

## **GUIDANCE DOCUMENT NO. 5\***

### **PROCEDURES FOR CONFIRMING EXEMPTION FROM POWER REVIEW BOARD APPROVAL FOR GENERATION PROJECTS THAT CONSTITUTE “QUALIFYING FACILITIES” UNDER THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978 (PURPA)**

#### **I. Purpose**

This policy is being implemented to comply with the legal conclusions in Nebraska Attorney General’s Opinion No. 04024 (September 7, 2004). The Policy describes the procedures by which the Power Review Board (the Board) will confirm that renewable generation projects which are considered “qualifying facilities” under the Public Utility Regulatory Policies Act of 1978 (PURPA), shall be exempt from the need to obtain Power Review Board approval prior to construction, or prior to interconnecting with the transmission grid in the case of an existing facility, pursuant to the requirements of Neb. Rev. Stat. §70-1014.

#### **II. Definitions.**

A. “Owner” for purposes of this policy shall mean one or more individuals or corporations, jointly or severally, in whom is or will be vested primary or controlling interest in a proposed or existing generation facility.

B. “Qualifying Facility” for purposes of this policy shall mean a generation facility that meets the criteria to be considered a qualifying small power production facility or a qualifying cogeneration facility under federal regulations set out at 18 C.F.R. subpart B (18 CFR §§ 292.201 through 292.211).

#### **III. Policy Applicability**

A. This policy applies to all renewable generation facilities whose owners obtain or wish to obtain certification for the project as a qualifying facility under PURPA. Certification of a project as a qualifying facility must be obtained through the Federal Energy Regulatory Commission (FERC), pursuant the criteria set out in the code of federal regulations at 18 C.F.R. part 292.

\* This guidance document is advisory in nature but is binding on an agency until amended by such agency. A guidance document does not include internal procedural documents that only affect the internal operations of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.

B. Generation facilities that constitute qualifying facilities are exempt from the need to obtain the Board's approval. However, the owner of the proposed facility must provide the Board with evidence that a proposed facility, or an existing facility that will be interconnected with the transmission grid, has obtained qualifying status through certification with FERC.

#### IV. Procedure To Be Followed

A. Owners seeking a determination that a proposed generation facility or an existing generation facility to be interconnected with the transmission grid is a qualifying facility and thus exempt from the Board review should contact FERC to obtain certification of the generation project as a qualifying facility.

B. After the owner of a generation project obtains certification of the project from FERC, the owner should provide the following to the Board:

1. A copy of the completed Form 556 submitted to FERC.
2. A copy of FERC's docket confirmation documentation or FERC's Order granting the application for FERC Certification.
3. A brief transmittal letter stating that the owner has obtained certification of the facility from FERC and therefore intends to proceed with the project without filing an application with the Board.

C. Upon receipt of the documents listed in III.B.1-3 (above), the Board's staff will provide written confirmation to the owner of the proposed generation facility that the evidence of FERC's certification has been received and that the facility is therefore exempt from the need to obtain Board approval prior to commencement of construction, or interconnection of an existing facility, under Neb. Rev. Stat. § 70-1014.

D. In the event of the receipt of an application for approval of a generation facility which the Board's staff believes may meet the criteria of a qualifying facility, the Board's staff will contact the applicant and inform him or her that it appears the project may constitute a qualifying facility. Such action by the Board's staff in no way constitutes a determination that the generation facility does in fact constitute a qualifying facility. It is intended to bring the matter to the attention of those owners or applicants that may be unaware of PURPA's provisions. The Board's staff will recommend that the applicant investigate the matter further, contact FERC, or seek legal advice.

E. Exemption from the necessity of Board approval does not in any way relieve the owner from any applicable notice requirements or interconnection or safety standards that must otherwise be met prior to or subsequent to construction or installation of the qualifying facility.



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Timothy J. Texel  
Executive Director and General Counsel

Approved at NPRB meeting held October 21, 2004.