

147 FERC ¶ 61,176
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 -- Brazos Electric Power Cooperative, Inc. Docket No. RM10-12-006

ORDER ON REQUEST FOR WAIVER OF ELECTRIC QUARTERLY REPORT
REPORTING REQUIREMENTS

(Issued June 2, 2014)

1. In this order, the Commission finds that Brazos Electric Power Cooperative, Inc. (Brazos Electric) is not required to file Electric Quarterly Reports (EQR) given that it makes no reportable sales. We thereby dismiss as unnecessary Brazos Electric'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 Brazos Electric's representations in its waiver request, it makes wholesale sales of electricity within the Electric Reliability Council of Texas (ERCOT) and the only wholesale sales it makes outside of ERCOT are to two of Brazos Electric's member cooperatives. Brazos Electric is not required to file EQRs because Order No. 768 does not apply to entities that make wholesale sales of electric energy within ERCOT. In addition, wholesale sales made by a non-public utility cooperative to its members are excluded from the EQR reporting requirements under Order No. 768.

¹ *Elec. Mkt. Transparency Provisions of Section 220 of the Fed. Power Act*, Order No. 768, FERC Stats. & Regs. ¶ 31,336, *order on reh'g*, Order No. 768-A, 143 FERC ¶ 61,054 (2013).

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

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 *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 on reh’g*, Order No. 768-A, 143 FERC ¶ 61,054 at P 30.

5. On February 21, 2014, Brazos Electric filed a request for waiver of the requirement for non-public utilities to file EQRs under Order No. 768 and section 35.10b of the Commission's regulations. Brazos Electric asserts that it is a rural electric generation and transmission cooperative that receives financing under the Rural Electrification Act of 1936 and that is not a public utility pursuant to section 201(f) of the FPA.⁷ Brazos Electric asserts that it supplies the wholesale electric power needs of 16 member distribution cooperatives and one municipal wholesale customer in ERCOT through its portfolio of owned generation and other power-supply resources, including wholesale power contracts. Brazos Electric states that the only wholesale sales that it makes outside of ERCOT, and the only such sales it has made during the preceding three years, are to its two member cooperatives with load in the Midcontinent Independent System Operator, Inc. (MISO). Brazos Electric states it serves all of such load through wholesale power purchases. Accordingly, Brazos Electric seeks a waiver because it does not make any wholesale sales that are subject to the reporting requirement.

II. Discussion

6. As noted in Order No. 768, companies may request, on an individual basis, a waiver from the EQR reporting requirements.⁸ Brazos Electric explains that it makes wholesale sales within ERCOT and the only wholesale sales it makes outside of ERCOT are to two of Brazos Electric's member cooperatives with load in MISO.

7. Order No. 768 does not apply to transactions for the purchase or sale of wholesale electric energy or transmission services within ERCOT.⁹ Specifically, section 35.10b(a) of the Commission's regulations provides that "[t]he term [non-public utility] does not include an entity that engages in purchases or sales of wholesale electric energy or transmission services within [ERCOT]."¹⁰ Accordingly, Brazos Electric's sales within ERCOT are exempted from the EQR reporting requirement.

8. 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

⁷ 16 U.S.C. § 824(f).

⁸ Order No. 768, FERC Stats. & Regs. ¶ 31,336 at P 191 (citing *Bridger Valley Elec. 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 P 23; *see also* 18 C.F.R. § 35.10b(a) (2013).

¹⁰ 18 C.F.R. § 35.10b(a).

non-members are considered “surplus” market sales that must be reported.¹¹ In Brazos Electric’s case, the wholesale sales it makes outside of ERCOT are to two of its member cooperatives; therefore, it is not required to report such sales in the EQR.

9. Based on Brazos Electric’s representations that it makes no reportable sales, we find that Brazos Electric is not required to file EQRs. Thus, we dismiss Brazos Electric’s waiver request as unnecessary. Because our finding is based on the facts as presented by Brazos Electric, we remind Brazos Electric that should circumstances change such that it had reportable non-member sales, it would need to file EQRs or seek waiver of the EQR reporting requirements at that time.

The Commission orders:

We dismiss Brazos Electric’s request for waiver as unnecessary, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹¹ Order No. 768, FERC Stats. & Regs. ¶ 31,336 at PP 22, 74, *order on reh’g*, Order No. 768-A, 143 FERC ¶ 61,054 at P 30. *See also* 18 C.F.R. § 35.10b(c)(1) (2013).