

148 FERC 61,049
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 – California
Department of Water Resources, CERS Division

Docket No. RM10-12-010

ORDER ON REQUEST FOR WAIVER OF ELECTRIC QUARTERLY REPORT
REPORTING REQUIREMENTS

(Issued July 18, 2014)

1. In this order, the Commission finds that the California Department of Water Resources, acting through its California Energy Resources Scheduling (CERS) division is not required to file the Electric Quarterly Report (EQR) because it makes no reportable sales. We thereby dismiss as unnecessary CERS' 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 the representations in CERS' waiver request, it is a non-public utility that only makes wholesale sales under a long-term, cost-based agreement that are required to be made to certain customers under a state statute. CERS is not required to file EQRs because its wholesale sales are excluded from the EQR reporting requirements pursuant to Order No. 768.

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

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).

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*, (continued...)

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 Energy Information Administration (EIA) Form 861, are exempted from the requirement to file an EQR.⁴ In addition, Order No. 768 excluded from the EQR reporting requirements two types of wholesale sales: (1) sales by a non-public utility, such as a cooperative or joint action agency, to its members; and (2) sales by a non-public utility under a long-term, cost-based agreement required to be made to certain customers under a Federal or state statute.⁵ Thus, a non-public utility above the *de minimis* threshold only needs to report “surplus” wholesale sales, i.e., wholesale sales that do not fall within a reporting exclusion, in its EQRs.⁶

5. On April 2, 2014, CERS filed a request for waiver of the EQR reporting requirements. CERS states that, during the California energy crisis in 2001, the California Legislature enacted legislation that required CERS, acting separate and apart from its powers and responsibilities related to the State Water Resources Development System, to enter into a portfolio of energy supply contracts to stabilize the electricity

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; see also 18 C.F.R. § 35.10b(c)(2) (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.

market and restore grid operations.⁷ CERS asserts that, to fulfill its legislative mandate, it entered into 58 long-term power purchase agreements with various suppliers, all but one of which have expired or been terminated. CERS also states that the last remaining power purchase agreement, with Kings River Conservation District (Kings River), will terminate on September 17, 2015, and the maximum amount of power CERS can purchase from Kings River under the terms of its agreement is significantly below the *de minimis* threshold of 4 million MWh per year. CERS states that it has no other power supply and is, and has been since January 1, 2003, statutorily prohibited from entering into any new power purchase agreements.

6. CERS argues that all of its sales are made under a long-term, cost-based agreement required to be made to certain customers under a state statute, consistent with one of the reporting exclusions established in Order No. 768. CERS explains that it entered into long-term, fixed rate contracts with approximately ten-year terms and that the last remaining contract has a ten-year term scheduled to expire in 2015. CERS also states that its rates are equivalent to cost-based rates because CERS' costs are administratively determined on an annual basis pursuant to the California Water Code and the rate agreement between CERS and the California Public Utilities Commission. Furthermore, CERS states that its participation in the electricity markets, including the acquisition of its power supply portfolio, was dictated by the California Legislature, which also specified the set of customers whom CERS must serve.

7. In addition to seeking a waiver based on one of the reporting exclusions in Order No. 768, CERS states that it filed its request under the *de minimis* threshold, which is calculated based on entities' EIA Form 861 data for the preceding three years. CERS states that, in the preceding three years, CERS only exceeded the *de minimis* threshold in 2011, which was prior to the expiration of all but a handful of smaller power contracts at the end of 2011 and mid-2012. For 2012, CERS states its sales were under the *de minimis* threshold of 4 million MWh and for 2013, under 400,000 MWhs. For 2014 and 2015, CERS forecasts sales to be under 100,000 MWh. CERS argues that, as a result, its engagement in the electricity markets is extremely limited and its sales, since June 2012, fall under the *de minimis* threshold of 4 million MWh per year. According to CERS, its sales will continue to fall below the *de minimis* threshold because it is statutorily prohibited from entering into any new power contracts and its last remaining power contract will expire on September 17, 2015.

⁷ Request for Waiver at 2-3 (citing California Water Code § 80000, *et seq.*).

II. Discussion

8. Order No. 768 noted that companies may request, on an individual basis, a waiver from the EQR reporting requirements.⁸ In addition, Order No. 768 set forth an exclusion from the EQR reporting requirement for sales by a non-public utility under a long-term, cost-based agreement required to be made to certain customers under Federal or state statute.⁹

9. CERS states that it should not be required to file EQRs because all of CERS' sales take place pursuant to state statute under long-term, cost-based agreements required to be made to certain customers.¹⁰ In addition, CERS argues that its engagement in the electricity markets is extremely limited and its sales since June 30, 2012 fall under the *de minimis* threshold of 4 million MWh per year. CERS adds that requiring it to comply with EQR filing requirements would be extremely burdensome while providing the Commission with little to no helpful information.

10. Based on CERS' representations that it makes no reportable sales, we find that CERS is not required to file EQRs. Thus, we dismiss the EQR waiver request as unnecessary.

11. Because our finding is based on the facts as presented by CERS, we remind CERS that should circumstances change such that it had reportable 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.

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. *See also* 18 C.F.R. § 35.10b(c)(2) (2013).

¹⁰ In its request for waiver, CERS mistakenly labels non-public utility sales that are excluded from the EQR reporting requirements as "surplus" market sales. Order No. 768 used the term "surplus" market sales to refer to non-public utility wholesale sales that are *not* subject to a reporting exclusion and, therefore, must be reported in the EQR. *See* Order No. 768, FERC Stats. & Regs. ¶ 31,336 at P 22; Order No. 768-A, 143 FERC ¶ 61,054 at P 30.

The Commission orders:

We dismiss CERS' waiver request as unnecessary, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.