

147 FERC ¶ 61,101
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-- Central Electric Power Cooperative, Inc. Docket No. RM10-12-005

ORDER ON REQUEST FOR WAIVER OF ELECTRIC QUARTERLY REPORT
REPORTING REQUIREMENTS

(Issued May 8, 2014)

1. In this order, the Commission finds that Central Electric Power Cooperative, Inc. (Central) is not required to file the Electric Quarterly Report (EQR) given that it makes no reportable sales. We thereby dismiss as unnecessary Central's request for waiver of the EQR reporting requirements set forth for non-public utilities in Order No. 768.¹

2. As explained below, based on Central's representations in its waiver request, it only makes wholesale sales to its cooperative members and is precluded by state law from making sales to non-members. Central is not required to file EQRs because wholesale sales made by a non-public utility cooperative to its members are excluded from the EQR reporting requirements under Order No. 768. In addition, we clarify that, to the extent a non-public utility above the *de minimis* market presence threshold has no reportable sales in a given quarter, it is not required to file an EQR for that quarter and need not request waiver of the EQR reporting requirements.

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.

I. Background

3. Order No. 2001² established EQR reporting requirements for all public utilities pursuant to section 205 of the Federal Power Act (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 No. 768 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

5. On October 9, 2013, Central filed a request for waiver of the EQR reporting requirements. Central states that it is a generation and transmission cooperative

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 id.* 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.

organized under the Electric Cooperative Act of South Carolina.⁷ Central adds that it is an electric cooperative that receives financing under the Rural Electrification Act of 1936 and is thereby exempt from regulation as a public utility. Central states that it is subject to the EQR reporting requirements because it is a non-public utility whose sales to its members exceed the 4 million MWh *de minimis* threshold. Central asserts that it makes no opportunity sales and, in fact, is required by state law to make all of its sales to its member cooperatives. Central concludes that waiver of the EQR reporting requirements is appropriate because Central makes no sales to non-members and has no sales to report.

6. Central also requests, to the extent necessary, waiver of the requirement to report any contracts in the EQR. Central states 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.⁸ Central explains 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. However, Central asserts that it only makes sales to its members and that state law precludes it from making sales to non-members. 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.⁹ Based on Central's representation that it makes no reportable sales, we find that Central is not required to file EQRs. Thus, we dismiss Central's EQR waiver request as unnecessary.

8. Because our finding is based on the facts as presented by Central, we remind Central that should circumstances change such that it had reportable non-member sales, it would need to file EQRs to the extent that its annual wholesale sales exceed the *de minimis* threshold or seek waiver of the EQR reporting requirements at that time.

⁷ Central request at 1 (citing S.C. Code Ann. § 33-49-10 *et seq.*).

⁸ 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.

⁹ 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).

9. We 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 it has no reportable sales.¹⁰ 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:

We dismiss Central's waiver request as unnecessary, as discussed above.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁰ 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.”).