Supporting Statement for
FERC Form No. 556, "Certification of Qualifying Facility (QF) Status for a Small Power Production or Cogeneration Facility" (OMB Control No. 1902-0075),
in Docket No. RM09-23-000 (Final Rule Issued 3/19/2010)

The Federal Energy Regulatory Commission (Commission or FERC) requests Office of Management and Budget (OMB) review and approval of the Final Rule in RM09-23 that affects FERC Form No. 556[1], "Certification of Qualifying Facility (QF) Status for a Small Power Production or Cogeneration Facility." The Final Rule and attached draft Form No. 556[2] [as published in the Federal Register on 3/30/2010] are included under 'Supplemental Documents' in OMB's ROCIS system.

FERC-556 is an existing information collection requirement, approved by OMB through December 31, 2012. We are requesting approval for three years of the collection, as revised by this final rule. We estimate that, as a result of the program changes in the final rule, the estimated annual reporting burden will be reduced by approximately 8,212 hours. (Details are provided in Questions 12 and 15.) Through the final rule, FERC is: (1) exempting 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) making Form No. 556 easier and less time consuming to complete and submit; (3) decreasing opportunities for confusion and error in completing the form; (4) improving consistency and quality of the data collected by the form; (5) decreasing Commission resources dedicated to managing errors and omissions in submitted forms; and (6) clarifying and correcting the regulations governing the requirements for obtaining and maintaining QF status.

Background

When the Commission first implemented section 201 of the Public Utility Regulatory Policy Act (PURPA), it provided two paths to QF status: self certification and Commission certification.[3] The procedures for self-certification are contained in 18CFR § 292.207(a). When a small power production facility or cogeneration facility self-certifies (or self-recertifies),[4] it

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1 FERC Form No. 556 is also known as "FERC Form 556" and "FERC-556".

2 The  symbol to the right of some questions in the FERC-556 (such as question 1k) indicates that there is supplemental system help available for the question. For information, we are adding a draft of the system help text, to the Supplemental Documents in OMB's ROCIS system. Subsequent to the issuance of the final rule with its attached form, we have determined that questions 7b, 8c, 8d, 8e, Section11 (top of page 12), 11g, 11j, 13i, 13k, 13l, and adjacent to the date field on page 18 do not need system help. The system help symbol will be removed from those questions upon OMB approval of the form, and the final form will then be submitted to OMB for information.

3 There is no fee for a 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.

4 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.

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.

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 FERC first implemented section 201 of PURPA in Order No. 70,[5] FERC 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.[6] This self-certification notice 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, FERC noted that QFs and purchasing utilities could agree that a generation facility met the requirements for QF status, and the facility would qualify for the benefits of PURPA without making any filing with FERC.

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 18 CFR 292.207(b), the "optional procedure" for QF status. Under the 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.Error: Reference source not found After receiving an application for Commission certification and the required fee, FERC assigns the filing a docket number and notices the filing in the Federal Register, providing an opportunity for interventions and protests. FERC'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.[7] FERC thought this combination of encouraging self-certifications, while

5 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).

6 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) and (b)(2).

7 See 18 CFR 292.207(d)(1)(ii). A similar opportunity for FERC 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 18, the right to file a motion seeking revocation of a self-certification was added to the

providing for both Commission-certification and an opportunity to seek revocation of QF status, would assure that only those generation facilities that meet the criteria for QF status would receive and retain that status.

As noted above, when it first enacted its regulations, the Commission 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, in Order No. 575, later required QFs to provide more detailed information about self-certifying QFs, in 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.

Following the enactment of the Energy Policy Act of 2005 (EPAct 2005), which imposed new requirements for QF status for "new" cogeneration facilities,[8] the Commission issued Order No. 671,[9] 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.[10]

Subject Final Rule (Docket No. RM09-23-000)

In this Final Rule (submitted separately in ROCIS), FERC is removing from 18 CFR 131.80 the contents and general instructions of the Form No. 556, 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 FERC.gov website). FERC also is requiring that the Form No. 556 be submitted electronically.

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.

8 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).

9 Revised Regulations Governing Small Power Production and Cogeneration Facilities, Order No. 671, 71 FR 7852 (Feb. 2, 2006), FERC Stats. & Regs. ¶ 31,203 (2006), order on reh'g, Order No. 671-A, 71 FR 30585 (May 22, 2006), FERC Stats. & Regs. ¶ 31,219 (2006).

10 See 18 CFR 292.203(a)(3), (b)(2).

FERC 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.

Additionally, FERC 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 FERC'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.

Finally, FERC is changing the exemption of QFs from the Federal Power Act and the Public Utility Holding Company Act of 2005 (PUHCA) and certain State laws and regulations 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.

The revisions described above 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 FERC 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.

A. Justification

1. CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY

The Commission is obligated by statute to regulate key economic aspects of the electric, natural gas and oil industries. The law requires the Commission's economic regulatory activity because the transmission of electricity, natural gas, and oil has often been a natural monopoly. In enacting Part II of the FPA in 1935, one of the primary Congressional goals was to protect electric ratepayers from abuses of market power. To accomplish this goal, Congress directed the FERC to oversee sales for resale and transmission service provided by public utilities in interstate commerce. Today, one of FERC's overarching goals is to promote competition in wholesale power markets, having determined that effective competition, as opposed to traditional forms of price regulation, can best protect the interests of ratepayers. Market power, however, can be exercised to the detriment of effective competition and exercise of market power in bulk power markets.

FERC Form No. 556 is required to implement the statutory provisions governed by Section 3 of the FPA (16 U.S.C. 792-828c) and Sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. §2601). These statutes authorize FERC to encourage cogeneration and small power production and to prescribe such rules as necessary in order to carry out these statutory directives. As noted above, the Commission has codified FERC Form No. 556 in 18 CFR 131.80 and related regulations in 18 CFR Part 292.

A primary objective of PURPA, as indicated in Section 2, is the conservation of energy through efficient use of energy resources and facilities by electric utilities. One means of achieving this goal is to encourage production of electric power by cogeneration facilities which make use of reject heat associated with commercial or industrial processes, and by small power production facilities which use other wastes and renewable resources. PURPA, through establishment of various regulatory benefits, encourages the development of small power production facilities and cogeneration facilities which meet certain technical and corporate criteria. Facilities that meet these criteria are called Qualifying Facilities or QFs.

FERC's regulations, in 18 CFR Part 292, specify: a) the certification procedures which must be followed by owners or operators of small power production and cogeneration facilities; b) the criteria which must be met; c) the information which must be submitted to FERC in order to obtain qualifying status; d) the PURPA benefits which are available to QFs to encourage small power production and cogeneration; and e) the requirements pertaining to PURPA implementation plans regarding the transaction obligations that electric utilities have with respect to QFs.

Among PURPA provisions in Part 292, are requirements for electric utilities to make available to the public avoided cost information and system capacity needs; to purchase energy and capacity from QFs favorably priced on the basis of the avoided cost of the power that is displaced by the QF power (i.e., the incremental cost to the purchasing utility if it had generated the displaced power or purchased it from another source); to sell backup, maintenance and other power services to QFs at rates based on the cost of rendering the services; to provide certain interconnection and transmission services priced on a nondiscriminatory basis; and to operate in "parallel" with other interconnected QFs so that they may be electrically synchronized with electric utility grids.

Other PURPA benefits listed in 18CFR Part 292 exempt QFs from certain corporate, accounting, reporting and rate regulation requirements under the Public Utility Holding Company Act of 1935 (*since repealed by EPAct 2005)*, certain state laws and in certain instances, regulation under the Federal Power Act.

By amending its regulations, FERC is satisfying the statutory mandate and satisfying its continuing obligation to review its policies encouraging cogeneration and small power production, energy conservation, efficient use of facilities and resources by electric utilities and

equitable rates for energy customers.

2. HOW, BY WHOM AND FOR WHAT PURPOSE IS THE INFORMATION TO BE USED AND THE CONSEQUENCES OF NOT COLLECTING THE INFORMATION

Since 1935, the Commission has regulated certain electric utility activities under the Federal Power Act. Under FPA sections 205 and 206, FERC oversees the rates, terms and conditions of sales for resale of electric energy and transmission service in interstate commerce by public utilities. The Commission must ensure that those rates, terms and conditions are just and reasonable, and not unduly discriminatory or preferential.

The information collected from FERC Form No. 556 and under 18 CFR Parts 131 and 292 is used by the Commission to determine whether an application for certification (FERC certification or self-certification) meets the criteria for a qualifying small power production facility or a qualifying cogeneration facility under its regulations and is eligible to receive the benefits available to it under PURPA.

In order to obtain QF status and obtain PURPA benefits, an owner or operator of a small power production or cogeneration facility must follow the process indicated in FERC Form No. 556 and select, at its option, either the procedure set forth in 18 CFR Section 292.207(a), which requires the submission to FERC, of a self-certification or a notice of pre-authorized recertification, or the application for FERC certification through the process set forth in section 292.207(b). The information requirements for both processes are largely the same, i.e., the submittal of a completed Form No. 556 which provides the information necessary to demonstrate compliance with FERC's regulations. If FERC did not collect the FERC Form No. 556 information, it would not be possible to determine whether a facility satisfies all of the QF requirements.

Since revocation of the qualifying status of a small power production or cogeneration facility may occur if the facility fails to comply with any of the Part 292 criteria, private financial lenders to small power production and cogeneration power facilities often require small power producers and cogenerators to follow the more involved section 292.207(b) procedures (certification by FERC as opposed to self-certification) in order to reduce the risk of status revocation.

The Commission is proposing the revisions described here and in the final rule with the following goals: (1) making the Form No. 556 easier and less time consuming to complete and submit; (2) decreasing opportunities for confusion and error in completing the form; (3) improving consistency and quality of the data collected by the form; (4) decreasing Commission resources dedicated to managing errors and omissions in submitted forms; and (5) clarifying and correcting the regulations governing the requirements for obtaining and maintaining QF status.

3. DESCRIBE ANY CONSIDERATION OF THE USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN AND THE TECHNICAL OR LEGAL OBSTACLES TO REDUCING BURDEN

There is an ongoing effort to determine the potential and value of improved information technology to reduce the burden. Specifically, in order to increase the efficiency with which it carries out its program responsibilities, the Commission has been implementing measures to use information technology to reduce the amount of paperwork required in its proceedings. In Order No. 619 (issued 9/14/2000), FERC established an electronic filing initiative to meet the goals of the Government Paperwork Elimination Act, which directed agencies to provide for optimal use and acceptance of electronic documents and signatures and electronic recordkeeping, where practical, by October 2003.

FERC has attempted to facilitate the granting of QF status by providing materials to potential small power producers and cogenerators to assist in their preparation of notices of self-certification and preparation of applications for certification. FERC Form No. 556 can be downloaded from FERC's web site at: http://www.ferc.gov/docs-filing/forms.asp#556 .

In the final rule on QFs, for several reasons, FERC is requiring that applicants submit their QF applications (whether initial certifications or recertifications, and whether self-certifications or applications for Commission certification) electronically via the FERC website. For most applicants, the 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 their application and a docket number for their submittal much more quickly than they would by filing in hardcopy format. 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 would facilitate the compilation of QF data that could be made available to the public. Each year Commission staff field a number of requests for QF certification data from private organizations, researchers and other government agencies. Requiring applicants to file in electronic format would make it possible to respond to many more such requests, and/or to publish compiled QF data on the Commission's website.

4. DESCRIBE EFFORTS TO IDENTIFY DUPLICATON AND SHOW SPECIFICALLY WHY ANY SIMILAR INFORMATION ALREADY AVAILABLE CANNOT BE USED OR MODIFIED FOR USE FOR THE PURPOSE(S) DESCRIBED IN INSTRUCTION NO. 2.

Commission filings and data requirements are periodically reviewed in conjunction with OMB clearance expiration dates. This includes a review of the Commission's regulations and data requirements to identify any duplication. There are no similar sources of information available that can be used or modified for these reporting requirements. Form No. 556 is not

likely to be duplicated in other government forms due to the uniqueness of the QF program. No similar information is available to FERC for these purposes.

5. METHODS USED TO MINIMIZE BURDEN IN COLLECTION OF INFORMATION INVOLVING SMALL ENTITIES

In this final rule, the Commission proposes three different types of regulatory changes with the intent to reduce the regulatory burden on small entities.

- First, FERC is clarifying and streamlining the Form No. 556 to make it easier for applicants to complete, because the proposed form leads applicants step-by-step through the compliance determinations. The new information proposed to be collected from applicants for cogeneration facilities in lines 11a through 11f serves to guide the applicants in determining whether the EPAct 2005 cogeneration requirements apply to their facilities. In the absence of this step-by-step guide, applicants (particularly small applicants) must independently research the requirements and determine compliance with the relatively complex EPAct 2005 cogeneration requirements.

- Second, FERC proposes certain limited additional disclosures of information. In particular, the Commission proposes (1) to collect in line 3g of the proposed form the geographic coordinates of facilities that do not have a street address, and (2) to collect 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.

  The requirement to report 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 website); 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 municipal or county map showing property lines.

- Third, the Commission proposes to exempt applicants for facilities with net power production capacities of 1 MW and smaller from any filing requirement. The electronic filing requirement does not apply to applicants for small QFs. The Commission believes that any applicant for a facility larger than 1 MW should have access to the resources needed to make an electronic filing.

6. CONSEQUENCE TO FEDERAL PROGRAM IF COLLECTION WERE CONDUCTED LESS FREQUENTLY

Applicants submit an initial Form No. 556 and additional notices for any changes in

qualifying status criteria. In view of the one-time requirement, the PURPA objective of conservation through encouragement of small power production and cogeneration would be undercut if Form No. 556 information were to be collected less frequently (i.e., not collected at all). If the information were not to be collected as noted above, the Commission would be unable to certify a facility as a QF, and the cogenerator or small power producer would be unable to determine in advance whether self-certification or request for Commission certification is warranted.

7. EXPLAIN ANY SPECIAL CIRCUMSTANCES RELATING TO THE INFORMATION

The Commission is requiring 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 website. The multiple paper copies of the filing will no longer be needed.

8. DESCRIBE EFFORTS TO CONSULT OUTSIDE THE AGENCY: SUMMARIZE PUBLIC COMMENTS AND THE AGENCY'S RESPONSE TO THESE COMMENTS

The Commission's procedures require that the rulemaking notice be published in the Federal Register, thereby allowing all public utilities, state commissions, federal agencies, and other interested parties an opportunity to submit comments, or suggestions concerning the proposal. The Notice of Proposed Rulemaking was published in the Federal Register (74FR54503, 10/22/2009) with comments due 12/21/2009. Seven parties filed comments in response to the NOPR. The comments and FERC's responses are detailed in the Final Rule; a summary of the public comments and FERC's responses follow.

A. In General

Comments

The following sections provide a 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.

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

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 the exemption of QFs from the Federal Power Act, and the exemption of QFs from the Public Utility Holding Company Act of 2005 (PUHCA) and certain State laws and regulations 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.

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. The changes will increase the effectiveness of the Commission's policies encouraging cogeneration and small power production, as required by section 210 of PURPA.

B. Revisions to 18 CFR 131.80

NOPR Proposal

Currently, § 131.80 of the Commission's 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.

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 website.

Comments

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.

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

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.

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 website.

To address 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

18CFR 292.203 of our regulations 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.

In the NOPR, the Commission proposed to correct an inadvertent error in 18 CFR 292.203(b)(1). 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."

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.

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

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

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.

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.

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

Commission Determination

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.

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.[11] 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;[12] 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.[13] 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.

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,[14] 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 No. 556, would rarely, if ever, not be in compliance with the standards and criteria for QF status. We see no significant benefit to NRECA's suggestion that we adopt a 1 MW threshold for

11 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.

12 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.

13 Order No. 671, FERC Stats. & Regs. ¶ 31,203 at P 81.

14 See 16 U.S.C. 824a-3(a).

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 No. 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. Ninety percent of the 2,142 filings 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 No. 556 filing enables, we discuss below means to monitor compliance with the criteria for QF status that are available to purchasing utilities.

In exempting smaller generating facilities from the requirement to file a Form No. 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 made a certification filing with the Commission.

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.[15] 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, [16] just as they could prior to Order No. 671. The Commission has not proposed to change these regulations in this proceeding.

Electric utilities, however, may not refuse to purchase electric energy from a QF that is exempt from the requirement that it file a Form No. 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 No. 556, absent a favorable finding by the Commission in response to a petition for revocation of QF status.

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.

The Commission declines to address, as beyond the scope of this proceeding, EEI's requests (1) to modify 18 C.F.R. § 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

15 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 No. 556 to provide the utility an attestation that the QF meets the requirements for QF status.
16 18 CFR 292.207(d).

with the Commission to obtain QF status,[17] 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

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,[18] 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.

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

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

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

17 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.

18 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.

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.[19]

E. Revisions to 18 CFR 292.205

NOPR Proposal

In the NOPR, the Commission explained that the text of § 292.205(d) of the Commission's regulations[20] 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. [21]

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.[22] 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, 2005]."[23] 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.[24] 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).

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]."[25] 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

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

20 18 CFR 292.205(d).

21 Id. (emphasis added).

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

23 16 U.S.C. 824a-3(n)(2)(A) (emphasis added).

24 See Order No. 671, FERC Stats. & Regs. ¶ 31,203 at P 81.

25 16 USC 824a-3(n)(2)(B).

certification as a qualifying cogeneration facility under § 292.207 of this chapter prior to February 2, 2006."

Comments

No comments were filed on this proposal.

Commission Determination

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

In the NOPR, the Commission proposed to eliminate the procedure for pre-authorized Commission recertification contained in § 292.207(a)(2).[26] 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. 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. 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.

26 18 CFR 292.207(a)(2).

Comments

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

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."[27] 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 filing requirements) and do not change their essential nature.

Commission Determination

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 From No. 556.

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.[28] 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.[29]

27 NOPR at P 28.

28 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.

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

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.[30] Although the revised Form No. 556 adopted in this Final Rule relaxes, to some extent, when a QF is required to disclose its owners,[31] 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.[32]

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

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

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.

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

30 Order No. 671 at P 110.

31 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.

32 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.

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

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.

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. 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.[33] 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.[34] 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.

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.

We will not, however, impose the requirement, suggested by EEI, that existing QFs not seeking recertification nevertheless be required to file a new Form No. 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.

33 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.
34 18 C.F.R. §§ 292.205(a)(1), (a)(2) and (b); Order No. 671 at P 51.

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

NOPR Proposal

Section 292.207(a)(1)(iv) of our regulations[35] 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[36] 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.

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

No comments were received on this issue.

Commission Determination

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

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.[37] No such requirement currently exists for applications for Commission certification.

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.

35 18 CFR 292.207(a)(1)(iv).

36 18 CFR 292.207(b)(4).

37 18 CFR 292.207(a)(ii).

Comments

Interstate Renewables suggests exempting small QFs that will be exempt under proposed § 202.203(d)(1) from the requirement to file a Form No. 556 from the notice requirements contained in proposed § 292.207(c)(2).

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

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.

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 has applied to the Commission under 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's 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 no reason to modify this 500 kW threshold.

5. Other Proposed Changes

NOPR Proposal

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

No comments were received on this issue.[38]

Commission Determination

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

In the NOPR, the Commission proposed to amend § 292.601(a) of its regulations[39] 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)[40] 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."[41]

Comments

No comments were filed on this proposal.

Commission Determination

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.

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

38 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.

39 18 CFR 292.601(a).

40 Pub. L. No. 101-575, 104 Stat. 2834 (1990), as amended by Pub. L. No. 102-46, 105 Stat. 249 (1991).

41 Cambria Cogen Co., 53 FERC ¶ 61,459, at 62,619 (1990).

NOPR Proposal

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

No comments were filed on this proposal.

Commission Determination

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.

I. Proposed Revisions to the Form No. 556

1. General

NOPR Proposal

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 website, and was published in the Federal Register.[42] 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,[43] after receiving and considering comments on those changes.

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.

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.

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42 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.

43 44 U.S.C. 3507(d).

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 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

No comments were filed on this proposal.

Commission Determination

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.

2. Name of Form

NOPR Proposal

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.[44] 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

No comments were filed on this proposal.

Commission Determination

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."

3. Geographic Coordinates

NOPR Proposal

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

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

some facilities in rural or wilderness areas do not have a street address.

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

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

Commission Determination

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 website); 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.

4. Ownership

NOPR Proposal

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.[45]

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.

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.

The Commission proposed to clarify both the level of ownership above which applicants are

45 Order No. 671, , FERC Stats. & Regs. ¶ 31,203 at P 110.

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[46] or holding company,[47] 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.[48] 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

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

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[49] or holding company,[50] 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.

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.

5. Fuel Use for Small Power Production Facilities

NOPR Proposal

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

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

48 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).

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

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

Section 292.204(b) of the Commission's regulations[51] 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.[52]

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.

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.

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

No comments were received on this issue.

Commission Determination

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.

51 18 CFR 292.204(b).

52 18 CFR 292.204(b)(2).

6. Mass and Heat Balance Diagrams for Cogeneration Facilities

NOPR Proposal

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

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. 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.

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
No comments were filed on this proposal.

Commission Determination
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.

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.

7. EPAct 2005 Cogeneration Facilities

NOPR Proposal
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.[53] 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).

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.[54] 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

53 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."

54 Order No. 671, FERC Stats. & Regs. ¶ 31,203 at P 17.

(lines 12a, 12b, 14a, and 14b of the proposed form).

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

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."[55] 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.

Thus, under the Commission's proposal, an applicant for recertification of a pre-EPAct 2005

55 Id. P 115.

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

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

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).

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.

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."

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.

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.

9. EXPLAIN ANY PAYMENT OR GIFTS TO RESPONDENTS

There are no payments or gifts to respondents in the requirements contained in the proposed rule.

10. DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS

The Commission generally does not consider the data filed to be confidential. However, the applicant may request privileged treatment for supporting documents in accordance with 18 CFR 388.112, if their release might be harmful to the competitive posture of the applicant.

11. PROVIDE ADDITIONAL JUSTIFICATION FOR ANY QUESTIONS OF A SENSITIVE NATURE

There are no questions of a sensitive nature associated with the reporting requirements in this final rule.

12. ESTIMATED BURDEN COLLECTION OF INFORMATION [56]

The Commission has previously broken down its estimated annual burden for completing the Form No. 556 by filing type (self-certification or Commission certification). Breaking down the filings by facility type (small power production facility or cogeneration facility), in addition to filing type, results in a significantly improved burden estimate. Using this method, the total estimated annual burden for the Form No. 556 is 2,156 hours, calculated as follows.

FERC Form No. 556, Final Rule in RM09-23 Error: Reference source not found				
Facility Type	**Filing Type**	**Number of Respondents**	**Burden Hours Per Respondent**	**Total Annual Burden Hours**
cogeneration facility > 1MW	self-certification	100	8	800
cogeneration facility > 1 MW	application for FERC certification	3	50	150
small power production facility > 1 MW	self-certification	400	3	1,200
small power production facility > 1 MW	application for FERC certification	1	6	6
Totals		504		2,156

Program Changes plus the Adjustments result in a net decrease of 384 hours [2,540 - 2,156] from Current Inventory (below).

FERC Form No. 556 Burden -- Current OMB Inventory Error: Reference source not found			
Certification Type	**No. of Respondents**	**Burden Hours per Respondent**	**Total Annual Burden Hours**

56 The most recent OMB approval for FERC-556 was issued 12/1/2009 (for ICR 2009-1902-008).
Based on a recent analysis of the data and number of respondents/filers involved, it appears that the number of filers for:

- self-certification had increased to approximately 1,000 (rather than the 820 currently carried in inventory), due, for example, to tax incentives, states' incentives, popularity of renewables (solar and wind), etc.
- FERC certification was approximately 20-30 (rather than the 4 currently carried in inventory) which were probably re-certifications.

Because those adjustments in the number of filers were discovered only recently during the preparation of the QF final rulemaking, they have not been submitted to OMB or reflected in the OMB inventory. Those figures are not detailed in the rulemaking or industry burden estimates and explanation of change in this clearance package. The burden changes discussed in the rulemaking and this clearance package reflect the program changes FERC is making in this rulemaking (e.g., the exemption for facilities that are 1 MW or less, electronic filing, clarifying the filing and instructions, etc.).

FERC Certification	4	20	80
Self Certification	820	3	2,460
Totals	824		2,540

13. ESTIMATE OF TOTAL ANNUAL COST OF BURDEN TO RESPONDENTS[Error: Reference source not found]

Projected industry costs:

The total estimated annual cost to respondents of FERC-556 is $251,540.52 (2,156 burden hours X $116.67/hour [an average hourly cost for attorney fees, engineering consultation, and administrative support]. The average estimated cost per respondent, or filing, by facility type and filing type follows. [For the 504 respondents, the average cost of a filing is $499.09.]

FERC-556, Final Rule in RM09-23 [Error: Reference source not found]				
Facility Type	**Filing Type**	**Burden Hours Per Respondent (1)**	**Average Hourly Cost ($) (2)**	**Estimated Cost per Respondent ($) (1)X(2)**
cogeneration facility > 1MW	self-certification	8	116.67	933.36
cogeneration facility > 1 MW	application for FERC certification	50	116.67	5,833.50
small power production facility > 1 MW	self-certification	3	116.67	350.01
small power production facility > 1 MW	application for FERC certification	6	116.67	700.02

14. ESTIMATED ANNUALIZED COST TO FEDERAL GOVERNMENT:

(a) Information Analysis (1.6 FTE) [57]	$220,598.40	
(b) Forms Clearance review		$ 1,528.00
Estimated Cost for Year of Operation	$222,126.40	

The estimate of the cost to the Federal Government is based on salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs

57 For Fiscal Year 2010, the estimated annual cost (using 2,080 hours per year) per FERC staff/employee is $137,874, including salary and benefits.

directly attributable to processing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than anyone particular function or activity.

15. REASONS FOR CHANGES IN BURDEN INCLUDING THE NEED FOR ANY INCREASE Error: Reference source not found

As noted above, the Commission is revising its regulations and the FERC-556:

- to exempt 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
- to 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
- 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
- to codify the Commission's authority to waive the QF certification requirement for good cause
- to 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
- to eliminate the requirement for applicants to provide a draft notice suitable for publication in the Federal Register
- to clarify, simplify or correct certain sections of the regulations.

The revisions described above 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 FERC 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.

We estimate these program changes plus adjustments will decrease industry burden by 324 hours, as detailed above.

16. TIME SCHEDULE FOR PUBLICATION OF DATA

Copies of the filings are made available to the public via the Commission's web site. There are no other publications or tabulations of the information.

17. DISPLAY OF EXPIRATION DATE

Because FERC Form No. 556 is available from the Commission's website as a standard form that can be downloaded; the expiration date for OMB approval is available on the form/instructions.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

There is an exception to the Paperwork Reduction Act statement. The Commission will not be using statistical survey methodology for this information collection.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

Not Applicable. Statistical methods are not employed for this data collection.