

147 FERC ¶ 61,099
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

Electricity Market Transparency Provisions of Section 220 of the Federal Power Act -- KAMO Electric Cooperative, Inc. Docket No. RM10-12-003

ORDER ON REQUEST FOR WAIVER OF ELECTRIC QUARTERLY REPORT
REPORTING REQUIREMENTS

(Issued May 8, 2014)

1. In this order, the Commission conditionally grants KAMO Electric Cooperative, Inc.'s (KAMO's) request for waiver of the Electric Quarterly Report (EQR) reporting requirements set forth for non-public utilities in Order No. 768.¹

2. As explained below, the Commission will adopt a standard for waiver from the EQR reporting requirements for a non-public utility cooperative above the *de minimis* threshold that makes wholesale sales to non-members. Under this standard, the Commission generally will grant a request for waiver of the EQR reporting requirements to a non-public utility if its average annual wholesale sales to non-members over the most recent three calendar years do not exceed the amount of energy that could be produced by a generator with a 20 MW capacity, i.e., 175,200 MWh. The 2012 sales data submitted by KAMO indicate that its annual non-member sales fall below 175,200 MWh. Therefore, we conditionally grant KAMO's request for waiver, subject to KAMO making

¹ *Elec. Mkt. Transparency Provisions of Section 220 of the Fed. Power Act*, Order No. 768, FERC Stats. & Regs. ¶ 31,336 (2012), *order on reh'g*, Order No. 768-A, 143 FERC ¶ 61,054 (2013). In Order No. 768, the Commission used the term "non-public utility" to refer to market participants that are excluded from the Commission's jurisdiction pursuant to Federal Power Act (FPA) section 205 because they fall under FPA section 201(f), 16 U.S.C. § 824(f) (2012). *See* Order No. 768, FERC Stats. & Regs. ¶ 31,336 at P 1 n.3. The non-public utilities include federal entities and municipalities, and certain cooperatives with Rural Electrification Act of 1936 (7 U.S.C. § 901 *et seq.* (2012)) financing or that sell less than 4 million MWh of electricity per year.

a compliance filing showing that its average annual non-member sales over the most recent three calendar years fall within the standard for granting waiver.

I. Background

3. Order No. 2001² established EQR reporting requirements for all public utilities pursuant to section 205 of the FPA.³ Under Order No. 2001, public utilities must electronically file EQRs summarizing data about their currently effective contracts (contract data) and wholesale power sales made during the reporting period (transaction data).

4. In Order No. 768, the Commission extended the EQR reporting requirements to non-public utilities that have more than a *de minimis* market presence. In applying EQR reporting requirements to non-public utilities, the Commission balanced the need to increase transparency with the burden associated with filing the EQR by uniformly adopting a 4 million MWh *de minimis* threshold for all non-public utilities. Specifically, non-public utilities that make 4 million MWh or less of annual wholesale sales, based on an average of the wholesale sales made in the preceding three years as reported in EIA Form 861, are exempted from the requirement to file an EQR.⁴ In addition, Order Nos. 768 and 768-A excluded from the EQR reporting requirements wholesale sales by a non-public utility cooperative to its members.⁵ Thus, a non-public utility cooperative only needs to report “surplus” wholesale sales, i.e., wholesale sales made to non-members, in its EQRs.⁶

² *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh’g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh’g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334, *order refining filing requirements*, Order No. 2001-E, 105 FERC ¶ 61,352 (2003), *order on clarification*, Order No. 2001-F, 106 FERC ¶ 61,060 (2004), *order revising filing requirements*, Order No. 2001-G, 120 FERC ¶ 61,270, *order on reh’g and clarification*, Order No. 2001-H, 121 FERC ¶ 61,289 (2007), *order revising filing requirements*, Order No. 2001-I, FERC Stats. & Regs. ¶ 31,282 (2008).

³ 16 U.S.C. § 824d (2012).

⁴ *See* Order No. 768, FERC Stats. & Regs. ¶ 31,336 at PP 54-57.

⁵ *See* Order No. 768, FERC Stats. & Regs. ¶ 31,336 at PP 22, 74; Order No. 768-A, 143 FERC ¶ 61,054 at P 30; *see also* 18 C.F.R. § 35.10b(b) (2013).

⁶ *See* Order No. 768, FERC Stats. & Regs. ¶ 31,336 at P 22; Order No. 768-A, 143 FERC ¶ 61,054 at P 30.

5. On May 10, 2013, KAMO filed a request for waiver of the EQR reporting requirements. KAMO states that it is subject to the EQR reporting requirements because it makes more than 4 million MWh in annual wholesale sales. KAMO asserts that all of its sales, with one very small exception, are made to its members. KAMO states that it makes one “surplus” wholesale sale to a non-member, American Electric Power (AEP), for AEP’s retail load located in Osage, Oklahoma. KAMO states that the AEP monthly peak load averaged 486 kW per month and represented 2,344 MWh of energy in 2012, which constitutes only 0.037 percent of KAMO’s wholesale sales. KAMO argues that, based on the Commission’s requirement to report “surplus” wholesale sales in the EQR, KAMO would be required to file EQRs to report a single wholesale sale. KAMO states that the burden of complying with the EQR reporting requirements far outweighs the benefits to the Commission of an EQR for a single wholesale sale of such small magnitude.

6. KAMO also requests, to the extent necessary, waiver of the requirement to report any contracts in the EQR with respect to sales to its members. KAMO comments that, while Order No. 768 excluded from the EQR reporting requirements a non-public utility’s sales to its members, it did not expressly indicate whether non-public utilities are obligated to report the contracts under which the excluded sales are made.

II. Discussion

7. As noted in Order No. 768, companies may request, on an individual basis, a waiver from the EQR reporting requirements.⁷ KAMO states that it is subject to the EQR reporting requirements because it is a non-public utility that makes more than 4 million MWh of total annual wholesale sales. Under Order No. 768, sales made by a non-public utility cooperative to its members are excluded from the EQR reporting requirements but wholesale sales to non-members are considered “surplus” market sales that must be reported.⁸ KAMO argues that waiver of the EQR reporting requirements is appropriate because KAMO only makes one wholesale sale to a non-member, AEP. KAMO adds that this wholesale sale to AEP is small because it represented only 2,344 MWh of energy in 2012.

8. The Commission finds that it will be appropriate in most circumstances to grant a request for waiver of the EQR reporting requirements to a non-public utility if the seller’s average annual wholesale sales to non-members over the most recent three calendar years

⁷ Order No. 768, FERC Stats. & Regs. ¶ 31,336 at P 191 (citing *Bridger Valley Elect. Assoc., Inc.*, 101 FERC ¶ 61,146 (2002)); *see also* Order No. 768-A, 143 FERC ¶ 61,054 at P 32.

⁸ Order No. 768, FERC Stats. & Regs. ¶ 31, 336 at PP 22, 74; Order No. 768-A, 143 FERC ¶ 61,054 at P 30. *See also* 18 C.F.R. § 35.10b(c)(1) (2013).

do not exceed the amount of energy that could be produced by a generator with a 20 MW capacity (i.e., 175,200 MWh assuming a 100 percent capacity factor). A 20 MW standard is consistent with the standard used in section 292.601(c) of the Commission's regulations to exempt a qualifying facility with a 20 MW net capacity or smaller from FPA sections 205 and 206.⁹ A 20 MW standard is also consistent with the 20 MW size limit for small generating facilities found in Order Nos. 2006¹⁰ and 792¹¹ regarding interconnection agreements and procedures. We believe that, in most circumstances, the benefits of receiving EQR data from non-public utilities about wholesale sales that fall below this standard may be outweighed by the burden to the non-public utility associated with filing the EQR.

9. Based on the 2012 sales data submitted by KAMO, its 2,344 MWh of annual wholesale sales to non-members fall below the 175,200 MWh threshold. Therefore, we conditionally grant KAMO's waiver request, subject to KAMO making a compliance filing showing that its average annual non-member sales over the most recent three calendar years do not exceed 175,200 MWh. This waiver is also granted as long as KAMO's average annual reportable sales over the most recent three calendar years remain below 175,200 MWh. To the extent that is no longer the case, KAMO must notify the Commission within 30 days of the change in circumstances and either begin filing EQRs or submit a new request for waiver.

10. We also clarify that, to the extent a non-public utility cooperative makes wholesale sales to its members, which are excluded from the EQR reporting requirements, the non-public utility cooperative does not need to report the contracts under which those member sales are made. In addition, we clarify that, unlike a public utility with a tariff on file with the Commission, a non-public utility (e.g., a federal entity, municipality, non-public utility cooperative, etc.) does not need to file an EQR for any quarter in which

⁹ See *Revised Regulations Governing Small Power Production and Cogeneration Facilities*, Order No. 671, FERC Stats. & Regs. ¶ 31,203 at P 98 n.24, *order on reh'g*, Order No. 671-A, FERC Stats. & Regs. ¶ 31,219, *order on clarification*, 114 FERC ¶ 61,128 (2006); *see also* 18 C.F.R. § 292.601(c)(1) (2013).

¹⁰ *Standardization of Small Generator Interconnection Agreements and Procedures*, Order No. 2006, FERC Stats. & Regs. ¶ 31,180 at P 75, *order on reh'g*, Order No. 2006-A, FERC Stats. & Regs. ¶ 31,196 (2005), *order granting clarification*, Order No. 2006-B, FERC Stats. & Regs. ¶ 31,221 (2006).

¹¹ *Small Generator Interconnection Agreements and Procedures*, Order No. 792, 145 FERC ¶ 61,159 (2013), *order on clarification*, Order No. 792-A, 146 FERC ¶ 61,214 (2014).

it has no reportable sales.¹² We further clarify that a non-public utility does not need to file a request for waiver from the EQR reporting requirements if it has no reportable sales.

The Commission orders:

(A) KAMO's request for waiver is conditionally granted, as discussed above.

(B) KAMO is hereby directed to submit a compliance filing, within 30 days from the date of this order showing that its average annual non-member sales over the most recent three calendar years do not exceed 175,200 MWh, as discussed above.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹² Each public utility with a tariff on file with the Commission must report, at minimum, complete identification information in the EQR each quarter. *See, e.g., Order Issuing Instruction Manual for Public Utilities to Use to File their Electric Quarterly Reports*, 99 FERC ¶ 61,238 (2002), at Attachment, Paragraph II (stating that each public utility subject to Part 35 of the Commission's regulations must comply with the requirement to file EQRs). *See also Revised Public Utility Filing Requirements*, Notice, Docket No. RM01-8-000, at P 3 (October 21, 2002) (“[e]very utility with a tariff on file with the Commission pursuant to Part 35 of the Commission's regulations must file the Electric Quarterly Report, even if there are no contracts under any of a utility's tariffs or rate schedules, or no sales were made during the quarter. Respondents without sales should leave the transaction template blank.”).