

147 FERC ¶ 61,100  
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-- Seminole Electric Cooperative      Docket No. RM10-12-004

ORDER ON REQUEST FOR WAIVER OF ELECTRIC QUARTERLY REPORT  
REPORTING REQUIREMENTS

(Issued May 8, 2014)

1. In this order, the Commission rejects without prejudice Seminole Electric Cooperative's (Seminole's) request for waiver of the Electric Quarterly Report (EQR) reporting requirements set forth for non-public utilities in Order No. 768.<sup>1</sup>

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 Seminole indicate that its annual non-member sales exceed 175,200 MWh. Therefore, we reject Seminole's request for waiver without prejudice.

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<sup>1</sup> *Electricity Market Transparency Provisions of Section 220 of the Federal 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. 2001<sup>2</sup> established EQR reporting requirements for all public utilities pursuant to section 205 of the FPA.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> Thus, a non-public utility cooperative only needs to report “surplus” wholesale sales, i.e., wholesale sales made to non-members, in its EQRs.<sup>6</sup>

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<sup>2</sup> *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).

<sup>3</sup> 16 U.S.C. § 824d (2012).

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

<sup>5</sup> *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).

<sup>6</sup> *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 June 6, 2013, as revised on June 7, 2013, Seminole filed a request for waiver of the EQR reporting requirements. Seminole states 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 under the FPA. Seminole states that it is subject to the EQR reporting requirements because it makes more than 4 million MWh in annual wholesale sales. Seminole asserts that its 2012 non-member sales of 437,351 MWh represent approximately 2.8 percent of its total sales of 15,762,391 MWh for 2012. Seminole adds that only 165,250 MWh of its 437,351 MWh in non-member sales were “true opportunity sales” because the remainder consisted of sales to the City of Winter Park, Florida, pursuant to a firm power sales agreement, and energy imbalance sales under Florida Power & Light Company’s and Duke Energy Florida, Inc.’s Open Access Transmission Tariffs. Seminole argues that the sales in which Seminole could have any influence on market pricing constituted 1 percent of its overall sales in 2012 and have not ever been more than 2 percent of its overall sales. Seminole also argues that its total non-member sales of 437,351 MWh were below the 4 million MWh *de minimis* threshold and its opportunity sales represented only 4 percent of the threshold. Seminole claims that the burden of reporting these non-member sales would far outweigh any benefit to the Commission.

6. Seminole also requests, to the extent necessary, waiver of the requirement to report any contracts in the EQR with respect to sales to its members. Seminole 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.<sup>7</sup> Seminole 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, Seminole argues that waiver of the EQR reporting requirements is appropriate because its sales to non-members are well below the 4 million MWh *de minimis* threshold and make up a very small percentage of its overall 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.<sup>8</sup>

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<sup>7</sup> 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.

<sup>8</sup> 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).

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 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.<sup>9</sup> A 20 MW standard is also consistent with the 20 MW size limit for small generating facilities found in Order Nos. 2006<sup>10</sup> and 792<sup>11</sup> 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 Seminole, its 437,351 MWh of annual wholesale sales to non-members exceed 175,200 MWh. Therefore, we reject Seminole's waiver request without prejudice. Seminole may file to request waiver of the EQR filing requirements if its average annual wholesale sales to non-members over the most recent three calendar years do not exceed 175,200 MWh.

10. We will give Seminole 60 days from the date of this order in which to file its EQR for the third quarter of 2013 (Q3 2013), the first quarter for which non-public utilities need to file EQR. We further will give Seminole an additional 30 days in which to file the subsequent EQRs. Accordingly, Seminole's Q4 2013 EQR will be due within 90 days of the effective date of this order; Seminole's Q1 2014 EQR will be due within 120 days of the effective date of this order; Seminole's Q2 2014 EQR will be due within 150 days of the effective date of this order; and Seminole's Q3 2014 EQR will be due within 180 days of the effective date of this order. Beginning with the Q4 2014 EQR, Seminole

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<sup>9</sup> 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).

<sup>10</sup> *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).

<sup>11</sup> *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).

should file its EQR according to the EQR filing schedule established by the Commission.<sup>12</sup>

11. 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 it has no reportable sales.<sup>13</sup> 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) Seminole's request for waiver is rejected without prejudice, as discussed above.

(B) Seminole is directed to file its Q3 EQR 2013 within 60 days of the date of this order; Seminole is directed to file its Q4 2013 EQR within 90 days of the date of this order; Seminole is directed to file its Q1 2014 EQR within 120 days of the date of this order; Seminole is directed to file its Q2 2014 EQR within 150 days of the date of this order; and Seminole is directed to file its Q3 2014 EQR within 180 days of the date of this order, as discussed above.

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<sup>12</sup> See 18 C.F.R. § 35.10b (2013).

<sup>13</sup> 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., *Revised Public Utility Filing Requirements*, 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.”).

(C) Beginning with Q4 2014, Seminole should file its EQR reports in accordance with the EQR filing schedule established by the Commission, as discussed above.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.