UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Revisions to Form, Procedures, and Criteria for Certification of Qualifying Facility Status for a Small Power Production or Cogeneration Facility	)	**Docket No. RM09-23-000**

COMMENTS OF THE EDISON ELECTRIC INSTITUTE

The Edison Electric Institute ("EEI") hereby submits these comments in response to the Federal Energy Regulatory Commission's Notice of Proposed Rulemaking ("NOPR"), issued October 15, 2009 in this docket. The NOPR was published in the *Federal Register* on October 22, with comments due on or before December 21, 2009.[1] In the NOPR, the Commission proposes several revisions to its regulations governing the certification of Qualifying Facility ("QF") status for small power production or cogeneration facilities under the Public Utility Regulatory Policies Act of 1978 ("PURPA").

EEI is the association of U.S. shareholder-owned electric companies. Our members serve 95% of the ultimate customers in the shareholder-owned segment of the industry, and they represent approximately 70 percent of the U.S. electric power industry. EEI's diverse membership includes companies generating electricity, providing transmission services, and serving retail customers in all regions of the country. Many of EEI's members are subject to the mandatory purchase obligations and other requirements of PURPA, and stand to be impacted by

[1] *Revisions to Form, Procedures, and Criteria for Certification of Qualifying Facility Status for a Small Power Production or Cogeneration Facility*, 129 FERC ¶ 61,034, 74 Fed. Reg. 54,503 (Oct. 22, 2009). Due to inclement weather, the Commission was closed on December 21, 2009. Pursuant to Section 385.2007 of the Commission's Rules and Regulations, 18 C.F.R. § 385.2007, comments became due on December 22, 2009.

any changes to the Commission's regulations governing the certification of QFs under that law.

Executive Summary

In these comments, EEI generally supports many of the aspects of the NOPR that are intended to make the process for becoming a QF more efficient, that clarify the QF eligibility requirements, and that provide more transparency in the available information regarding certified QFs. However, EEI asks that the Commission clarify and revise certain proposals in the NOPR to ensure that affected utilities and the Commission will still obtain needed information regarding QFs and proposed QFs, including information regarding the eligibility of facilities to become a QF.

Specifically, EEI requests that the Commission revise and clarify the proposed filing exemption for applicants with a net power production less than or equal to 1 MW in three respects:

- The Commission should adopt a lower MW threshold that is more representative of the small residential generating technologies that appear to be the focus of this rulemaking;
- The Commission should clarify that utilities and / or State commissions may continue to require proof from potential QFs that are made exempt from filing in this rulemaking that they meet the eligibility criteria to be treated as QFs; and
- The Commission should modify 18 C.F.R. § 292.310(c) to adopt a companion filing requirement exemption for entities that seek relief from the mandatory purchase obligation under PURPA Section 210(m).

Additionally, while EEI supports the Commission's proposal to require applicants for recertification as a QF to provide additional information and an explanation of why their facility

should not be subject to the requirements for "new" cogeneration facilities adopted in the Energy Policy Act of 2005, we seek clarification and guidance regarding the threshold above which changes to a facility will be deemed significant enough to render a facility "new" for purposes of applying these requirements.

Further, to build a robust, accurate and complete electronic database of information regarding QFs and to support the Commission's goal of transparency in that information, EEI suggests that the Commission require all currently-certified QFs to refile their information electronically (via the Commission's new electronic Form No. 556) within two years after a final rule becomes effective, if they have not already done so as a result of recertification.

Finally, EEI requests that as part of this rulemaking the Commission revisit the "one-mile rule" that is currently used to determine whether facilities are considered to be located at the same site as the facility for which QF status is sought. Originally adopted in 1980, this rule has little relevance when applied to the geographically expansive multi-generator wind and solar QF facilities that are more prevalent today. EEI asks that the Commission instead adopt a rebuttable presumption that facilities on sites located more than a mile apart are independent for purposes of QF certification, with a utility or other interested party able to rebut that presumption by showing that two or more facilities are part of a common enterprise.

I. EEI Generally Supports Efforts That Are Found Necessary to Make the Process for Becoming a QF More Efficient, and to Clarify the QF Eligibility Requirements

The NOPR sets forth proposed revisions to the Commission's PURPA regulations that, in part, would: (1) remove the contents of FERC Form No. 556 (the form used in the certification of QF status for an existing or proposed small power production or cogeneration facility) from the regulations, and instead adopt regulations to require that QF applicants complete and file the

version of Form No. 556 that is in effect at the time of filing and available on the Commission's website; (2) revise, reformat and clarify the contents of Form No. 556; and (3) revise the procedures, standards and criteria set forth in Part 292 of the Commission's regulations for obtaining QF status, most notably by adopting an exemption of generating facilities with a net power production of 1 MW or less from the requirement to make a filing with the Commission to obtain QF status.

The Commission states that these proposed revisions will ease the burden on small power production and cogeneration facilities that seek certification of QF status, particularly smaller generating facilities, decrease confusion and errors in completing the certification forms and preserve Commission resources dedicated to managing errors in submitted certification forms, and improve the consistency and quality of the QF data collected by the Commission. NOPR at P 5. Additionally, the Commission states that the proposed revisions will increase the effectiveness of its policies encouraging cogeneration and small power production, as required by Section 210 of PURPA, 16 U.S.C. § 824a-3. NOPR at P 6.

As a general matter, EEI and its member companies support efforts that are deemed necessary to make the process for certifying QFs more efficient for applicants and the Commission, as well as efforts needed to clarify the requirements for becoming a QF. As smaller distributed electric generating technologies continue to mature and improve, more small power production and cogeneration facilities are being developed, a trend that is expected to continue in the coming years. As a result, more small power production and cogeneration facilities can be expected to seek to obtain QF status, interconnect with the transmission and distribution systems of EEI member companies, and provide those companies with electricity supplies. For this reason, as the Commission seeks to adopt any changes to its current forms and

procedures for becoming a QF that it finds are necessary to make the process more efficient, it should continue to have in place sufficient processes and requirements that provide enough information to allow utilities and the Commission to verify the QF status of generating facilities.

EEI supports many of the proposals in the NOPR that are intended to achieve the Commission's goals of making the QF certification process more efficient and clarifying the requirements for becoming a QF, including:

- The proposal to remove FERC Form No. 556 from the Commission's regulations at 18 C.F.R. § 131.80, and to instead use an online version of Form No. 556 (NOPR at PP 12-14)[2];
- The proposal to amend the Commission's regulations at 18 C.F.R. §§ 292.207(a)(1)(ii) and 292.207(c) to explicitly require that all QF applicants (whether filing a self-certification, self-recertification, application for Commission certification or application for Commission recertification) serve a copy of its filing on each affected utility and State regulatory authority (NOPR at PP 32-33);
- The proposal to eliminate the procedure for pre-approved Commission reauthorization currently contained in 18 C.F.R. § 292.207(a)(2) (NOPR at PP 26-28); and
- The proposal to eliminate the provision in 18 C.F.R. § 292.207(a)(1)(iii) that allows applicants for self-recertification to refer to prior self-certifications or prior Commission certifications and report only those changes that have occurred since the prior self-certification or Commission certification, and instead to establish a

[2] EEI supports this proposal with the understanding that the public will still have sufficient opportunity to provide comments on proposed changes to the electronic version of Form No. 556. The Commission indicates in the NOPR that public comments will be solicited regarding all proposed changes to this form. *See* NOPR at P 13.

Commission policy to require that applicants provide all information about their facility each time they submit Form No. 556 with a self-recertification or application for Commission recertification (NOPR at P 29).

These proposals strike a good balance between the need for efficiency and the need to ensure that sufficient processes and requirements are in place to verify the QF eligibility of small power production and cogeneration facilities.

II. Certain Clarifications and Revisions Are Necessary to Ensure That the QF Certification Process Provides Affected Utilities and the Commission With Needed Information Regarding QFs and Proposed QFs

In the comments that follow, EEI requests certain targeted clarifications or revisions to the proposals in the NOPR that we believe will ensure that the QF certification process continues to provide utilities and the Commission with necessary information regarding QFs, including information needed to determine whether generating facilities satisfy the requirements to become a QF.

A. The Proposed Filing Exemption for Applicants With a Net Power Production Less Than or Equal to 1 MW Should be Revised and Clarified

As discussed above, the Commission states that many of the proposals in the NOPR are intended to simplify the procedures for obtaining QF status. While noting that its proposal to move to electronic filing of QF certifications will have many benefits in this regard, the Commission states that some parties seeking to certify their 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." NOPR at P 15. To address this concern, the Commission proposes to amend 18 C.F.R. § 292.203 to exempt generating facilities with a net power production capacity less than or equal to 1 MW from the requirements to make

any filing (whether an application for Commission certification or a self-certification) to become a QF. NOPR at P 16.

While EEI and its member companies have not heard concerns from existing or potential QFs (including smaller QFs) regarding the current requirement to file an application for certification or self-certification with the Commission to become a QF, in principle we do not oppose a narrowly tailored filing exemption for smaller QFs that may find the filing requirements burdensome or prohibitive. However, EEI believes the 1 MW threshold proposed by the Commission is too high and does not accurately reflect the typical production capacity of the small residential generation technologies the Commission appears to be targeting with the proposed filing exemption. Additionally, if the Commission adopts a filing exemption, it should: (1) clarify that utilities and / or State commissions can require proof that a facility meets the requirements to become a QF; (2) clarify that disputes regarding the QF eligibility of facilities that are not required to submit filings may be brought to the Commission for resolution; and (3) adopt conforming changes with regard to the notice requirements applied to utilities that seek relief from the PURPA mandatory purchase obligations under Section 210(m) of PURPA and 18 C.F.R. § 292.310.

1. If the Commission Adopts a Filing Exemption, it Should Adopt a Lower MW Threshold That is More Representative of the Class or Category of Applicants It Believes Require the Exemption

In the NOPR, the Commission seeks comments on its proposal to exempt smaller applicants from the requirement to make any filing with the Commission to be a QF and, "in particular, on whether a 1 MW threshold" (at or below which no filing would be required) is appropriate. NOPR at P 16. The Commission states that it chose a 1 MW threshold because facilities larger than that "represent a significant departure from *residential power generation*,"

and can be expected to have the electronic tools and access to legal representation needed to file Form No. 556 with the Commission. *Id.* (emphasis added).

EEI respectfully submits that the proposed 1 MW threshold is too large and is not supported by the NOPR. It is unclear from the discussion in the NOPR what types or categories of potential or existing QFs the Commission believes are facing an undue burden under the current filing requirements. As noted above, the Commission does make a reference in the NOPR to "residential power generation." NOPR at P 16. Assuming that small residential generation technologies are the Commission's primary concern, the proposed 1 MW threshold is far too large. On-site residential power generation technologies (such as solar panels) are generally much smaller than 1 MW, typically on the order of 5 kW in output.[3] Additionally, many generation sources installed at industrial and large commercial customer locations are smaller than 1 MW,[4] so adopting a 1 MW exemption would actually encompass even industrial and larger commercial QFs, rather than just the small residential QFs the Commission appears to be targeting in this NOPR. Finally, it is important to recognize the relative scale and scope of a 1 MW generating project and its expected costs. For example, according to a recent study issued by Lawrence Berkeley National Laboratory, the average installed cost of photovoltaic systems (in terms of real 2007 dollars) is $7.6 per installed watt.[5] This would equate to a total installed

[3] *See* http://www.sce.com/solarleadership/gosolar/california-solar-initiative/CSIResources/CSIFAQs/solar-faq.htm (stating that the size of the average residential solar installation in EEI member Southern California Edison's service territory is 5 kW).

[4] The Commission's recent order in *SunEdison*, 129 FERC ¶61,146 (2009) is instructive in this regard. In that proceeding, SunEdison reported that it owns and installs photovoltaic panels, inverters and associated equipment on property controlled by entities such as large retail stores, hospitals, schools and manufacturing plants, and that those installations have an average capacity of approximately 250 kW.

[5] *See* Ryan Wiser *et al.*, Lawrence Berkeley National Laboratories, "Tracking the Sun: The Installed Cost of Photovoltaics in the US from 1998-2007" at p. 1 (February 2009), *available at* http://eetd.lbl.gov/ea/emp/reports/lbnl-1516e.pdf

cost of $7,600,000 for a 1 MW project, and $760,000 for a 100 kW project. As a general matter, projects approaching this level of complexity and cost will likely be undertaken by relatively sophisticated parties that should not find the Commission's filing requirements burdensome.

For these reasons, if the Commission adopts a filing exemption for smaller generating facilities that seek to become QFs, it should adopt a lower threshold that is more representative of the class or category of potential QFs the Commission believes face an undue burden under the current filing rules and thus require a filing exemption. Assuming, as the NOPR indicates, that the Commission is focused on small residential generation, EEI recommends that the Commission adopt a "100 kW or less" threshold. The Commission's existing PURPA regulations require electric utilities to establish standard rates for purchases from QFs with a design capacity of 100 kW or less.[6] As discussed above, this design capacity level would be much more representative of the small residential generating resources that appear to be of concern to the Commission. The Commission should follow this example in setting a size threshold below which a QF would be exempt from making a filing with the Commission.

2. The Commission Should Clarify That Utilities and State Commissions May Still Require Proof From a Small Power Production or Cogeneration Facility That it Meets the Eligibility Criteria to be Treated as a QF, and May Bring Disputes Regarding QF Status to the Commission

As the Commission knows, the status of a generating facility as a QF has important implications for how utilities must treat the facility for purposes of interconnection with the transmission or distribution system (in particular, whether Order Nos. 2003 or 2006 will apply), and whether the facility can and must sell to the utility at avoided cost rates. The filings made with the Commission to certify or self-certify a small power production or cogeneration facility

[6] 18 C.F.R. § 292.304(c).

as a QF also provide utilities and State commissions with important technical information regarding the design of the facility and its likely system impacts. For these reasons, if the Commission adopts an exemption for smaller generating facilities from the requirement to file with the Commission to become a QF, it should clarify that utilities and / or State commissions can still require a small power production or cogeneration facility to provide proof that it meets the requirements to be treated as a QF and may still require the facility to provide necessary technical design information.

Specifically, the Commission should allow utilities and / or State commissions to require a potential QF, prior to interconnection with the system and as a condition of receiving a QF contract and avoided cost treatment, to file either: (1) a self-certification with the Commission, with sufficient information to demonstrate the facility qualifies for QF status; or (2) another form of attestation that the facility meets the eligibility requirements to be treated as a QF. If the Commission chooses the second option and allows utilities and / or State regulators to require an attestation, it should also explicitly clarify that a utility may rely on the attestation of QF eligibility provided by the QF to determine the avoided cost rates and payments due to the facility, the interconnection procedures that will apply, and other determinations that hinge on QF status.[7] EEI recognizes that the Commission's goal in this rulemaking is to ease the filing burden on smaller QFs, and we would not expect that any attestations required by utilities and / or State commissions would be extensive or burdensome.[8]

[7] EEI assumes that utilities and / or state regulators can require that this attestation be signed by a person "with full power and authority" to act on behalf of the QF owner, similar to the general requirements for making filings with the Commission found in Section 385.2005 of the Commission's Regulations. 18 C.F.R. § 385.2005.

[8] Rather, such attestations would be similar to the relatively simple attestation required to designate a new Network Resource under the Pro Form Open Access Transmission Tariff ("OATT"). *See* Pro Forma OATT at § 30.2.

Additionally, the Commission should provide clarity regarding how disputes over the QF eligibility of a small power production or cogeneration facility that is exempt from filing requirements will be addressed. In particular, the Commission should clarify that such disputes may be brought before the Commission for resolution, with the burden on the QF to prove its eligibility. With no requirement to file an application for certification or self-certification with the Commission in place for a subset of potential QFs, it may be unclear that the Commission remains a venue to resolve disputes regarding the QF eligibility for these facilities. Granting this clarification and making clear that disputes may be brought before the Commission would mirror the practice utilized before the filing requirements for QF certification were adopted in Order No. 671 in response to the Energy Policy Act of 2005 ("EPAct 2005").

In addition, the Commission should also clarify that a utility may terminate or otherwise abrogate the QF contract of a facility that is exempt from the 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. The owner of that facility could then seek to bring the dispute before the Commission for resolution, as discussed above.

3. If the Commission Adopts a Filing Exemption for Certain QFs, it Should Make Corresponding Changes to the Filing Requirements for Entities Seeking Relief From The Mandatory Purchase Obligation under Section 210(m) of PURPA

If the Commission ultimately adopts an exemption for smaller facilities from the requirement to make a filing with the Commission to become a QF, a companion filing exemption will be needed for electric utilities that seek a termination of the mandatory purchase obligation under Section 210(m) of PURPA and the Commission's regulations implementing

that section. PURPA Section 210(m), adopted in EPAct 2005, provides for termination of an electric utility's obligation to purchase energy and capacity from QFs as of August 8, 2005, the date on which EPAct 2005 was enacted, if the Commission finds that QFs within the service territory of the utility have nondiscriminatory access to competitive wholesale markets, the indicia of which are prescribed in the statute.

Section 292.310(c) of the Commission's regulations, 18 C.F.R. § 292.310(c), contains the filing and notice requirements a utility must satisfy when it seeks to terminate the mandatory purchase obligation pursuant to PURPA Section 210(m). While all such requests to date have been for QFs that are 20 MW and larger, the regulations require that notice be served on every QF, and that substantial information be gathered on each QF, regardless of size. Section 292.310(c) currently reads in part:

> (c) An electric utility must submit with its application for each potentially affected qualifying facility: The docket number assigned if the qualifying facility filed for self-certification or an application for Commission certification of qualifying facility status; the net capacity of the qualifying facility; the location of the qualifying facility depicted by state and county, and the name and location of the substation where the qualifying facility is interconnected; the interconnection status of each potentially affected qualifying facility including whether the qualifying facility is interconnected as an energy or a network resource; and the expiration date of the energy and/or capacity agreement between the applicant utility and each potentially affected qualifying facility.

If QFs do not self-certify or otherwise make filings with the Commission under an exemption adopted in this rulemaking, it will be either impossible or much more onerous to provide some of the information required by Section 292.310(c) because there would no longer be a self-certification or application for Commission certification available containing most of the relevant information. To avoid this difficulty with respect to QFs that are exempted from filing in this rulemaking, 18 C.F.R. § 292.310(c) should be modified to require a utility to

provide only the name and address of any QF that is exempt from filing with the Commission to obtain QF status.[9]

B. Additional Clarification is Needed Regarding The Changes to a QF That Will Render the Facility Subject to the Revised Eligibility Criteria Adopted in EPAct 2005 and Order No. 671

In EPAct 2005, Congress enacted a new Section 210(n) of PURPA, 16 U.S.C. 824a-3(n), which required the Commission to adopt and apply revised QF eligibility criteria to "new qualifying cogeneration facilities."[10] The Commission adopted revised regulations implementing EPAct 2005 in Order No. 671.[11] That order also added a new section to FERC Form No. 556 to implement the "productive and beneficial" and "fundamental use" requirements of EPAct 2005. NOPR at P 59.

In the NOPR, the Commission notes that "in practice, Form No. 556 has not provided sufficient guidance to applicants" in several areas, including whether the revised eligibility requirements required by EPAct 2005 will apply to their facilities. NOPR at P 59. The NOPR proposes a number of changes to Form No. 556 to address these concerns and provide more guidance to applicants. *Id.* The Commission seeks comments on these proposed changes, and in particular on its proposal to add a new line 11c to the revised Form No. 556 that is intended to

[9] In fact, FERC is currently reviewing its form FERC-912, "Cogeneration and Small Power Production, PURPA Section 210(m) Regulations for Termination or Reinstatement of Obligation to Purchase or Sell," as noted in the Commission's "Notice of proposed information collection and request for comments" published at 74 Fed. Reg. 47567 (Sept. 16, 2009), inviting comments by November 19, 2009. The Commission should make this change to the form as part of that review before adopting the revised form.

[10] Specifically, Section 210(n) required the Commission to revise the QF eligibility criteria in its regulations to ensure that (1) "the thermal energy output of a new qualifying cogeneration facility is used in a productive and beneficial manner;" and (2) that the output of a new qualifying cogeneration facility is "used fundamentally for industrial, commercial, or institutional purposes and is not intended fundamentally for sale to an electric utility."

[11] *Revised Regulations Governing Small Power Production and Cogeneration Facilities*, Order No. 671, 71 Fed. Reg. 7852 (Feb. 2, 2006), FERC Stats. & Regs. ¶ 31,203 (2006).

generate information to be used in determining whether a modification to a pre-EPAct 2005 qualifying cogeneration facility "might be so significant that the facility should be considered a new facility" and thus subject to the EPAct 2005 "productive and beneficial" and "fundamental use" requirements. *Id.* at P 62. Specifically, this new line 11c would require an applicant for recertification of a QF that was certified prior to the enactment of EPAct 2005 to provide a description of relevant changes to the facility and an explanation why the facility should not be considered a "new" EPAct 2005 cogeneration facility. *Id.*

EEI supports the Commission's proposal to require applicants for recertification to provide additional information and an explanation of why their facility should not be subject to EPAct 2005's "productive and beneficial" and "fundamental use" requirements. We believe additional clarification and guidance is needed, however, regarding the threshold above which changes to a facility will be deemed significant enough to render it a new EPAct 2005 qualifying cogeneration facility.

As the Commission states in the NOPR, Order No. 671 established a rebuttable presumption that the act of filing a recertification of a pre-EPAct 2005 cogeneration facility does not alone render that facility a new EPAct 2005 cogeneration facility. NOPR at P 62. As the Commission notes, it also cautioned in Order No. 671 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.'" NOPR at P 62 (quoting Order No. 671 at P 115). This extreme example – representing a seven-fold increase in capacity – does not provide sufficient guidance regarding the magnitude of changes that will render an existing facility a new EPAct 2005

cogeneration facility.[12]

The industry would benefit from additional clarification and guidance regarding the threshold or factors the Commission will apply when determining whether changes to a qualifying cogeneration facility were so great that the facility will be deemed a new facility subject to the EPAct 2005 requirements. The Commission should take this opportunity to provide such clarification and guidance. In particular, the Commission should provide guidance that it will find that an existing QF has become a new EPAct 2005 qualifying cogeneration facility where there has been a material change in the electrical characteristics of the existing QF (such as a change in the size and/or number of generators), or a material change in the utilization of thermal energy (such as a reduction in useful thermal output for a combined cycle cogeneration system, accompanied by an increase in net electrical output).

While the Commission should apply its own expertise to determine the exact magnitude (or percentage) of change in the generating capacity of a QF that it will consider a material change and thus render the QF a new EPAct 2005 qualifying cogeneration facility, it should not rely on the extreme examples that have been available to date. 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 previously certified cogeneration facility is a material change in the electrical characteristics of the facility that will render it a new EPAct 2005 facility. An existing certified cogeneration facility would have the opportunity to provide evidence to rebut this presumption (such as by showing that the change in output does not so

[12] The Commission's case-by-case consideration of whether changes to a cogeneration facility will render it a new EPAct 2005 facility has not provided further guidance, and in fact has produced equally extreme examples. *See Chugach Electric Association, Inc. and Matanuska Electric Association, Inc.*, 121 FERC ¶ 61,287 at PP 29-31 (2009) (finding that an increase in net capacity from 39.7 MW to 150.47 MW (an over 375 percent increase) rendered a previously self-certified cogeneration facility an EPAct 2005 cogeneration facility).

alter the facility's electrical characteristics that it should be considered a new facility subject to the EPAct 2005 requirements).

While an argument could be made for a lower threshold, EEI believes that a 20 percent threshold for this proposed rebuttable presumption represents a reasonable compromise between encouraging the continued beneficial operation of previously certified qualifying cogeneration facilities and recognizing the intent of Congress in EPAct 2005 to ensure that the output of new qualifying cogeneration facilities is "used in a productive and beneficial manner." Additionally, EEI recognizes that it sometimes occurs that cogeneration facilities undergo incremental improvements in efficiency in the course of routine maintenance that result in an increase in their electrical or thermal energy output. For example, a facility might replace the blading or combustors in a combustion turbine during an overhaul, and the replacement units provided by the manufacturer may incorporate upgrades in efficiency. These evolutionary improvements do not rise to the level of redesign of the facility or outright replacement of one piece of generating equipment with a larger unit. Setting a threshold of 20 percent would provide a reasonable allowance for incremental improvements of the first type, while also providing a simple and less subjective standard to identify more substantive changes that should trigger the EPAct 2005 criteria.[13]

[13] The Commission should also remind QFs that no matter what threshold is selected for this purpose, as to QFs that are interconnected pursuant to FERC-jurisdictional arrangements, *any* increase in MW requires a new Interconnection Request and that certain changes other than MW increases also may trigger the Material Modification provisions of the Commission's Interconnection Procedures. Simply because a QF facility will not in some cases become subject to the EPAct 2005 requirements does not mean the QF is also exempt from the Interconnection Procedures, if otherwise applicable.

C. The Commission Should Clarify Whether Existing QFs Will be Required to Refile Their Information Electronically

As discussed above, EEI fully supports the Commission's proposal to adopt an electronic system for processing QF certifications, including moving FERC Form No. 556 online. EEI also strongly supports the proposal to eliminate the provision that allows applicants for self-recertification to refer to prior self-certifications or prior Commission certifications and only report those changes that have occurred since the prior self-certification or Commission certification. However, because the existing policy of allowing cross-references to earlier certifications has been in place for decades, it has rendered the current database of FERC Form No. 556s and the QF single docket-system for filings in eLibrary cumbersome. A person searching for information on a particular QF may have to search dozens of filings, some of which are available only on microfilm, to find a complete set of information on a particular QF. The Commission thus should require all currently-certified existing QFs to refile all their current information electronically within two years after the rule becomes effective, if they have not otherwise had to do so as a result of a re-certification. It would be beneficial to the Commission and the industry to take this step to create a robust, accurate, and complete electronic database in eLibrary of FERC Form No. 556. Such a database would increase transparency which, as the Commission notes in the NOPR, offers significant benefits with only a relatively small, one-time burden on existing QFs. NOPR at P 29.

III. Given Changes In The Size and Scope of Renewable Generation Projects, The Commission Should Revise Its Existing Rules For Determining Whether Facilities are Considered to Be Located at The Same Site

EEI requests that as part of this rulemaking the Commission revisit the provisions of 18 C.F.R. § 292.204(a)(2) that relate to the method for determining whether facilities are considered

to be located at the same site as the facility for which qualification is sought. These provisions state:

> (2) *Method of calculation.* (i) For purposes of this paragraph, facilities are considered to be located at the same site as the facility for which qualification is sought if they are located within one mile of the facility for which qualification is sought and, for hydroelectric facilities, if they use water from the same impoundment for power generation.
> (ii) For purposes of making the determination in clause (i), the distance between facilities shall be measured from the electrical generating equipment of the facility.

The existing one-mile distance rule for determining whether a facility meets the QF size limitation is a vestige of the 1980's that has little relevance in today's energy environment, and is ambiguous given the recent trends of numerous wind generation facilities being aggregated to comprise a single QF. The intent behind the QF provisions of PURPA was to encourage the growth of cogeneration and smaller renewable facilities, which at the time were still in a nascent state of development. Expansion of QFs in recent years has demonstrated that the QF provisions of PURPA have served their intended purpose—cogeneration and small renewables (particularly wind generation) are an important and growing piece of the nation's energy system. In fact, QFs have become so successful that in EPAct 2005, Congress took steps to limit the benefits associated with QF status in areas where smaller facilities have the same access to markets as larger facilities. *See* PURPA Section 210(m), 16 U.S.C. §824a-3(m).

In the original QF rules, the Commission adopted the one-mile rule for determining whether or not facilities were located at the same site and therefore met the size eligibility criteria. In its order adopting the one-mile rule, the Commission's focus was primarily on ensuring appropriate treatment of small hydroelectric facilities located on the same waterway.

Also, at the time the original QF rules were promulgated, cogeneration QFs were the predominant source of QF supply, typically co-located on the retail customer premises.

While the one-mile rule may have been appropriate in 1980 in light of the then-common types of QF facilities, the landscape since that time has changed dramatically. At the time this rule was enacted, the Commission could not have anticipated the extensive and dispersed nature of multi-generator wind farm QF facilities. Today, many QFs are relatively large (for QF purposes) wind and solar facilities that can stretch out over literally miles of landmass. Given the expansiveness of these facilities, particularly wind farms, it is relatively easy for a developer to space groups of turbines more than one mile apart and meet the one-mile rule, even though those individual groups of turbines when aggregated may exceed (or far exceed) the 80 MW size limit for QFs. Such facilities or limited liability project companies may have common ownership, be part of the same overall development program, share electrical infrastructure, interconnect at the same (or nearby) point or substation, and perhaps even share the same land rights (*e.g.*, land lease or leases), yet still individually meet the criteria for QFs. Separating individual groups of turbines from an otherwise single generating facility in an effort to satisfy the one-mile rule directly contravenes the intent of Congress in enacting PURPA. Given that Congress chose to enact an 80 MW size limitation in that statute, it is quite likely that these facilities are not the type of smaller renewable facilities that Congress sought to encourage in 1978. The ambiguity inherent in the site sizing rules, when taken in consideration of the changed QF landscape, is in need of clarification.

For these reasons, EEI believes that the Commission should replace the strict one-mile rule currently in its regulations with an approach that is more suited to today's environment. Specifically, we recommend the application of a rebuttable presumption that individual QF

facilities are independent where the sites are located more than one-mile apart. The Commission should allow a utility or other interested party to rebut this presumption upon a showing that two or more facilities are part of a common enterprise. The determination of whether an enterprise is "common" or immediately adjacent for purposes of rebutting the presumption should include, at a minimum:

- Whether the facilities have common or affiliated owners or developers;
- Whether the facilities share a common generator lead line, electrical infrastructure, or interconnect at the same or nearby point or substations;
- Whether the facilities share a common land lease or land rights;
- Whether the facilities have common financing; and
- Whether the facilities are part of a common development or permitting effort, even if the interconnection of sub-parts of the footprint occurs at separate points on the electric delivery system.

Further, the Commission should clarify 18 C.F.R. § 292.204(a)(2)(ii) for facilities such as wind farms and solar fields. This provision dictates that for purposes of applying the one-mile rule, "the distance between facilities shall be measured from the electrical generating equipment of a facility." It is not clear how this requirement is applied to a wind farm where electrical generating equipment will be found at each turbine, or at a solar field where individual collectors are spread over large areas. In EEI's view, the one-mile rule should be applied at the boundaries of the facility, since generation can occur at various locations within the perimeter, not just at the point of interconnection to the delivery system. The boundaries of the facility should be considered to be its permitted boundaries, if a permit is required, or the perimeter of the applicable land lease or land rights (or the perimeter of the aggregated boundaries of leased land

if multiple land leases are involved) and should include all electrical facilities leading up to the point of interconnection.

IV. Conclusion and Contact Information

EEI appreciates the opportunity to submit these comments. If the Commission has any questions, please do not hesitate to contact me, Jeff Dennis, Director of Federal Regulatory Affairs (202-508-5098, jdennis@eei.org), or Henri Bartholomot, Director, Regulatory Legal Issues (202-508-5622, hbartholomot@eei.org).

Respectfully submitted,

- signature –

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