Subchapter D—Approved Forms, Federal Power Act and Public Utility Regulatory Policies Act of 1978

PART 131—FORMS

■ 1. The authority citation for part 131 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 2. Section 131.80 is revised to read as follows:

§ 131.80 FERC Form No. 556, Certification of qualifying facility (QF) status for a small power production or cogeneration facility.

(a) *Who must file.* Any person seeking to certify a facility as a qualifying facility pursuant to sections 3(17) or 3(18) of the Federal Power Act, 16 U.S.C. 796(3)(17), (3)(18), unless otherwise exempted or granted a waiver by Commission rule or order pursuant to § 292.203(d), must complete and file the Form of Certification of Qualifying Facility (QF) Status for a Small Power Production or Cogeneration Facility, FERC Form No. 556. Every Form of Certification of Qualifying Status must be submitted on the FERC Form No. 556 then in effect and must be prepared in accordance with the instructions incorporated in that form.

(b) *Availability of FERC Form No. 556.* The currently effective FERC Form No. 556 shall be made available for download from the Commission's Web site.

(c) *How to file a FERC Form No. 556.* All applicants must file their FERC Forms No. 556 electronically via the Commission's eFiling Web site.

Subchapter K—Regulations Under the Public Utility Regulatory Policies Act of 1978

PART 292—REGULATIONS UNDER SECTIONS 201 AND 210 OF THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978 WITH REGARD TO SMALL POWER PRODUCTION AND COGENERATION

■ 1. The authority citation for part 292 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 2. Section 292.203 is revised to read as follows:

§ 292.203 General requirements for qualification.

(a) *Small power production facilities.* Except as provided in paragraph (c) of this section, a small power production facility is a qualifying facility if it:

(1) Meets the maximum size criteria specified in § 292.204(a);

(2) Meets the fuel use criteria specified in § 292.204(b); and

(3) Unless exempted by paragraph (d), has filed with the Commission a notice of self-certification, pursuant to § 292.207(a); or has filed with the Commission an application for Commission certification, pursuant to § 292.207(b)(1), that has been granted.

(b) *Cogeneration facilities.* A cogeneration facility, including any diesel and dual-fuel cogeneration facility, is a qualifying facility if it:

(1) Meets any applicable standards and criteria specified in §§ 292.205(a), (b) and (d); and

(2) Unless exempted by paragraph (d), has filed with the Commission a notice of self-certification, pursuant to § 292.207(a); or has filed with the Commission an application for Commission certification, pursuant to § 292.207(b)(1), that has been granted.

(c) *Hydroelectric small power production facilities located at a new dam or diversion.* (1) A hydroelectric small power production facility that impounds or diverts the water of a natural watercourse by means of a new dam or diversion (as that term is defined in § 292.202(p)) is a qualifying facility if it meets the requirements of:

(i) Paragraph (a) of this section; and

(ii) Section 292.208.

(2) [Reserved]

(d) *Exemptions and waivers from filing requirement.* (1) Any facility with a net power production capacity of 1 MW or less is exempt from the filing requirements of paragraphs (a)(3) and (b)(2) of this section.

(2) The Commission may waive the requirement of paragraphs (a)(3) and (b)(2) of this section for good cause. Any applicant seeking waiver of paragraphs (a)(3) and (b)(2) of this section must file a petition for declaratory order describing in detail the reasons waiver is being sought.

■ 3. In § 292.204, paragraph (a)(1) is revised and paragraph (a)(4) is added to read as follows:

§ 292.204 Criteria for qualifying small power production facilities.

(a) *Size of the facility*—(1) *Maximum size.* Except as provided in paragraph (a)(4) of this section, the power production capacity of a facility for which qualification is sought, together with the power production capacity of any other small power production facilities that use the same energy resource, are owned by the same person(s) or its affiliates, and are located at the same site, may not exceed 80 megawatts.

* * * * *

(4) *Exception.* Facilities meeting the criteria in section 3(17)(E) of the Federal Power Act (16 U.S.C. 796(17)(E)) have no maximum size, and the power production capacity of such facilities shall be excluded from consideration when determining the maximum size of other small power production facilities within one mile of such facilities.

* * * * *

■ 4. In § 292.205, paragraph (d) is revised to read as follows:

§ 292.205 Criteria for qualifying cogeneration facilities.

* * * * *

(d) *Criteria for new cogeneration facilities.* Notwithstanding paragraphs (a) and (b) of this section, any cogeneration facility that was either not a qualifying cogeneration facility on or before August 8, 2005, or that had not filed a notice of self-certification or an application for Commission certification as a qualifying cogeneration facility under § 292.207 of this chapter prior to February 2, 2006, and which is seeking to sell electric energy pursuant to section 210 of the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 824a–1, must also show:

* * * * *

■ 5. In § 292.207, paragraphs (a) through (d)(1)(i) are revised to read as follows:

§ 292.207 Procedures for obtaining qualifying status.

(a) *Self-certification.* The qualifying facility status of an existing or a proposed facility that meets the requirements of § 292.203 may be self-certified by the owner or operator of the facility or its representative by properly completing a Form No. 556 and filing that form with the Commission, pursuant to § 131.80 of this chapter, and complying with paragraph (c) of this section.

(b) *Optional procedure*—(1) *Application for Commission certification.* In lieu of the self-certification procedures in paragraph (a) of this section, an owner or operator of an existing or a proposed facility, or its representative, may file with the Commission an application for Commission certification that the facility is a qualifying facility. The application must be accompanied by the fee prescribed by part 381 of this chapter, and the applicant for Commission certification must comply with paragraph (c) of this section.

(2) *General contents of application.* The application must include a properly completed Form No. 556 pursuant to § 131.80 of this chapter.

(3) *Commission action.* (i) Within 90 days of the later of the filing of an application or the filing of a supplement, amendment or other change to the application, the Commission will either: Inform the applicant that the application is deficient; or issue an order granting or denying the application; or toll the time for issuance of an order. Any order denying certification shall identify the specific requirements which were not met. If the Commission does not act within 90 days of the date of the latest filing, the application shall be deemed to have been granted.

(ii) For purposes of paragraph (b) of this section, the date an application is filed is the date by which the Office of the Secretary has received all of the information and the appropriate filing fee necessary to comply with the requirements of this Part.

(c) *Notice requirements*—(1) *General.* An applicant filing a self-certification, self-recertification, application for Commission certification or application for Commission recertification of the qualifying status of its facility must concurrently serve a copy of such filing on each electric utility with which it expects to interconnect, transmit or sell electric energy to, or purchase supplementary, standby, back-up or maintenance power from, and the State regulatory authority of each state where the facility and each affected electric utility is located. The Commission will publish a notice in the **Federal Register** for each application for Commission certification and for each self-certification of a cogeneration facility that is subject to the requirements of § 292.205(d).

(2) *Facilities of 500 kW or more.* An electric utility is not required to purchase electric energy from a facility with a net power production capacity of 500 kW or more until 90 days after the facility notifies the facility that it is a qualifying facility or 90 days after the utility meets the notice requirements in paragraph (c)(1) of this section.

(d) *Revocation of qualifying status.* (1)(i) If a qualifying facility fails to conform with any material facts or representations presented by the cogenerator or small power producer in its submittals to the Commission, the notice of self-certification or Commission order certifying the qualifying status of the facility may no longer be relied upon. At that point, if the facility continues to conform to the Commission's qualifying criteria under this part, the cogenerator or small power producer may file either a notice of self-recertification of qualifying status pursuant to the requirements of paragraph (a) of this section, or an application for Commission recertification pursuant to the requirements of paragraph (b) of this section, as appropriate.

* * * * *

■ 6. In § 292.601, paragraph (a) is revised to read as follows:

§ 292.601 Exemption to qualifying facilities from the Federal Power Act.

(a) *Applicability.* This section applies to qualifying facilities, other than those described in paragraph (b) of this section. This section also applies to qualifying facilities that meet the criteria of section 3(17)(E) of the Federal Power Act (16 U.S.C. 796(17)(E)), notwithstanding paragraph (b).

* * * * *

■ 7. In § 292.602, the title and paragraph (c)(1) are revised to read as follows:

§ 292.602 Exemption to qualifying facilities from the Public Utility Holding Company Act of 2005 and certain State laws and regulations.

* * * * *

(c) *Exemption from certain State laws and regulations.* (1) Any qualifying facility described in paragraph (a) of this section shall be exempted (except as provided in paragraph (c)(2) of this

section) from State laws or regulations respecting:

* * * * *

Note: The following Appendix will not be published in the *Code of Federal Regulations.*

BILLING CODE 6717–01–P

Appendix A—Proposed FERC Form No. 556

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC

OMB Control # [ ]

Form 556 Certification of Qualifying Facility (QF) Status for a Small Power Production or Cogeneration Facility

General

Questions about completing this form should be sent to Form556@ferc.gov. Information about the Commission's QF program, answers to frequently asked questions about QF requirements or completing this form, and contact information for QF program staff are available at the Commission's QF website, www.ferc.gov/QF. The Commission's QF website also provides links to the Commission's QF regulations (18 C.F.R. § 131.80 and Part 292), as well as other statutes and orders pertaining to the Commission's QF program.

Who Must File

Any applicant seeking QF status or recertification of QF status for a generating facility with a net power production capacity (as determined in lines 7a through 7g below) greater than 1000 kW must file a self-certification or an application for Commission certification of QF status, which includes a properly completed Form 556. Any applicant seeking QF status for a generating facility with a net power production capacity 1000 kW or less is exempt from the certification requirement, and is therefore not required to complete or file a Form 556. *See* 18 C.F.R. § 292.203.

How to Complete the Form 556

This form is intended to be completed by responding to the items in the order they are presented, according to the instructions given. If you need to back-track, you may need to clear certain responses before you will be allowed to change other responses made previously in the form. If you experience problems, click on the nearest help button (?) for assistance, or contact Commission staff at Form556@ferc.gov.

Certain lines in this form will be automatically calculated based on responses to previous lines, with the relevant formulas shown. You must respond to all of the previous lines within a section before the results of an automatically calculated field will be displayed. If you disagree with the results of any automatic calculation on this form, contact Commission staff at Form556@ferc.gov to discuss the discrepancy before filing.

You must complete all lines in this form unless instructed otherwise. Do not alter this form or save this form in a different format. Incomplete or altered forms, or forms saved in formats other than PDF, will be rejected.

How to File a Completed Form 556

Applicants are required to file their Form 556 electronically through the Commission's eFiling website (see instructions on page 2). By filing electronically, you will reduce your filing burden, save paper resources, save postage or courier charges, help keep Commission expenses to a minimum, and receive a much faster confirmation (via an email containing the docket number assigned to your facility) that the Commission has received your filing.

If you are simultaneously filing both a waiver request and a Form 556 as part of an application for Commission certification, see the "Waiver Requests" section on page 3 for more information on how to file.

Paperwork Reduction Act Notice

This form is approved by the Office of Management and Budget (OMB Control No. [ ], expiration [ ]). Compliance with the information requirements established by the FERC Form No. 556 is required to obtain or maintain status as a QF. See 18 C.F.R. § 131.80 and Part 292. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The estimated burden for completing the FERC Form No. 556, including gathering and reporting information, is as follows: 3 hours for self-certification of a small power production facility, 8 hours for self-certifications of a cogeneration facility, 6 hours for an application for Commission certification of a small power production facility, and 50 hours for an application for Commission certification of a cogeneration facility. Send comments regarding this burden estimate or any aspect of this collection of information, including suggestions for reducing this burden, to the following: Information Clearance Officer, Office of the Executive Director (ED-32), Federal Energy Regulatory Commission, 888 First Street N.E., Washington, DC 20426; and Desk Officer for FERC, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (oira_submission@omb.eop.gov). Include the Control No. [ ] in any correspondence. [When OMB approval is received, the OMB Control No. and expiration date will be added to the form/instructions.]

Electronic Filing (eFiling)

To electronically file your Form 556, visit the Commission's QF website at www.ferc.gov/QF and click the eFiling link.

If you are eFiling your first document, you will need to register with your name, email address, mailing address, and phone number. If you are registering on behalf of an employer, then you will also need to provide the employer name, alternate contact name, alternate contact phone number and and alternate contact email.

Once you are registered, log in to eFiling with your registered email address and the password that you created at registration. Follow the instructions. When prompted, select one of the following QF-related filing types, as appropriate, from the Electric or General filing category.

Filing category	Filing Type as listed in eFiling	Description
Electric	(Fee) Application for Commission Cert. as Cogeneration QF	Use to submit an application for Commission certification or Commission recertification of a cogeneration facility as a QF.
	(Fee) Application for Commission Cert. as Small Power QF	Use to submit an application for Commission certification or Commission recertification of a small power production facility as a QF.
	Self-Certification Notice (QF, EG, FC)	Use to submit a notice of self-certification of your facility (cogeneration or small power production) as a QF.
	Self-Recertification of Qualifying Facility (QF)	Use to submit a notice of self-recertification of your facility (cogeneration or small power production) as a QF.
	Supplemental Information or Request	Use to correct or supplement a Form 556 that was submitted with errors or omissions, or for which Commission staff has requested additional information. Do not use this filing type to report new changes to a facility or its ownership; rather, use a self-recertification or Commission recertification to report such changes.
General	(Fee) Petition for Declaratory Order (not under FPA Part 1)	Use to submit a petition for declaratory order granting a waiver of Commission QF regulations pursuant to 18 C.F.R. §§ 292.204(a)(3) and/or 292.205(c). A Form 556 is not required for a petition for declaratory order unless Commission recertification is being requested as part of the petition.

You will be prompted to submit your filing fee, if applicable, during the electronic submission process. Filing fees can be paid via electronic bank account debit or credit card.

During the eFiling process, you will be prompted to select your file(s) for upload from your computer.

Filing Fee

No filing fee is required if you are submitting a self-certification or self-recertification of your facility as a QF pursuant to 18 C.F.R. § 292.207(a).

A filing fee is required if you are filing either of the following:

(1) an application for Commission certification or recertification of your facility as a QF pursuant to 18 C.F.R. § 292.207(b), or
(2) a petition for declaratory order granting waiver pursuant to 18 C.F.R. §§ 292.204(a)(3) and/or 292.205(c).

The current fees for applications for Commission certifications and petitions for declaratory order can be found by visiting the Commission's QF website at www.ferc.gov/QF and clicking the Fee Schedule link.

You will be prompted to submit your filing fee, if applicable, during the electronic filing process described on page 2.

Required Notice to Utilities and State Regulatory Authorities

Pursuant to 18 C.F.R. § 292.207(a)(ii), you must provide a copy of your self-certification or request for Commission certification to the utilities with which the facility will interconnect and/or transact, as well as to the State regulatory authorities of the states in which your facility and those utilities reside. Links to information about the regulatory authorities in various states can be found by visiting the Commission's QF website at www.ferc.gov/QF and clicking the Notice Requirements link.

What to Expect From the Commission After You File

An applicant filing a Form 556 electronically will receive an email message acknowledging receipt of the filing and showing the docket number assigned to the filing. Such email is typically sent within one business day, but may be delayed pending confirmation by the Secretary of the Commission of the contents of the filing.

An applicant submitting a self-certification of QF status should expect to receive no documents from the Commission, other than the electronic acknowledgement of receipt described above. Consistent with its name, a self-certification is a certification by the applicant itself that the facility meets the relevant requirements for QF status, and does not involve a determination by the Commission as to the status of the facility. An acknowledgement of receipt of a self-certification, in particular, does not represent a determination by the Commission with regard to the QF status of the facility. An applicant self-certifying may, however, receive a rejection, revocation or deficiency letter if its application is found, during periodic compliance reviews, not to comply with the relevant requirements.

An applicant submitting a request for Commission certification will receive an order either granting or denying certification of QF status, or a letter requesting additional information or rejecting the application. Pursuant to 18 C.F.R. § 292.207(b)(3), the Commission must act on an application for Commission certification within 90 days of the later of the filing date of the application or the filing date of a supplement, amendment or other change to the application.

Waiver Requests

18 C.F.R. § 292.204(a)(3) allows an applicant to request a waiver to modify the method of calculation pursuant to 18 C.F.R. § 292.204(a)(2) to determine if two facilities are considered to be located at the same site, for good cause. 18 C.F.R. § 292.205(c) allows an applicant to request waiver of the requirements of 18 C.F.R. §§ 292.205(a) and (b) for operating and efficiency upon a showing that the facility will produce significant energy savings. A request for waiver of these requirements must be submitted as a petition for declaratory order, with the appropriate filing fee for a petition for declaratory order. Applicants requesting Commission recertification as part of a request for waiver of one of these requirements should electronically submit their completed Form 556 along with their petition for declaratory order, rather than filing their Form 556 as a separate request for Commission recertification. Only the filing fee for the petition for declaratory order must be paid to cover both the waiver request and the request for recertification if such requests are made simultaneously.

18 C.F.R. § 292.203(d)(2) allows an applicant to request a waiver of the Form 556 filing requirements, for good cause. Applicants filing a petition for declaratory order requesting a waiver under 18 C.F.R. § 292.203(d)(2) do not need to complete or submit a Form 556 with their petition.

Geographic Coordinates

If a street address does not exist for your facility, then line 3c of the Form 556 requires you to report your facility's geographic coordinates (latitude and longitude). Geographic coordinates may be obtained from several different sources. You can find links to online services that show latitude and longitude coordinates on online maps by visiting the Commission's QF webpage at www.ferc.gov/QF and clicking the Geographic Coordinates link. You may also be able to obtain your geographic coordinates from a GPS device, Google Earth (available free at http://earth.google.com), a property survey, various engineering or construction drawings, a property deed, or a municipal or county map showing property lines.

Filing Privileged Data or Critical Energy Infrastructure Information in a Form 556

The Commission's regulations provide procedures for applicants to either (1) request that any information submitted with a Form 556 be given privileged treatment because the information is exempt from the mandatory public disclosure requirements of the Freedom of Information Act, 5 U.S.C. § 552, and should be withheld from public disclosure; or (2) identify any documents containing critical energy infrastructure information (CEII) as defined in 18 C.F.R. § 388.113 that should not be made public.

If you are seeking privileged treatment or CEII status for any data in your Form 556, then you must follow the procedures in 18 C.F.R. § 388.112. See www.ferc.gov/help/filing-guide/file-ceii.asp for more information.

Among other things (see 18 C.F.R. § 388.112 for other requirements), applicants seeking privileged treatment or CEII status for data submitted in a Form 556 must prepare and file both (1) a complete version of the Form 556 (containing the privileged and/or CEII data), and (2) a public version of the Form 556 (with the privileged and/or CEII data redacted). Applicants preparing and filing these different versions of their Form 556 must indicate below the security designation of this version of their document. If you are not seeking privileged treatment or CEII status for any of your Form 556 data, then you should not respond to any of the items on this page.

☐	**Non-Public:** Applicant is seeking privileged treatment and/or CEII status for data contained in the Form 556 lines indicated below. This non-public version of the applicant's Form 556 contains all data, including the data that is redacted in the (separate) public version of the applicant's Form 556.
☐	**Public (redacted):** Applicant is seeking privileged treatment and/or CEII status for data contained in the Form 556 lines indicated below. This public version of the applicants's Form 556 contains all data except for data from the lines indicated below, which has been redacted.
Privileged: Indicate below which lines of your form contain data for which you are seeking privileged treatment	
Critical Energy Infrastructure Information (CEII): Indicate below which lines of your form contain data for which you are seeking CEII status	

The eFiling process described on page 2 will allow you to identify which versions of the electronic documents you submit are public, privileged and/or CEII. The filenames for such documents should begin with "Public", "Priv", or "CEII", as applicable, to clearly indicate the security designation of the file. Both versions of the Form 556 should be unaltered PDF copies of the Form 556, as available for download from www.ferc.gov/QF. To redact data from the public copy of the submittal, simply omit the relevant data from the Form. For numerical fields, leave the redacted fields blank. For text fields, complete as much of the field as possible, and replace the redacted portions of the field with the word "REDACTED" in brackets. Be sure to identify above all fields which contain data for which you are seeking non-public status.

The Commission is not responsible for detecting or correcting filer errors, including those errors related to security designation. If your documents contain sensitive information, make sure they are filed using the proper security designation.

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC

OMB Control # [ ]

Form 556 Certification of Qualifying Facility (QF) Status for a Small Power Production or Cogeneration Facility

Application Information

1a Full name of applicant (legal entity on whose behalf qualifying facility status is sought for this facility)

1b Applicant street address

1c City | **1d** State/province

1e Postal code | **1f** Country (if not United States) | **1g** Telephone number

1h Has the instant facility ever previously been certified as a QF? Yes ☐ No ☐

1i If yes, provide the docket number of the last known QF filing pertaining to this facility: QF ____ - ____ - ____

1j Under which certification process is the applicant making this filing?

☐ Notice of self-certification (see note below)

☐ Application for Commission certification (requires filing fee; see "Filing Fee" section on page 3)

Note: a notice of self-certification is a notice by the applicant itself that its facility complies with the requirements for QF status. A notice of self-certification does not establish a proceeding, and the Commission does not review a notice of self-certification to verify compliance. See the "What to Expect From the Commission After You File" section on page 3 for more information.

1k What type(s) of QF status is the applicant seeking for its facility? (check all that apply)

☐ Qualifying small power production facility status ☐ Qualifying cogeneration facility status

1l What is the purpose and expected effective date(s) of this filing?

☐ Original certification; facility expected to be installed by ____ and to begin operation on ____

☐ Change(s) to a previously certified facility to be effective on ____
(identify type(s) of change(s) below, and describe change(s) in the Miscellaneous section starting on page 19)

- ☐ Name change and/or other administrative change(s)
- ☐ Change in ownership
- ☐ Change(s) affecting plant equipment, fuel use, power production capacity and/or cogeneration thermal output

☐ Supplement or correction to a previous filing submitted on ____
(describe the supplement or correction in the Miscellaneous section starting on page 19)

1m If any of the following three statements is true, check the box(es) that describe your situation and complete the form to the extent possible, explaining any special circumstances in the Miscellaneous section starting on page 19.

☐ The instant facility complies with the Commission's QF requirements by virtue of a waiver of certain regulations previously granted by the Commission in an order dated ____ (specify any other relevant waiver orders in the Miscellaneous section starting on page 19)

☐ The instant facility would comply with the Commission's QF requirements if a petition for waiver submitted concurrently with this application is granted

☐ The instant facility complies with the Commission's regulations, but has special circumstances, such as the employment of unique or innovative technologies not contemplated by the structure of this form, that make the demonstration of compliance via this form difficult or impossible (describe in Misc. section starting on p. 19)

FERC Form 556 Page 6 - All Facilities

Contact Information

2a Name of contact person

2b Telephone number

2c Which of the following describes the contact person's relationship to the applicant? (check one)

☐ Applicant (self) ☐ Employee, owner or partner of applicant authorized to represent the applicant

☐ Employee of a company affiliated with the applicant authorized to represent the applicant on this matter

☐ Lawyer, consultant, or other representative authorized to represent the applicant on this matter

2d Company or organization name (if applicant is an individual, check here and skip to line 2e) ☐

2e Street address (if same as Applicant, check here and skip to line 3a) ☐

2f City

2g State/province

2h Postal code

2i Country (if not United States)

Facility Identification and Location

3a Facility name

3b Street address (if a street address does not exist for the facility, check here and skip to line 3c) ☐

3c Geographic coordinates: If you indicated that no street address exists for your facility by checking the box in line 3b, then you must specify the latitude and longitude coordinates of the facility in degrees (to three decimal places). Use the following formula to convert to decimal degrees from degrees, minutes and seconds: decimal degrees = degrees + (minutes/60) + (seconds/3600). See the "Geographic Coordinates" section on page 4 for help. If you provided a street address for your facility in line 3b, then specifying the geographic coordinates below is optional.

Longitude ☐ East (+) ☐ West (-) _____ degrees Latitude ☐ North (+) ☐ South (-) _____ degrees

3d City (if unincorporated, check here and enter nearest city) ☐

3e State/province

3f County (or check here for independent city) ☐

3g Country (if not United States)

Transacting Utilities

Identify the electric utilities that are contemplated to transact with the facility.

4a Identify utility interconnecting with the facility

4b Identify utilities providing wheeling service or check here if none ☐

4c Identify utilities purchasing the useful electric power output or check here if none ☐

4d Identify utilities providing supplementary power, backup power, maintenance power, and/or interruptible power service or check here if none ☐

Ownership and Operation

5a Direct ownership as of effective date or operation date: Identify all direct owners of the facility holding at least 10 percent equity interest. For each identified owner, also (1) indicate whether that owner is an electric utility, as defined in section 3(22) of the Federal Power Act (16 U.S.C. 796(22)), or a holding company, as defined in section 1262(8) of the Public Utility Holding Company Act of 2005 (42 U.S.C. 16451(8)), and (2) for owners which are electric utilities or holding companies, provide the percentage of equity interest in the facility held by that owner. If no direct owners hold at least 10 percent equity interest in the facility, then provide the required information for the two direct owners with the largest equity interest in the facility.

	Full legal names of direct owners	Electric utility or holding company	If Yes, % equity interest
1)		Yes ☐ No ☐	%
2)		Yes ☐ No ☐	%
3)		Yes ☐ No ☐	%
4)		Yes ☐ No ☐	%
5)		Yes ☐ No ☐	%
6)		Yes ☐ No ☐	%
7)		Yes ☐ No ☐	%
8)		Yes ☐ No ☐	%
9)		Yes ☐ No ☐	%
10)		Yes ☐ No ☐	%

☐ Check here and continue in the Miscellaneous section starting on page 19 if additional space is needed

5b Upstream (i.e., indirect) ownership as of effective date or operation date: Identify all upstream (i.e., indirect) owners of the facility that both (1) hold at least 10 percent equity interest in the facility, and (2) are electric utilities, as defined in section 3(22) of the Federal Power Act (16 U.S.C. 796(22)), or holding companies, as defined in section 1262(8) of the Public Utility Holding Company Act of 2005 (42 U.S.C. 16451(8)). Also provide the percentage of equity interest in the facility held by such owners. (Note that, because upstream owners may be subsidiaries of one another, total percent equity interest reported may exceed 100 percent.)

Check here if no such upstream owners exist. ☐

	Full legal names of electric utility or holding company upstream owners	% equity interest
1)		%
2)		%
3)		%
4)		%
5)		%
6)		%
7)		%
8)		%
9)		%
10)		%

☐ Check here and continue in the Miscellaneous section starting on page 19 if additional space is needed

5c Identify the facility operator

FERC Form 556 Page 8 - All Facilities

Energy Input

6a Describe the primary energy input: (check one main category and, if applicable, one subcategory)

- ☐ Biomass (specify)
  - ☐ Landfill gas
  - ☐ Manure digester gas
  - ☐ Municipal solid waste
  - ☐ Sewage digester gas
  - ☐ Wood
  - ☐ Other biomass (describe on page 19)
- ☐ Waste (specify type below in line 6b)
- ☐ Renewable resources (specify)
  - ☐ Hydro power - river
  - ☐ Hydro power - tidal
  - ☐ Hydro power - wave
  - ☐ Solar - photovoltaic
  - ☐ Solar - thermal
  - ☐ Wind
  - ☐ Other renewable resource (describe on page 19)
- ☐ Geothermal
- ☐ Fossil fuel (specify)
  - ☐ Coal (not waste)
  - ☐ Fuel oil/diesel
  - ☐ Natural gas (not waste)
  - ☐ Other fossil fuel (describe on page 19)
- ☐ Other (describe on page 19)

6b If you specified "waste" as the primary energy input in line 6a, indicate the type of waste fuel used: (check one)

☐ Waste fuel listed in 18 C.F.R. § 292.202(b) (specify one of the following)

- ☐ Anthracite culm produced prior to July 23, 1985
- ☐ Anthracite refuse that has an average heat content of 6,000 Btu or less per pound and has an average ash content of 45 percent or more
- ☐ Bituminous coal refuse that has an average heat content of 9,500 Btu per pound or less and has an average ash content of 25 percent or more
- ☐ Top or bottom subbituminous coal produced on Federal lands or on Indian lands that has been determined to be waste by the United States Department of the Interior's Bureau of Land Management (BLM) or that is located on non-Federal or non-Indian lands outside of BLM's jurisdiction, provided that the applicant shows that the latter coal is an extension of that determined by BLM to be waste
- ☐ Coal refuse produced on Federal lands or on Indian lands that has been determined to be waste by the BLM or that is located on non- Federal or non-Indian lands outside of BLM's jurisdiction, provided that applicant shows that the latter is an extension of that determined by BLM to be waste
- ☐ Lignite produced in association with the production of montan wax and lignite that becomes exposed as a result of such a mining operation
- ☐ Gaseous fuels (except natural gas and synthetic gas from coal) (describe on page 19)
- ☐ Waste natural gas from gas or oil wells (describe on page 19 how the gas meets the requirements of 18 C.F.R. § 2.400 for waste natural gas; include with your filing any materials necessary to demonstrate compliance with 18 C.F.R. § 2.400)
- ☐ Materials that a government agency has certified for disposal by combustion (describe on page 19)
- ☐ Heat from exothermic reactions (describe on page 19) ☐ Residual heat (describe on page 19)
- ☐ Used rubber tires ☐ Plastic materials ☐ Refinery off-gas ☐ Petroleum coke

☐ Other waste energy input that has little or no commercial value and exists in the absence of the qualifying facility industry (describe in the Miscellaneous section starting on page 19; include a discussion of the fuel's lack of commercial value and existence in the absence of the qualifying facility industry)

6c Provide the average energy input, calculated on a calendar year basis, in terms of Btu/h for the following fossil fuel energy inputs, and provide the related percentage of the total average annual energy input to the facility (18 C.F.R. § 292.202(j)). For any oil or natural gas fuel, use lower heating value (18 C.F.R. § 292.202(m)).

Fuel	Annual average energy input for specified fuel	Percentage of total annual energy input
Natural gas	Btu/h	%
Oil-based fuels	Btu/h	%
Coal	Btu/h	%

Technical Facility Information

Indicate the maximum gross and maximum net electric power production capacity of the facility at the point(s) of delivery by completing the worksheet below. Respond to all items. If any of the parasitic loads and/or losses identified in lines 7b through 7e are negligible, enter zero for those lines.

7a The maximum gross power production capacity at the terminals of the individual generator(s) under the most favorable anticipated design conditions	kW
7b Parasitic station power used at the facility to run equipment which is necessary and integral to the power production process (boiler feed pumps, fans/blowers, office or maintenance buildings directly related to the operation of the power generating facility, etc.). If this facility includes non-power production processes (for instance, power consumed by a cogeneration facility's thermal host), do not include any power consumed by the non-power production activities in your reported parasitic station power.	kW
7c Electrical losses in interconnection transformers	kW
7d Electrical losses in AC/DC conversion equipment, if any	kW
7e Other interconnection losses in power lines or facilities (other than transformers and AC/DC conversion equipment) between the terminals of the generator(s) and the point of interconnection with the utility	kW
7f Total deductions from gross power production capacity = 7b + 7c + 7d + 7e	0 kW
7g Maximum net power production capacity = 7a - 7f	0 kW

7h Description of facility and primary components: Describe the facility and its operation. Identify all boilers, heat recovery steam generators, prime movers (any mechanical equipment driving an electric generator), electrical generators, photovoltaic solar equipment, fuel cell equipment and/or other primary power generation equipment used in the facility. Descriptions of components should include (as applicable) specifications of the nominal capacities for mechanical output, electrical output, or steam generation of the identified equipment. For each piece of equipment identified, clearly indicate how many pieces of that type of equipment are included in the plant, and which components are normally operating or normally in standby mode. Provide a description of how the components operate as a system. Applicants for cogeneration facilities do not need to describe operations of systems that are clearly depicted on and easily understandable from a cogeneration facility's attached mass and heat balance diagram; however, such applicants should provide any necessary description needed to understand the sequential operation of the facility depicted in their mass and heat balance diagram. If additional space is needed, continue in the Miscellaneous section starting on page 19.

Information Required for Small Power Production Facility

If you indicated in line 1k that you are seeking qualifying small power production facility status for your facility, then you must respond to the items on this page. Otherwise, skip page 10.

Certification of Compliance with Size Limitations

Pursuant to 18 C.F.R. § 292.204(a), the power production capacity of any small power production facility, together with the power production capacity of any other small power production facilities that use the same energy resource, are owned by the same person(s) or its affiliates, and are located at the same site, may not exceed 80 megawatts. To demonstrate compliance with this size limitation, or to demonstrate that your facility is exempt from this size limitation under the Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990 (Pub. L. 101-575, 104 Stat. 2834 (1990) *as amended by* Pub. L. 102-46, 105 Stat. 249 (1991)), respond to lines 8a through 8e below (as applicable).

8a Identify any facilities with electrical generating equipment located within 1 mile of the electrical generating equipment of the instant facility, and for which any of the entities identified in lines 5a or 5b, or their affiliates, holds at least a 5 percent equity interest.

Check here if no such facilities exist. ☐

	Facility location (city or county, state)	Root docket # (if any)	Common owner(s)	Maximum net power production capacity
1)		QF -		kW
2)		QF -		kW
3)		QF -		kW

☐ Check here and continue in the Miscellaneous section starting on page 19 if additional space is needed

8b The Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990 (Incentives Act) provides exemption from the size limitations in 18 C.F.R. § 292.204(a) for certain facilities that were certified prior to 1995. Are you seeking exemption from the size limitations in 18 C.F.R. § 292.204(a) by virtue of the Incentives Act?

☐ Yes (continue at line 8c below) ☐ No (skip lines 8c through 8e)

8c Was the original notice of self-certification or application for Commission certification of the facility filed on or before December 31, 1994? Yes ☐ No ☐

8d Did construction of the facility commence on or before December 31, 1999? Yes ☐ No ☐

8e If you answered No in line 8d, indicate whether reasonable diligence was exercised toward the completion of the facility, taking into account all factors relevant to construction? Yes ☐ No ☐ If you answered Yes, provide a brief narrative explanation in the Miscellaneous section starting on page 19 of the construction timeline (in particular, describe why construction started so long after the facility was certified) and the diligence exercised toward completion of the facility.

Certification of Compliance with Fuel Use Requirements

Pursuant to 18 C.F.R. § 292.204(b), qualifying small power production facilities may use fossil fuels, in minimal amounts, for only the following purposes: ignition; start-up; testing; flame stabilization; control use; alleviation or prevention of unanticipated equipment outages; and alleviation or prevention of emergencies, directly affecting the public health, safety, or welfare, which would result from electric power outages. The amount of fossil fuels used for these purposes may not exceed 25 percent of the total energy input of the facility during the 12-month period beginning with the date the facility first produces electric energy or any calendar year thereafter.

9a Certification of compliance with 18 C.F.R. § 292.204(b) with respect to uses of fossil fuel:

☐ Applicant certifies that the facility will use fossil fuels exclusively for the purposes listed above.

9b Certification of compliance with 18 C.F.R. § 292.204(b) with respect to amount of fossil fuel used annually:

☐ Applicant certifies that the amount of fossil fuel used at the facility will not, in aggregate, exceed 25 percent of the total energy input of the facility during the 12-month period beginning with the date the facility first produces electric energy or any calendar year thereafter.

Information Required for Cogeneration Facility

If you indicated in line 1k that you are seeking qualifying cogeneration facility status for your facility, then you must respond to the items on pages 11 through 13. Otherwise, skip pages 11 through 13.

General Cogeneration Information

Pursuant to 18 C.F.R. § 292.202(c), a cogeneration facility produces electric energy and forms of useful thermal energy (such as heat or steam) used for industrial, commercial, heating, or cooling purposes, through the sequential use of energy. Pursuant to 18 C.F.R. § 292.202(s), "sequential use" of energy means the following: (1) for a topping-cycle cogeneration facility, the use of reject heat from a power production process in sufficient amounts in a thermal application or process to conform to the requirements of the operating standard contained in 18 C.F.R. § 292.205(a); or (2) for a bottoming-cycle cogeneration facility, the use of at least some reject heat from a thermal application or process for power production.

10a What type(s) of cogeneration technology does the facility represent? (check all that apply)

☐ Topping-cycle cogeneration ☐ Bottoming-cycle cogeneration

10b To help demonstrate the sequential operation of the cogeneration process, and to support compliance with other requirements such as the operating and efficiency standards, include with your filing a mass and heat balance diagram depicting average annual operating conditions. This diagram must include certain items and meet certain requirements, as described below. You must check next to the description of each requirement below to certify that you have complied with these requirements.

Check to certify compliance with indicated requirement	Requirement
☐	Diagram must show orientation within system piping and/or ducts of all prime movers, heat recovery steam generators, boilers, electric generators, and condensers (as applicable), as well as any other primary equipment relevant to the cogeneration process.
☐	Any average annual values required to be reported in lines 10b, 12a, 13a, 13b, 13d, 13f, 14a, 15b, 15d and/or 15f must be computed over the anticipated hours of operation.
☐	Diagram must specify all fuel inputs by fuel type and average annual rate in Btu/h. Fuel for supplementary firing should be specified separately and clearly labeled. All specifications of fuel inputs should use lower heating values.
☐	Diagram must specify average gross electric output in kW or MW for each generator.
☐	Diagram must specify average mechanical output (that is, any mechanical energy taken off of the shaft of the prime movers for purposes not directly related to electric power generation) in horsepower, if any. Typically, a cogeneration facility has no mechanical output.
☐	At each point for which working fluid flow conditions are required to be specified (see below), such flow condition data must include mass flow rate (in lb/h or kg/s), temperature (in °F, R, °C or K), absolute pressure (in psia or kPa) and enthalpy (in Btu/lb or kJ/kg). Exception: For systems where the working fluid is liquid only (no vapor at any point in the cycle) and where the type of liquid and specific heat of that liquid are clearly indicated on the diagram or in the Miscellaneous section starting on page 19, only mass flow rate and temperature (not pressure and enthalpy) need be specified. For reference, specific heat at standard conditions for pure liquid water is approximately 1.002 Btu/(lb*R) or 4.195 kJ/(kg*K).
☐	Diagram must specify working fluid flow conditions at input to and output from each steam turbine or other expansion turbine or back-pressure turbine.
☐	Diagram must specify working fluid flow conditions at delivery to and return from each thermal application.
☐	Diagram must specify working fluid flow conditions at make-up water inputs.

EPAct 2005 Requirements for Fundamental Use of Energy Output from Cogeneration Facilities

EPAct 2005 cogeneration facilities: The Energy Policy Act of 2005 (EPAct 2005) established a new section 210(n) of the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 USC 824a-3(n), with additional requirements for any qualifying cogeneration facility that (1) is seeking to sell electric energy pursuant to section 210 of PURPA and (2) was either not a cogeneration facility on August 8, 2005, or had not filed a self-certification or application for Commission certification of QF status on or before February 1, 2006. These requirements were implemented by the Commission in 18 C.F.R. § 292.205(d). Complete the lines below, carefully following the instructions, to demonstrate whether these additional requirements apply to your cogeneration facility and, if so, whether your facility complies with such requirements.

11a Was your facility operating as a qualifying cogeneration facility on or before August 8, 2005? Yes ☐ No ☐

11b Was the initial filing seeking certification of your facility (whether a notice of self-certification or an application for Commission certification) filed on or before February 1, 2006? Yes ☐ No ☐

If the answer to either line 11a or 11b is Yes, then continue at line 11c below. Otherwise, if the answers to both lines 11a and 11b are No, skip to line 11e below.

11c With respect to the design and operation of the facility, have any changes been implemented on or after February 2, 2006 that affect general plant operation, affect use of thermal output, and/or increase net power production capacity from the plant's capacity on February 1, 2006?

☐ Yes (continue at line 11d below)

☐ No. Your facility is not subject to the requirements of 18 C.F.R. § 292.205(d) at this time. However, it may be subject to to these requirements in the future if changes are made to the facility. At such time, the applicant would need to recertify the facility to determine eligibility. Skip lines 11d through 11j.

11d Does the applicant contend that the changes identified in line 11c are not so significant as to make the facility a "new" cogeneration facility that would be subject to the 18 C.F.R. § 292.205(d) cogeneration requirements?

☐ Yes. Provide in the Miscellaneous section starting on page 19 a description of any relevant changes made to the facility (including the purpose of the changes) and a discussion of why the facility should not be considered a "new" cogeneration facility in light of these changes. Skip lines 11e through 11j.

☐ No. Applicant stipulates to the fact that it is a "new" cogeneration facility (for purposes of determining the applicability of the requirements of 18 C.F.R. § 292.205(d)) by virtue of modifications to the facility that were initiated on or after February 2, 2006. Continue below at line 11e.

11e Will electric energy from the facility be sold pursuant to section 210 of PURPA?

☐ Yes. The facility is an EPAct 2005 cogeneration facility. You must demonstrate compliance with 18 C.F.R. § 292.205(d)(2) by continuing at line 11f below.

☐ No. Applicant certifies that energy will <u>not</u> be sold pursuant to section 210 of PURPA. Applicant also certifies its understanding that it must recertify its facility in order to determine compliance with the requirements of 18 C.F.R. § 292.205(d) <u>before</u> selling energy pursuant to section 210 of PURPA in the future. Skip lines 11f through 11j.

11f Is the net power production capacity of your cogeneration facility, as indicated in line 7g above, less than or equal to 5,000 kW?

☐ Yes, the net power production capacity is less than or equal to 5,000 kW. 18 C.F.R. § 292.205(d)(4) provides a rebuttable presumption that cogeneration facilities of 5,000 kW and smaller capacity comply with the requirements for fundamental use of the facility's energy output in 18 C.F.R. § 292.205(d)(2). Applicant certifies its understanding that, should the power production capacity of the facility increase above 5,000 kW, then the facility must be recertified to (among other things) demonstrate compliance with 18 C.F.R. § 292.205(d)(2). Skip lines 11g through 11j.

☐ No, the net power production capacity is greater than 5,000 kW. Demonstrate compliance with the requirements for fundamental use of the facility's energy output in 18 C.F.R. § 292.205(d)(2) by continuing on the next page at line 11g.

EPAct 2005 Requirements for Fundamental Use of Energy Output from Cogeneration Facilities (continued)

Lines 11g through 11k below guide the applicant through the process of demonstrating compliance with the requirements for "fundamental use" of the facility's energy output. 18 C.F.R. § 292.205(d)(2). Only respond to the lines on this page if the instructions on the previous page direct you to do so. Otherwise, skip this page.

18 C.F.R. § 292.205(d)(2) requires that the electrical, thermal, chemical and mechanical output of an EPAct 2005 cogeneration facility is used fundamentally for industrial, commercial, residential or institutional purposes and is not intended fundamentally for sale to an electric utility, taking into account technological, efficiency, economic, and variable thermal energy requirements, as well as state laws applicable to sales of electric energy from a qualifying facility to its host facility. If you were directed on the previous page to respond to the items on this page, then your facility is an EPAct 2005 cogeneration facility that is subject to this "fundamental use" requirement.

The Commission's regulations provide a two-pronged approach to demonstrating compliance with the requirements for fundamental use of the facility's energy output. First, the Commission has established in 18 C.F.R. § 292.205(d)(3) a "fundamental use test" that can be used to demonstrate compliance with 18 C.F.R. § 292.205(d)(2). Under the fundamental use test, a facility is considered to comply with 18 C.F.R. § 292.205(d)(2) if at least 50 percent of the facility's total annual energy output (including electrical, thermal, chemical and mechanical energy output) is used for industrial, commercial, residential or institutional purposes.

Second, an applicant for a facility that does not pass the fundamental use test may provide a narrative explanation of and support for its contention that the facility nonetheless meets the requirement that the electrical, thermal, chemical and mechanical output of an EPAct 2005 cogeneration facility is used fundamentally for industrial, commercial, residential or institutional purposes and is not intended fundamentally for sale to an electric utility, taking into account technological, efficiency, economic, and variable thermal energy requirements, as well as state laws applicable to sales of electric energy from a qualifying facility to its host facility.

Complete lines 11g through 11j below to determine compliance with the fundamental use test in 18 C.F.R. § 292.205 (d)(3). Complete lines 11g through 11j even if you do not intend to rely upon the fundamental use test to demonstrate compliance with 18 C.F.R. § 292.205(d)(2).

11g Amount of electrical, thermal, chemical and mechanical energy output (net of internal generation plant losses and parasitic loads) expected to be used annually for industrial, commercial, residential or institutional purposes and not sold to an electric utility	MWh
11h Total amount of electrical, thermal, chemical and mechanical energy expected to be sold to an electric utility	MWh
11i Percentage of total annual energy output expected to be used for industrial, commercial, residential or institutional purposes and not sold to a utility = 100 * 11g /(11g + 11h)	0 %

11j Is the response in line 11i greater than or equal to 50 percent?

☐ Yes. Your facility complies with 18 C.F.R. § 292.205(d)(2) by virtue of passing the fundamental use test provided in 18 C.F.R. § 292.205(d)(3). Applicant certifies its understanding that, if it is to rely upon passing the fundamental use test as a basis for complying with 18 C.F.R. § 292.205(d)(2), then the facility must comply with the fundamental use test both in the 12-month period beginning with the date the facility first produces electric energy, and in all subsequent calendar years.

☐ No. Your facility does not pass the fundamental use test. Instead, you must provide in the Miscellaneous section starting on page 19 a narrative explanation of and support for why your facility meets the requirement that the electrical, thermal, chemical and mechanical output of an EPAct 2005 cogeneration facility is used fundamentally for industrial, commercial, residential or institutional purposes and is not intended fundamentally for sale to an electric utility, taking into account technological, efficiency, economic, and variable thermal energy requirements, as well as state laws applicable to sales of electric energy from a QF to its host facility. Applicants providing a narrative explanation of why their facility should be found to comply with 18 C.F.R. § 292.205(d)(2) in spite of non-compliance with the fundamental use test may want to review paragraphs 47 through 61 of Order No. 671 (accessible from the Commission's QF website at www.ferc.gov/QF), which provide discussion of the facts and circumstances that may support their explanation. Applicant should also note that the percentage reported above will establish the standard that that facility must comply with, both for the 12-month period beginning with the date the facility first produces electric energy, and in all subsequent calendar years. *See* Order No. 671 at paragraph 51. As such, the applicant should make sure that it reports appropriate values on lines 11g and 11h above to serve as the relevant annual standard, taking into account expected variations in production conditions.

Information Required for Topping-Cycle Cogeneration Facility

If you indicated in line 10a that your facility represents topping-cycle cogeneration technology, then you must respond to the items on pages 14 and 15. Otherwise, skip pages 14 and 15.

Usefulness of Topping-Cycle Thermal Output

The thermal energy output of a topping-cycle cogeneration facility is the net energy made available to an industrial or commercial process or used in a heating or cooling application. Pursuant to sections 292.202(c), (d) and (h) of the Commission's regulations (18 C.F.R. §§ 292.202(c), (d) and (h)), the thermal energy output of a qualifying topping-cycle cogeneration facility must be useful. In connection with this requirement, describe the thermal output of the topping-cycle cogeneration facility by responding to lines 12a and 12b below.

12a Identify and describe each thermal host, and specify the annual average rate of thermal output made available to each host for each use. For hosts with multiple uses of thermal output, provide the data for each use in separate rows.

	Name of entity (thermal host) taking thermal output	Thermal host's relationship to facility; Thermal host's use of thermal output	Average annual rate of thermal output attributable to use (net of heat contained in process return or make-up water)
1)		Select thermal host's relationship to facility Select thermal host's use of thermal output	Btu/h
2)		Select thermal host's relationship to facility Select thermal host's use of thermal output	Btu/h
3)		Select thermal host's relationship to facility Select thermal host's use of thermal output	Btu/h
4)		Select thermal host's relationship to facility Select thermal host's use of thermal output	Btu/h
5)		Select thermal host's relationship to facility Select thermal host's use of thermal output	Btu/h
6)		Select thermal host's relationship to facility Select thermal host's use of thermal output	Btu/h

☐ Check here and continue in the Miscellaneous section starting on page 19 if additional space is needed

12b Demonstration of usefulness of thermal output: At a minimum, provide a brief description of each use of the thermal output identified above. In some cases, this brief description is sufficient to demonstrate usefulness. However, if your facility's use of thermal output is not common, and/or if the usefulness of such thermal output is not reasonably clear, then you must provide additional details as necessary to demonstrate usefulness. Your application may be rejected and/or additional information may be required if an insufficient showing of usefulness is made. (Exception: If you have previously received a Commission certification approving a specific use of thermal output related to the instant facility, then you need only provide a brief description of that use and a reference by date and docket number to the order certifying your facility with the indicated use. Such exemption may not be used if any change creates a material deviation from the previously authorized use.) If additional space is needed, continue in the Miscellaneous section starting on page 19.

Topping-Cycle Operating and Efficiency Value Calculation

Applicants for facilities representing topping-cycle technology must demonstrate compliance with the topping-cycle operating standard and, if applicable, efficiency standard. Section 292.205(a)(1) of the Commission's regulations (18 C.F.R. § 292.205(a)(1)) establishes the operating standard for topping-cycle cogeneration facilities: the useful thermal energy output must be no less than 5 percent of the total energy output. Section 292.205(a)(2) (18 C.F.R. § 292.205(a)(2)) establishes the efficiency standard for topping-cycle cogeneration facilities for which installation commenced on or after March 13, 1980: the useful power output of the facility plus one-half the useful thermal energy output must (A) be no less than 42.5 percent of the total energy input of natural gas and oil to the facility; and (B) if the useful thermal energy output is less than 15 percent of the total energy output of the facility, be no less than 45 percent of the total energy input of natural gas and oil to the facility. To demonstrate compliance with the topping-cycle operating and/or efficiency standards, or to demonstrate that your facility is exempt from the efficiency standard based on the date that installation commenced, respond to lines 13a through 13l below.

If you indicated in line 10a that your facility represents both topping-cycle and bottoming-cycle cogeneration technology, then respond to lines 13a through 13l below considering only the energy inputs and outputs attributable to the topping-cycle portion of your facility. Your mass and heat balance diagram must make clear which mass and energy flow values and system components are for which portion (topping or bottoming) of the cogeneration system.

13a Indicate the annual average rate of useful thermal energy output made available to the host(s), net of any heat contained in condensate return or make-up water	Btu/h
13b Indicate the annual average rate of net electrical energy output	kW
13c Multiply line 13b by 3,412 to convert from kW to Btu/h	0 Btu/h
13d Indicate the annual average rate of mechanical energy output taken directly off of the shaft of a prime mover for purposes not directly related to power production (this value is usually zero)	hp
13e Multiply line 13d by 2,544 to convert from hp to Btu/h	0 Btu/h
13f Indicate the annual average rate of energy input from natural gas and oil	Btu/h
13g Topping-cycle operating value = 100 * 13a / (13a + 13c + 13e)	0 %
13h Topping-cycle efficiency value = 100 * (0.5*13a + 13c + 13e) / 13f	0 %

13i Compliance with operating standard: Is the operating value shown in line 13g greater than or equal to 5%?

☐ Yes (complies with operating standard) ☐ No (does not comply with operating standard)

13j Did installation of the facility in its current form commence on or after March 13, 1980?

☐ Yes. Your facility is subject to the efficiency requirements of 18 C.F.R. § 292.205(a)(2). Demonstrate compliance with the efficiency requirement by responding to line 13k or 13l, as applicable, below.

☐ No. Your facility is exempt from the efficiency standard. Skip lines 13k and 13l.

13k Compliance with efficiency standard (for low operating value): If the operating value shown in line 13g is less than 15%, then indicate below whether the efficiency value shown in line 13h greater than or equal to 45%:

☐ Yes (complies with efficiency standard) ☐ No (does not comply with efficiency standard)

13l Compliance with efficiency standard (for high operating value): If the operating value shown in line 13g is greater than or equal to 15%, then indicate below whether the efficiency value shown in line 13h is greater than or equal to 42.5%:

☐ Yes (complies with efficiency standard) ☐ No (does not comply with efficiency standard)

Information Required for Bottoming-Cycle Cogeneration Facility

If you indicated in line 10a that your facility represents bottoming-cycle cogeneration technology, then you must respond to the items on pages 16 and 17. Otherwise, skip pages 16 and 17.

Usefulness of Bottoming-Cycle Thermal Output

The thermal energy output of a bottoming-cycle cogeneration facility is the energy related to the process(es) from which at least some of the reject heat is then used for power production. Pursuant to sections 292.202(c) and (e) of the Commission's regulations (18 C.F.R. § 292.202(c) and (e)), the thermal energy output of a qualifying bottoming-cycle cogeneration facility must be useful. In connection with this requirement, describe the process(es) from which at least some of the reject heat is used for power production by responding to lines 14a and 14b below.

14a Identify and describe each thermal host and each bottoming-cycle cogeneration process engaged in by each host. For hosts with multiple bottoming-cycle cogeneration processes, provide the data for each process in separate rows.

	Name of entity (thermal host) performing the process from which at least some of the reject heat is used for power production	Thermal host's relationship to facility; Thermal host's process type	Has the energy input to the thermal host been augmented for purposes of increasing power production capacity? (if yes, describe on p. 19)
1)		Select thermal host's relationship to facility Select thermal host's process type	Yes ☐ No ☐
2)		Select thermal host's relationship to facility Select thermal host's process type	Yes ☐ No ☐
3)		Select thermal host's relationship to facility Select thermal host's process type	Yes ☐ No ☐

☐ Check here and continue in the Miscellaneous section starting on page 19 if additional space is needed

14b Demonstration of usefulness of thermal output: At a minimum, provide a brief description of each process identified above. In some cases, this brief description is sufficient to demonstrate usefulness. However, if your facility's process is not common, and/or if the usefulness of such thermal output is not reasonably clear, then you must provide additional details as necessary to demonstrate usefulness. Your application may be rejected and/or additional information may be required if an insufficient showing of usefulness is made. (Exception: If you have previously received a Commission certification approving a specific bottoming-cycle process related to the instant facility, then you need only provide a brief description of that process and a reference by date and docket number to the order certifying your facility with the indicated process. Such exemption may not be used if any material changes to the process have been made.) If additional space is needed, continue in the Miscellaneous section starting on page 19.

Bottoming-Cycle Operating and Efficiency Value Calculation

Applicants for facilities representing bottoming-cycle technology and for which installation commenced on or after March 13, 1990 must demonstrate compliance with the bottoming-cycle efficiency standards. Section 292.205(b) of the Commission's regulations (18 C.F.R. § 292.205(b)) establishes the efficiency standard for bottoming-cycle cogeneration facilities: the useful power output of the facility must be no less than 45 percent of the energy input of natural gas and oil for supplementary firing. To demonstrate compliance with the bottoming-cycle efficiency standard (if applicable), or to demonstrate that your facility is exempt from this standard based on the date that installation of the facility began, respond to lines 15a through 15h below.

If you indicated in line 10a that your facility represents both topping-cycle and bottoming-cycle cogeneration technology, then respond to lines 15a through 15h below considering only the energy inputs and outputs attributable to the bottoming-cycle portion of your facility. Your mass and heat balance diagram must make clear which mass and energy flow values and system components are for which portion of the cogeneration system (topping or bottoming).

15a Did installation of the facility in its current form commence on or after March 13, 1980?

☐ Yes. Your facility is subject to the efficiency requirement of 18 C.F.R. § 292.205(b). Demonstrate compliance with the efficiency requirement by responding to lines 15b through 15h below.

☐ No. Your facility is exempt from the efficiency standard. Skip the rest of page 17.

15b Indicate the annual average rate of net electrical energy output	kW
15c Multiply line 15b by 3,412 to convert from kW to Btu/h	0 Btu/h
15d Indicate the annual average rate of mechanical energy output taken directly off of the shaft of a prime mover for purposes not directly related to power production (this value is usually zero)	hp
15e Multiply line 15d by 2,544 to convert from hp to Btu/h	0 Btu/h
15f Indicate the annual average rate of supplementary energy input from natural gas or oil	Btu/h
15g Bottoming-cycle efficiency value = 100 * (15c + 15e) / 15f	0 %

15h Compliance with efficiency standard: Indicate below whether the efficiency value shown in line 15g is greater than or equal to 45%:

☐ Yes (complies with efficiency standard) ☐ No (does not comply with efficiency standard)

Certificate of Completeness, Accuracy and Authority

Applicant must certify compliance with and understanding of filing requirements by checking next to each item below and signing at the bottom of this section. Forms with incomplete Certificates of Completeness, Accuracy and Authority will be rejected by the Secretary of the Commission.

Signer identified below certifies the following: (check all items and applicable subitems)

- ☐ He or she has read the filing, including any information contained in any attached documents, such as cogeneration mass and heat balance diagrams, and any information contained in the Miscellaneous section starting on page 19, and knows its contents.
- ☐ He or she has provided all of the required information for certification, and the provided information is true as stated, to the best of his or her knowledge and belief.
- ☐ He or she possess full power and authority to sign the filing; as required by Rule 2005(a)(3) of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2005(a)(3)), he or she is one of the following: (check one)
  - ☐ The person on whose behalf the filing is made
  - ☐ An officer of the corporation, trust, association, or other organized group on behalf of which the filing is made
  - ☐ An officer, agent, or employe of the governmental authority, agency, or instrumentality on behalf of which the filing is made
  - ☐ A representative qualified to practice before the Commission under Rule 2101 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2101) and who possesses authority to sign
- ☐ He or she has reviewed all automatic calculations and agrees with their results, unless otherwise noted in the Miscellaneous section starting on page 19.
- ☐ He or she has provided a copy of this Form 556 and all attachments to the utilities with which the facility will interconnect and transact (see lines 4a through 4d), as well as to the regulatory authorities of the states in which the facility and those utilities reside. See the Required Notice to Public Utilities and State Regulatory Authorities section on page 3 for more information.

Provide your signature, address and signature date below. Rule 2005(c) of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2005(c)) provides that persons filing their documents electronically may use typed characters representing his or her name to sign the filed documents. A person filing this document electronically should sign (by typing his or her name) in the space provided below.

Your Signature	Your address	Date

Audit Notes
Commission Staff Use Only:

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Miscellaneous

Use this space to provide any information for which there was not sufficient space in the previous sections of the form to provide. For each such item of information clearly identify the line number that the information belongs to. You may also use this space to provide any additional information you believe is relevant to the certification of your facility.

Your response below is not limited to one page. Additional page(s) will automatically be inserted into this form if the length of your response exceeds the space on this page. Use as many pages as you require.

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