

148 FERC ¶ 61,083
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

Electric Quarterly Reports

Docket No. ER02-2001-000

ORDER ON REQUEST FOR WAIVER OF ELECTRIC QUARTERLY REPORT
REPORTING REQUIREMENTS

(Issued July 31, 2014)

1. In this order, the Commission denies a request by Portland General Electric Company (Portland General) made on behalf of Fale-Safe, Inc. (Fale-Safe) for waiver of the Electric Quarterly Report (EQR) reporting requirements for the third quarter (Q3) and fourth quarter (Q4) of 2013.

I. Background

2. Order No. 2001¹ established EQR reporting requirements for all public utilities pursuant to section 205 of the Federal Power Act (FPA).² Order No. 2001 requires public utilities to electronically file EQRs summarizing transaction information for short-term and long-term cost-based sales and market-based rate sales and the contractual terms and

¹ *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).

² 16 U.S.C. § 824d (2012).

conditions in their agreements for all jurisdictional services.³ In Order No. 768, the Commission revised the existing EQR filing requirements.⁴

3. In Order No. 770, the Commission changed the process for filing EQRs by adopting a web-based approach to filing EQRs that would allow a public utility or non-public utility to file an EQR directly through the Commission's website.⁵ The Commission notified all public and non-public utilities that they were not to file Q3 and Q4 2013 EQRs until the web-based approach was made available.⁶ The Commission ultimately extended the EQR filing deadlines for public utilities and non-public utilities to April 30, 2014 for Q3 2013 EQRs, to May 31, 2014 for Q4 2013 EQRs, and to June 30, 2014 for Q1 2014 EQRs.⁷

4. On March 7, 2014, Portland General filed on behalf of Fale-Safe a request for waiver of the EQR requirements under 18 C.F.R. § 35.10b, Order No. 2001, Order No. 768, and Order No. 770.⁸ Portland General notes that Fale-Safe was an Oregon corporation and single-purpose entity organized in December 1985 to lease from General Electric Credit Corporation a 15 percent interest in Portland General's No. 1 Boardman Generating Station coal-fired plant (Boardman plant), related Boardman plant assets, and a 10.714 percent interest in the Pacific Northwest Intertie. Portland General states that it is the majority owner and operator of the Boardman plant.

³ See Order No. 2001, FERC Stats. & Regs. ¶ 31,127.

⁴ See *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).

⁵ *Revisions to Electric Quarterly Report Filing Process*, Order No. 770, FERC Stats. & Regs. ¶ 31,338 (2012).

⁶ See *Filing Requirements for El. Utility S.A.*, 145 FERC ¶ 61,031 (2013) (*Filing Requirements*); *Filing Requirements for El. Utility S.A.*, 145 FERC ¶ 61,282 (2013) (*Filing Requirements*).

⁷ *Filing Requirements for El. Utility S.A.*, 146 FERC ¶ 61,144 (2014) (*Filing Requirements*).

⁸ On April 29, 2014, Portland General filed on behalf of Fale-Safe a request for an extension of time to file Fale-Safe's remaining EQRs. The request for an extension was granted in *Fale-Safe Inc.*, Docket No. ER02-2001-000 (May 2, 2014) (delegated letter order).

5. Portland General states that Fale-Safe was a public utility subject to the Commission's jurisdiction. Portland General also notes that, pursuant to a variety of operational, management and service agreements, Portland General performed all services and functions for Fale-Safe, including fulfilling Fale-Safe's reporting obligations to the Commission. Portland General states that it had been submitting EQRs on behalf of Fale-Safe from 2008 until Q3 and Q4 of 2013. Portland General notes that the Commission accepted Fale-Safe's cancellation of its market-based rate tariff on file with the Commission, effective January 1, 2014.⁹ Portland General explains that Fale-Safe sold power to only one customer, San Diego Gas & Electric (SDG&E), and that the EQR filings generally included 10 to 50 transactions per quarter. Portland General states that it made these filings quarterly and that they were current until the Commission discontinued use of the existing system pursuant to Order No. 770. Portland General contends that, due to the unavailability of the EQR system, Portland General is unable to submit EQR data on behalf of Fale-Safe for Q3 and Q4 of 2013. Portland General asserts that, with the expiration of the SDG&E power sales contract and the termination of the Fale-Safe lease, as of December 31, 2013, no EQR filings will be due after 2013. For these reasons, Portland General requests waiver from the EQR filing requirement for Fale-Safe for Q3 and Q4 of 2013.

II. Discussion

6. In Order No. 2001, the Commission required public utilities to file EQRs. The Commission established the EQR reporting requirements to help ensure the collection of information needed to perform its regulatory functions over transmission and sales of electric energy, while making data more useful to the public and allowing public utilities to better fulfill their responsibility under FPA section 205(c)¹⁰ to have rates on file in a convenient form and place.¹¹ The Commission previously has granted waiver of the EQR filing requirements for certain public utilities based on specified factors,¹² which

⁹ See *Fale-Safe, Inc.*, Docket No. ER14-306-000 (Dec. 13, 2013) (delegated letter order).

¹⁰ 16 U.S.C. § 824d(c) (2012).

¹¹ See Order No. 2001, FERC Stats. & Regs. ¶ 31,127 at P 31.

¹² In particular, the Commission found that waiver was appropriate because: (1) each applicant was a small entity within the meaning of the Regulatory Flexibility Act and had qualified for a waiver under Order Nos. 888 and 889, served a load of 45 MW or less and had four or fewer employees engaged in accounting, billing, and regulatory activities; (2) no applicant made, or had authority to make, wholesale power sales at market-based rates; (3) each applicant made all of its sales under a small number of cost-based rate agreements on file with the Commission; (4) each applicant was obligated

(continued...)

Portland General has not set forth as the basis for its request for waiver in this case. Instead, Portland General seeks waiver of any obligation to submit EQRs on behalf of Fale-Safe for Q3 and Q4 of 2013 and from the requirement to submit data corrections for previously filed EQRs based on the fact that it was unable to submit EQR data during Q3 and Q4 2013 due to the unavailability of the new EQR system. Portland General also contends that the expiration of the SDG&E power sales contract and the termination of the Fale-Safe lease, as of December 31, 2013, mean that no EQR filings will be due after 2013.

7. Based on the circumstances presented here, we are not persuaded to grant Portland General's request for waiver. As a public utility with market-based rate authority, Fale-Safe is required to file EQRs.¹³ As noted above, the Commission has previously granted waivers of EQR reporting requirements; however, the Commission has granted such waivers sparingly because the EQR is one of the foundations of the market-based rate program.¹⁴ On December 13, 2013, the Commission authorized the return of the interests held by Fale-Safe back to Portland General.¹⁵ Before the cancellation of Fale-Safe's market-based rate tariff became effective on January 1, 2014, the Commission notified all EQR filers that the deadlines for filing Q3 and Q4 2013 EQRs would be extended until the new web-based EQR system became available.¹⁶ The new EQR system became available for filing Q3 and Q4 2013 EQRs on April 1, 2014.¹⁷ The Commission's regulations require that a seller with market-based rate authority

to file for Commission approval any new contracts or revisions to its existing contracts; and (5) each applicant's transmission system was essentially radial in nature and primarily used for distribution to its member-owners. *See Bridger Valley Elec. Assoc., Inc.*, 101 FERC ¶ 61,146 (2002).

¹³ *See Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at P 3, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *aff'd sub nom. Mont. Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied*, 133 S. Ct. 26 (2012).

¹⁴ *See* Order No. 2001-G, 120 FERC ¶ 61,270 at P 86.

¹⁵ *Portland General Elec. Co.*, 145 FERC ¶ 62,213 (2013).

¹⁶ *See Filing Requirements*, 145 FERC ¶ 61,031; *Filing Requirements*, 145 FERC ¶ 61,282.

¹⁷ *See Filing Requirements*, 146 FERC ¶ 61,144.

retain, for a period of five years, all data and information upon which it billed the prices it charged for the electric energy and electric energy products it sold pursuant to its market-based rate tariff.¹⁸ Furthermore, as described by Portland General, Fale-Safe sold power to one customer with 10 to 50 transactions generally being reported in each quarter. Since Portland General does not indicate that it lacks access to the relevant data to make the necessary filings and given the relatively small amount of data involved, we believe that filing Fale-Safe's EQRs for Q3 and Q4 2013 will not impose an undue burden on Portland General. In addition, as noted above, Portland General did not address the factors the Commission generally considers when reviewing a public utility's request for waiver of the EQR filing requirement. Therefore, we deny Portland General's request for waiver and order that Fale-Safe's Q3 and Q4 2013 EQRs be filed with the Commission within 30 days of the issuance of this order.

The Commission orders:

(A) As discussed in the body of this order, we deny Portland General's request for waiver of the Q3 and Q4 2013 EQR reporting requirements on behalf of Fale-Safe.

(B) Fale-Safe's Q3 and Q4 2013 EQRs must be filed within 30 days from the date of issuance of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁸ See 18 C.F.R. § 35.41(d) (2013).