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FERC Ruling Signals Flexibility for Energy Developers on Qualifying Facilities

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In the recent *Broadview Solar, LLC*, 174 FERC 61,199 (Docket No. QF17-454), the Federal Energy Regulatory Commission (FERC) issued a decision signaling increased flexibility for renewable resource developers on the maximum threshold for Qualifying Facility (QF) certification. In this ruling, FERC set aside its initial order and found on rehearing, that under the circumstances a 160 MW solar project coupled with 50 MW of battery storage (for up to 4 hours) met the 80 MW maximum threshold QF certification because the inverters on the project limited it to 80 MW at the point of interconnection.

FERC reinstated its long-standing “send out” analysis, which an earlier decision had rejected. As a result of this ruling, a project owner is able to increase the capacity factor of the QF project, and will likely see a higher revenue stream under its PPA. Significant excerpts from the ruling are included below (footnotes omitted):

The Commission's early proceedings applying its PURPA regulations were consistent with this interpretation that “power production capacity” is best understood as the amount of power that a facility is capable of safely and reliably sending to the interconnecting utility. In formulating the “send out” test in *Occidental*, the Commission recognized that while the nominal rating of a facility's generating equipment may exceed 80 MW, it is “the maximum net output of the facility which can be safely and reliably achieved under the most favorable operating conditions likely to occur over a period of several years” that determines the facility's “power production capacity”. The Commission further explained that “the nominal rating of even a key component of the facility” is not necessarily determinative because, for example, “it is not uncommon for smaller facilities to find it most economic to employ commercially available components some of which have individual capabilities significantly exceeding the overall facility capability.”

The Commission stated that the net output of a facility is “its send out after subtraction of the power used to operate auxiliary equipment in the facility necessary for power generation (such as pumps, blowers, fuel preparation machinery, and excitors) and for other essential electricity uses in the facility from the gross generator output.” Because the Commission explicitly focused on the overall facility capabilities, *Occidental* supports the proposition that power production capacity means output in a form useful to an interconnected entity. The Commission's subsequent applications of the *Occidental* approach likewise reflect that the owner or operator of a facility should not be allowed to obtain the benefits of QF status

for more than the facility's net output because only the amount of the net output will be capable of being avoided on an interconnected utility's system.

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Based on the analysis above, we conclude that Broadview's facility will conform to the size limit for a qualifying small power production facility established in PURPA and the Commission's regulations. To be sure, Broadview's facility is distinct in certain respects from the facilities that the Commission considered when it first applied the "send out" test. Nevertheless, on reconsideration, we do not believe that those differences, including the presence of a 200-MWh battery energy storage system and a 160-MW solar array, are material for the purposes of determining whether Broadview's "facility" has a "power production capacity" of no more than 80 MW. Although Broadview's configuration allows it to more consistently deliver a higher share of the 80 MW power production capacity, that configuration does not change the fact that the Broadview facility is not actually capable of providing more than 80 MW at any one point in time at its point of interconnection with NorthWestern. On reconsideration, we find that while this effectively increases the Broadview facility's capacity factor, it does not change the Broadview facility's "power production capacity" or call into question our longstanding reliance on the "send out" analysis to measure power production capacity.

Likewise, consistent with *Malacha*, we further find that it is reasonable to measure power production capacity of a facility like Broadview's at the point of interconnection because its inverters are an integral part of a solar PV facility's generation equipment and are necessary to produce power in a form useful to the interconnecting utility. Indeed any solar-PV QF can produce power for delivery to the purchasing utility only to the extent enabled by the inverters because the grid operates predominantly using AC power. Without the inverters, a solar PV QF cannot benefit from its rights to interconnect and exchange power with an electric utility, as Congress intended to "encourage the development of cogeneration and small power production facilities' by addressing 'problems imped[ing] the development of nontraditional generating facilities.'" Because Broadview's facility—including the PV panels, inverters, and the battery system—can deliver a maximum of 80 MW of power to NorthWestern's system at any one point in time, the power production capacity of Broadview's facility cannot and will not exceed 80 MW.

Renewable energy producers should note that a party to the recent decision may petition the Court of Appeals to reverse this decision.