

ENERGY ALERT

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A win for solar power: FERC reverses Broadview on rehearing allowing QF status based on output to electric grid

In a March 19, 2021, order on rehearing ([Broadview Solar, LLC, 174 FERC ¶ 61,199 \(2021\)](#) (*Broadview II*)), the Federal Energy Regulatory Commission (FERC) reversed its decision from last fall in [Broadview Solar, LLC, 172 FERC ¶ 61,194 \(2020\)](#) (*Broadview I*). In *Broadview II*, FERC decided that Broadview Solar—a proposed hybrid solar and battery storage facility—could be certified as a Qualifying Facility (QF) for purposes of the Public Utility Regulatory Policies Act of 1978, as amended (PURPA), even though its subcomponents would be capable of producing 160 MW of power (and thus exceed the 80 MW threshold for a small power production QF under PURPA) because it would not inject more than 80 MW of power onto the grid.

As explained in an [earlier alert](#), *Broadview I*, interpreted power production capacity as a facility's power delivery capacity, rather than its net output of power onto the electric grid.

Broadview I's conclusion disregarded Broadview's configuration as a solar array co-located with a battery storage system — something Congress probably could not have imagined to be economic or even possible back when PURPA was enacted. And because PURPA requires utilities to purchase electricity generated by QFs at an avoided cost rate, the power with which PURPA is concerned is that which displaces utility power (not power that may be created but transmitted internally to a QF's constituent parts). Further, capacity of energy infrastructure is generally understood as output, which— consistent with FERC's decision in *Malacha Power Project, Inc.*, 41 FERC ¶ 61,350—is reasonably measured at the point of interconnection with the grid.

Described as a “well-supported course correction” by Commissioner Chatterjee, *Broadview II* paves the way for combined solar and/or battery storage facilities like Broadview Solar, LLC to qualify for QF status based on net output to the electric grid based on AC inverter ratings. The decision also aligns with nearly 40 years of precedent, including the send out test as announced in *Occidental Geothermal, Inc.*, 17 FERC ¶ 61,231 (1981).

Commissioner Danly dissented from the majority in *Broadview II*, taking issue with the definition of power production on the grounds that it was being improperly conflated with power delivery.

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