

CLIENT ALERT

FERC Reverses 40-Year QF Precedent

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Reversing its 40-year old precedent, the Federal Energy Regulatory Commission (FERC) revoked the qualifying facility (QF) status of a facility made up of a 160 MW solar array and a 50 MW battery storage resource, as well as inverters that convert the direct current (DC) electricity generated by the solar panels into alternating current (AC) electricity, which (after subtracting parasitic load) physically limit the capacity that can be delivered to the grid to 80 MW. FERC rejected prior precedent that applied the 80 MW size limit for small power production qualifying facilities to the amount of power that can be delivered to the grid and now finds that the size will be based on the rated capacity of the facility without regard to the fact that the output is limited such as when the inverters necessary for operation limit the facility's output.

To qualify as a small power production QF, a renewable resource must have a power production capacity of 80 MW or less. Under prior precedent, FERC found that to determine this size criteria, it would focus on the facility's actual output, and further found that the facility would still qualify as a QF if it used artificial or mechanical means of limiting its output to 80 MW or below. FERC now finds that it improperly focused on output in determining QF eligibility, and that a facility cannot rely on the fact that inverters serve as a limiting element in determining its power production capacity for the purpose of QF eligibility because that is a conversion limit, not a limit on the facility's power production capacity. FERC found that a facility could still reduce its capacity by parasitic load and line losses in determining its net power production capacity, which is the value that must be 80 MW or less in order to qualify as a QF for most small power production facilities.

FERC found that its order would apply prospectively from the date of the order, and that small power production QFs that had self-certified or been granted QF status before September 1, 2020 that may have included adjustments for inverters or other output-limiting devices to calculate their maximum net power production capacity as 80 MW or less would be grandfathered under prior precedent. FERC also found that having taken steps to implement the option under PURPA to require an electric utility to purchase its output (which FERC characterizes as obtaining a legally enforceable obligation or LEO) is insufficient to grandfather QF status when the QF certification has not yet been filed.

Generation resources that are currently in development and intended to rely on inverters or other mechanical means of limiting their output in order to qualify for QF status will now need to address a different regulatory status if their facilities will exceed 80 MWs before application of the inverter conversion or other limitation on its output. Moreover, even if a facility continues to qualify for QF status because it is 80 MW or less under FERC's new view of QF eligibility, it might affect the QF's ability to qualify for certain exemptions from certain Federal Power Act provisions and other regulatory requirements that are available to QFs based on a size of 20 MW or 30 MW.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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