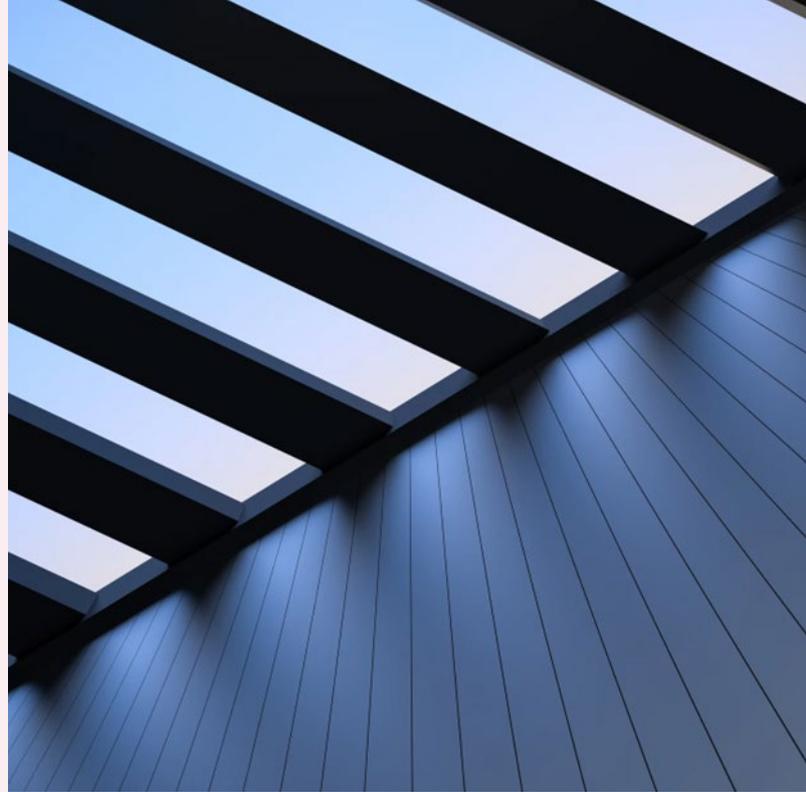


FERC Reaffirms Need for QFs to File Recertification

When Changes in Upstream Ownership Occur to Maintain QF Status

February 26, 2026



On February 19, the Federal Energy Regulatory Commission (“FERC”) issued an order (“Branch Street Order”)¹ reaffirming that a qualifying facility (“QF”) must submit a recertification when there is a material change in the upstream ownership information the QF previously reported in its Form No. 556, and that failure to do so will result in a loss of QF status. The Branch Street Order largely reflects FERC’s application of its 2022 decision in *Irradiant Partners, LP*, 178 FERC ¶ 61,215 (2022) (“Irradiant Order”). Nonetheless, it serves as an important reminder to those who own QFs, or are considering acquiring QFs, of the importance of keeping a QF’s Form No. 556 up to date, and the potential adverse consequences of failing to do so.

Background

Small power production facilities and cogeneration facilities are eligible for QF status if they comply with FERC’s size, fuel-use, and other standards. QFs receive certain benefits under federal and state laws. Subject to certain limitations based on size and other factors, these benefits include: (1) the right to sell energy or capacity to a utility; (2) exemption from Public Utility Holding Company Act of 2005; and (3) exemption from rate regulation under Federal Power Act (“FPA”) section 205 and need to obtain prior FERC approval for dispositions under FPA section 203.

An owner or operator of an eligible generating facility may obtain QF status for the facility by submitting a self-certification to FERC. The self-certification process involves filing a Form No. 556 with FERC. Under FERC’s regulations, to ensure the facility retains QF status, a QF-owning entity must “self-recertify” by submitting an updated Form No. 556 if the QF “fails to conform with any material facts or representations”² in the prior Form No. 556.

FERC has provided little guidance over the years regarding what constitutes a material change that triggers the need to recertify. However, in the Irradiant Order, FERC made it clear that if “there is a material change

¹ *Branch Street Solar Partners, LLC, et al.*, 194 FERC ¶ 61,124 (2026).

² 18 C.F.R. § 292.207(f)(1)(i).

in facility ownership, an updated Form No. 556 needs to be filed for a facility to continue to be a QF.”³ FERC has stated that “it considers a change in ownership in which an owner increases its equity interest by at least 10% from the equity interest previously reported to be a material change, as would be the addition of an owner not previously reported that holds an equity interest of 10% or more.”⁴

The Branch Street Order

Citing the Irradiant Order over 50 times, in the Branch Street Order FERC reaffirmed that recertification is required at the time a material change occurs, including a change in ownership, rather than at some later point. In rejecting arguments based on cases that predate Order No. 671, which made filing mandatory for QF status, FERC held that since 2006, certification with accurate information is a condition of QF status. Therefore, recertification is required when a material change occurs, and a QF cannot rely on its prior certification until a recertification is filed.

If a recertification is not filed when required, the QF loses the ability to rely on its certification during the period of non-compliance, even though FERC does not “revoke” QF status. According to FERC:

By failing to timely file for recertification, the Companies – whose Facilities range in size from approximately 1.5 MW to 20 MW – could no longer rely upon their status as QFs and thus sold electric energy without the benefit of the QF exemption from FPA section 205 during the period between the Facilities’ changes in ownership and each Facility’s filing of an updated Form No. 556.

In other words, since the QF cannot rely on its QF exemption from FPA section 205, any wholesale sales made during the gap period are treated as unauthorized under the FPA. Therefore, FERC held that as a result of the lapse in recertification, time-value refunds must be paid by the affected QFs for the period during which their QF status was not effective.

Practical Takeaways

FERC’s holding in the Branch Street Order reaffirms the importance of ensuring that upstream ownership information in Form No. 556s is updated on a timely basis to reflect any material changes in ownership. The same applies to other material changes to the facts included in the prior Form No. 556. From a practical perspective, this means:

- **Existing QF Owners:** Companies that already own QFs should review their existing Form No. 556s to ensure they accurately reflect the current upstream ownership information of such QFs. If the Form No. 556 does not accurately reflect the upstream ownership information, a re-certification should be submitted to update the ownership information.⁵

³ Irradiant Order at P 16.

⁴ *Id.* at P 10 (citing Order No. 732, 130 FERC ¶ 61,214 at P 58 & n.51 (2010)).

⁵ Neither the Branch Street Order nor the Irradiant Order specifically discussed the “materiality” treatment of purely internal changes to intermediate QF ownership (*e.g.*, due to internal corporate reorganizations).

- **Potential QF Owners:** Those who are considering acquiring a QF (or QFs) should make sure to, as part of diligence, confirm that any Form No. 556s are accurate. If it is not, this presents several issues: (i) potential refund liability for the period in which the QF's Form No. 556 was not updated; and (ii) ineligibility for the exemption from FPA section 203, which would mean that FERC prior approval would be required for the change of control transaction. If these types of issues are identified during a potential transaction, a buyer will need to work with its energy regulatory counsel to address these issues in a way that minimizes regulatory risk.

FERC has never expressly indicated exactly what specific deadline applies to Form No. 556 re-certifications. In the Irradiant Order, FERC stated that “[w]hile we recognize that the regulations do not explicitly state when a QF must file for recertification to reflect a material change, recertification is required when the material change is made.”⁶ Further, in the Branch Street Order, FERC required that refunds be calculated for the whole period during which the change in ownership was not reflected in the Form No. 556. This suggests that the safest approach is to prepare a Form No. 556 in advance of an anticipated material change to ensure it can be filed contemporaneous with, or as soon as possible after, the change occurs.⁷

⁶ Irradiant Order at P 17 & n.36.

⁷ In practice, some companies have submitted QF recertifications within 30 days of the change and, since the Irradiant Order, several self-recertification letter filings were submitted to FERC in connection with ownership changes for fleet-wide QF portfolios asking for more than 30 days to submit the recertifications for every QF in the portfolio. See e.g. *Standard Solar, Inc. (QF17-1548 et al.)*, *Duke Energy Renewables Commercial, LLC, et al. (QF17-799 et al.)*, and *SunE H3 Holdings, LLC, et al. (QF07-124 et al.)*. Although FERC has not rejected these requests or taken any on-record action against the implicated QFs, FERC typically has not issued orders expressly granting requests of this nature, meaning that it has not explicitly endorsed the 30-day timeline.



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