

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeem G. Kelly.

Access Energy Cooperative	Docket No. AC04-105-000
Bridger Valley Electric Association	Docket No. AC04-91-000
Dixie Escalante Rural Electric Association	Docket No. AC04-102-000
Fall River Rural Electric Cooperative	Docket No. AC04-72-000
Flowell Electric Association	Docket No. AC04-107-000
Idaho County Light & Power Cooperative	Docket No. AC05-29-000
Kandiyohi Power Cooperative	Docket No. AC04-85-000
Lyon Rural Electric Cooperative	Docket No. AC04-81-000
Midwest Energy Inc	Docket No. AC04-63-000
Moon Lake Electric	Docket No. AC04-104-000
Mt. Wheeler Power	Docket No. AC04-103-000
NewCorp Resources Electric Cooperative	Docket No. AC04-88-000
North Central Missouri Electric Cooperative	Docket No. AC04-93-000
Oregon Trail Electric Consumers Cooperative	Docket No. AC04-67-000
Pioneer Power and Light	Docket No. AC05-05-000
Platte-Clay Electric Cooperative	Docket No. AC04-79-000
Salmon River Electric Cooperative	Docket No. AC04-73-000
Sun River Electric Cooperative	Docket No. AC05-4-000
Sussex Rural Electric Cooperative	Docket No. AC04-83-000
Wells Rural Electric Cooperative	Docket No. AC04-71-000
White River Electric Cooperative	Docket No. AC04-75-000
Graham County Electric Cooperative, Inc.	Docket No. ER05-1406-000 (Not Consolidated)

ORDER ON WAIVERS OF REPORTING REQUIREMENTS

(Issued October 25, 2005)

1. In response to amendments to section 201(f) of the Federal Power Act (FPA)¹ in the Energy Policy Act of 2005 (EPAAct 2005),² this order addresses requests for waivers, filed by the entities identified above, of the Form 3-Q

¹ 16 U.S.C. § 824 (2000).

² Pub. L. No. 109-58, § 1291(c), 119 Stat. 594, 1217 (2005).

financial reporting requirements in Order No. 646.³ The order finds that, under EAct 2005, certain of the electric cooperatives are no longer subject to the Commission's jurisdiction and their requests for waiver are moot. This order also addresses a request for guidance from the Commission regarding the filing of a final Form 1 and/or 3-Q in light of the amendments in EAct 2005. Finally, this order also grants Pioneer Power and Light Company's request for waiver from the Form 3-Q quarterly financial reporting requirement.

Background

2. On February 11, 2004, the Commission issued a Final Rule (Order No. 646) amending its financial reporting regulations by establishing new quarterly financial reporting for respondents that file FERC Annual Reports. Order No. 646 requires all FERC jurisdictional entities filing FERC Annual Report Form Nos. 1, 1-F, 2, 2-A or 6 to file supplemental quarterly financial reports.⁴

3. On June 2, 2004, the Commission issued an Order on Rehearing (Order No. 646-A). In that order, the Commission declined to provide a blanket waiver to all electric cooperatives, but instead required any electric cooperative seeking a waiver to demonstrate that quarterly financial reporting represented an undue burden. The Commission directed respondents requesting waivers from the quarterly reporting requirements to establish undue burden based on the entity's facts and circumstances.

4. Between June 21, 2004, and October 13, 2004, the above-captioned entities filed requests for waiver of the quarterly financial reporting requirements in their entirety and each requested a filing extension until the Commission acts upon its waiver request.⁵ The Chief Accountant issued a data request seeking additional sales and transmission service information from the following entities on November 17, 2004: Access Energy Cooperative, Bridger Valley Electric Association, Dixie Escalante Rural

³ *Quarterly Financial Reporting and Revisions to the Annual Reports*, Order No. 646, 69 FR 9030 (Feb. 26, 2004), III FERC Stats. & Regs. ¶ 31,158 (Feb. 11, 2004).

⁴ The quarterly financial reports are the FERC Form No. 3-Q, Quarterly Financial Report of Electric Companies, Licensees, and Natural Gas Companies, and the FERC Form No. 6-Q, Quarterly Financial Report of Oil Pipeline Companies.

⁵ On August 18, 2004 and August 31, 2004, the Secretary granted these entities an extension of time pending the Commission's action on the waiver requests.

Electric Association, Fall River Rural Electric Cooperative, Flowell Electric Association, Inc., Kandiyohi Power Cooperative, Lyon Rural Electric Cooperative, Moon Lake Electric, Mt Wheeler Power, Inc., Oregon Trail Electric Cooperative, Platte-Clay Electric Cooperative, Salmon River Electric Cooperative, Sussex Rural Electric Cooperative and White River Electric Cooperative.

5. On September 15, 2005, in a separate docket, Graham County Electric Cooperative, Inc. (Graham) requested the Commission to provide guidance to electric cooperatives regarding the filing of FERC Forms 1 and/or 3-Q in light of the amendments in EPart (September 15 Letter).

Public Notice, Intervention, and Protests

6. The above-mentioned Form 3-Q waiver requests were noticed on September 23, 2004, 69 Fed. Reg. 58,898 (2004). National Rural Electric Cooperative Association (NRECA) filed a motion to intervene and comment regarding NewCorp Resources Electric Cooperative's (NewCorp) waiver request in Docket No. AC04-88-000. NRECA did not take a position on whether the Commission should grant or deny NewCorp's waiver request, but did provide additional information concerning NewCorp's ownership structure. No motions to intervene or protests were received in the other Form 3-Q waiver request dockets.

7. Graham's September 15 Letter was noticed on September 20, 2005, 70 Fed. Reg. 56,678 (2005) with motions to intervene and protests due on or before October 6, 2005. None was filed.

Discussion

Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), NRECA's motion to intervene serves to make it a party to this proceeding.

Commission Decision

A. Requests for Waiver of Electric Cooperatives No Longer Subject to Commission Jurisdiction under Part II of the FPA and Guidance on Filing of Final forms

9. On August 8, 2005, EPAct 2005 became law. Section 1291 of EPAct 2005 amended section 201(f) of the Federal Power Act (*to be codified at* 16 U.S.C. § 824(f)) to read as follows:

No provision in this Part (Part II, Regulation of Electric Utility Companies Engaged in Interstate Commerce) shall apply to, or be deemed to include, the United States, a State or **political subdivision of a State, an electric cooperative that receives financing under the Rural Electrification Act of 1936 (7 U.S.C. § 901 *et seq.*) or that sells less than 4,000,000 megawatt hours of electricity per year**, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned, directly or indirectly, by any one or more of the foregoing, or any officer, agent employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto. [new language in bold]

10. Based on the amended language in section 201(f) of the FPA, the Commission determines that the above-captioned electric cooperatives are no longer subject to the Commission's jurisdiction as "public utilities" under Part II of the FPA. The Forms 1, 1-F and 3-Q reporting requirements apply to public utilities and licensees.⁶ With the exceptions noted below, the electric cooperatives' requests for waiver of Order No. 646, therefore, are moot, and are terminated in the above-referenced dockets.

11. In response to Graham's request for guidance in its September 15 Letter, we will not require electric cooperatives that are no longer subject to our jurisdiction as "public utilities" under Part II of the FPA to file a final Form 1, 1-F or 3-Q. Electric cooperatives will not be required as "public utilities" to file Forms 1, 1-F or 3-Q in the future as long as they fall within section 201(f) of the FPA.

⁶ See 16 U.S.C. §§ 796, 797, 825c and 825h (2000); *see also* 18 C.F.R. §§ 141.1 and 141.400 (2005).

B. Requests for Waiver of Electric Cooperatives Subject to Commission Jurisdiction under Part I of the FPA

12. Fall River Rural Electric Cooperative, Inc. (Fall River), Moon Lake Electric Association, Inc. (Moon Lake) and Wells Rural Electric Company (Wells Rural) are electric cooperatives that own hydroelectric projects, and thus continue to be subject to Commission jurisdiction as licensees under Part I of the FPA. They also request exemption of the Form 3-Q financial reporting requirement.

13. The Commission denies Fall River's, Moon Lake's, and Wells Rural's requests for waiver of the Form 3-Q financial reporting requirements. The electric cooperatives have not shown that the requirements are unduly burdensome.

14. The Commission directs electric cooperatives subject to Commission jurisdiction under Part I of the FPA to continue to comply with the same requirements that apply to non-electric cooperative small public utility licensees.

For the purpose of the reporting requirements concerning Forms 1, 1-F and 3-Q, the Commission will not treat electric cooperative licensees differently than small licensees. Therefore, electric cooperative licensees will not be exempt from filing Forms 1, 1-F and 3-Q.

C. Pioneer Power and Light Company's Request for Waiver

15. Pioneer Power and Light Company (Pioneer Power and Light) also filed a request for waiver from Form 3-Q financial reporting requirements. Pioneer Power and Light is not an electric cooperative, however, and thus is not impacted by EAct 2005. Rather it is a small investor-owned utility with 2,000 customers, most of whom are small rural electric users. In 2004, Pioneer Power and Light had 30,308 megawatt-hours of total sales and 13,786 megawatt-hours of sales for resale. It employs a small staff of three people.

16. Given the size of its operation, quarterly financial reporting requirements would be an undue burden. We will, therefore, grant Pioneer Power and Light's request for a waiver from the Form 3-Q financial reporting requirements.

The Commission orders:

- (A) The requests for waiver of the Form 3-Q financial reporting

requirements of the electric cooperatives no longer subject to Commission jurisdiction under Part II of the FPA are moot and are hereby terminated, as discussed in the body of this order.

(B) Electric cooperatives no longer subject to Commission jurisdiction as “public utilities” under Part II of the FPA will not be required to file a final Form 1, 1-F or 3-Q, as discussed in the body of this order. They will not be required to file Forms 1, 1-F or 3-Q in the future as long as they fall within section 201(f) of the FPA.

(C) Fall River’s, Moon Lake’s and Wells Rural’s requests for waiver of the Form 3-Q financial reporting requirements are denied, as discussed in the body of this order.

(D) Pioneer Power’s request for waiver of the Form 3-Q financial reporting requirements is granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.