

148 FERC ¶ 61,063
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 - Intermountain
Power Agency

Docket No. RM10-12-007

ORDER ON REQUEST FOR WAIVER OF ELECTRIC QUARTERLY REPORT
REPORTING REQUIREMENTS

(Issued July 24, 2014)

1. In this order, the Commission finds that Intermountain Power Agency (IPA) is not required to file the Electric Quarterly Report (EQR) given that it makes no reportable sales. We thereby dismiss as unnecessary IPA'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 the representations in the waiver request, IPA only makes wholesale sales to its members. IPA is not required to file EQRs because wholesale sales made by a joint action agency 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 (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.

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 Energy Information Administration 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 or joint action agency to its members.⁵ Thus, a non-public utility cooperative or joint action agency 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 id.* PP 22, 74; *see also* 18 C.F.R. § 35.10b(c) (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 February 24, 2014, Los Angeles Department of Water and Power (LADWP), as Operating Agent for the IPA, filed a request for waiver of the EQR reporting requirements on IPA's behalf. LADWP states that IPA is a joint action agency formed under the Interlocal Cooperation Act of Utah⁷ in 1977 to finance, construct, and operate the Intermountain Power Project (Intermountain Project), which includes electric generation facilities with a capacity of approximately 1900 MW and transmission facilities. LADWP states that LADWP and IPA have contracted to make LADWP the operating agent responsible for the operation and maintenance of the Intermountain Project. LADWP explains that IPA entered into identical power sales contracts with 36 participants for the sale by IPA of 100 percent of the Intermountain Project's output. LADWP notes that, pursuant to each power sales contract, each participant is obligated to take its share of capacity and energy from the Intermountain Project. LADWP also explains that these sales are pursuant to long-term contracts and are cost-based, with actual costs merely passed through to the participants or "family members."⁸ According to LADWP, these sales are based on "take-or-pay" contracts; are not influenced by the wholesale market for either pricing or volumes sold; could not result in affiliate abuse; and could not constitute collusion or anticompetitive behavior with respect to other third-party wholesale purchasers.

6. LADWP states that IPA is subject to the EQR reporting requirements under Order No. 768 because IPA annually generates well over 4 million MWh. LADWP notes that Order No. 768 provided an EQR reporting exclusion for non-public utilities that exceed the 4 million MWh EQR reporting threshold by allowing them to exclude all sales to their members from the amounts they would report in the EQR. LADWP also requests, on behalf of IPA, that the Commission grant IPA waiver of any requirement to report any of its contracts in the EQR.

II. Discussion

7. As noted in Order No. 768, companies may request, on an individual basis, a waiver from the EQR reporting requirements.⁹ LADWP states that IPA is subject to the EQR reporting requirement because it is a non-public utility that makes over

⁷ Request for Waiver at 2 (citing Utah Code Ann. §§ 11-13-101 to -313).

⁸ *Id.* at 3 (citing *Elec. Mkt. Transparency Provisions of Section 220 of the Fed. Power Act*, Notice of Proposed Rulemaking, 135 FERC ¶ 61,053 (Apr. 21, 2011); Order No. 768, FERC Stats. & Regs. ¶ 31,336 at P 57).

⁹ 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.

4 million MWh of annual wholesale sales. However, LADWP states that IPA should not be required to report its wholesale sales in the EQR because it sells all of its output to participants under certain contracts. Under Order No. 768, sales made by a non-public utility, such as a cooperative or joint action agency, 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.¹⁰ Based on LADWP’s representation that IPA makes no reportable sales, we find that IPA is not required to file EQRs. Thus, we dismiss the EQR waiver request as unnecessary.

8. Because our finding is based on the facts as presented by LADWP, on behalf of IPA, we remind IPA 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.

9. With respect to LADWP’s request that IPA be granted waiver of any requirement to report any contracts, to the extent a joint action agency makes wholesale sales to its members, which are excluded from the EQR reporting requirements, the joint action agency does not need to report the contracts under which those member sales are made.¹¹

The Commission orders:

We dismiss LADWP’s waiver request, filed on behalf of IPA, as unnecessary, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁰ 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).

¹¹ *See Elec. Mkt. Transparency Provisions of Section 220 of the Federal Power Act – Central Elec. Power Coop., Inc.*, 147 FERC ¶ 61,101, at P 9 (2014).