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## FERC REQUIRES MORE SELLERS TO REPORT POWER SALES

At its recent public meeting, FERC approved a final rule extending the requirement to file quarterly reports of wholesale power sales and transmission service to “non-public utilities” (such as Federal, municipal and cooperative electric utilities). The new rule also adopts a few ministerial changes to the quarterly reports.

FERC’s new rule will be of interest to those holding interests in electric generation or transmission assets or in marketers that transact in wholesale electricity markets in the U.S.

FERC has required “public utilities” to electronically file Electric Quarterly Reports, or EQRs, since 2002. EQRs summarize contractual terms and conditions of agreements for FERC-jurisdictional services, including sales for resale, transmission service, and transmission capacity reassignments. EQRs also provide detailed transactional information for power sales and transmission capacity reassignments. EQR data is designed to provide price transparency, promote competition, enhance confidence in the fairness of the markets, and provide a means to detect and discourage discriminatory practices.

Currently, only market participants that are “public utilities” and thus fall within FERC’s jurisdiction under Federal Power Act section 205 must file EQRs. However, the FPA exempts certain entities (i.e., Federal entities, municipalities, and certain cooperatives) from FERC’s section 205 jurisdiction. Accordingly, such “non-public utilities” do not file EQRs.

However, as FERC observed in this final rule, non-public utilities have a significant presence in wholesale electric markets so that obtaining information about their transactions is important to unmasking how prices are formed in those markets. The lack of information from non-public utilities results in an incomplete picture of these markets, and hampers the ability of the public and FERC to detect and address the potential exercise of market power and manipulation.

In this final rule, FERC concluded that a provision of the FPA added by the Energy Policy Act of 2005 gives it the authority to collect EQR information from entities that are not public utilities.

EPAct05 added section 220 to the FPA that directs FERC to “facilitate price transparency in markets for the sale and transmission of electric energy in interstate commerce” and grants FERC the authority to obtain information about the availability and prices of wholesale electric energy and transmission service from “any market participant,” except for entities with a *de minimis* market presence. FERC concluded that extending the EQR requirement to non-public utilities is necessary to facilitate price transparency in wholesale electricity markets

FERC’s final rule (Order No. 768) extends the requirement to file electric quarterly reports (EQR) to non-public utilities with annual wholesale sales of more than 4 million megawatt hours (MWh). A non-public utility that makes 4,000,000 MWh or less of annual wholesale sales is regarded as having a “*de minimis* market presence.” However, the term “non-public utility” does not include an entity that engages in purchases or sales of wholesale electric energy or transmission services within

the Electric Reliability Council of Texas or that engages solely in sales of wholesale electric energy or transmission services in Alaska or Hawaii.

Non-public utilities are not required to report the following types of wholesale sales:

- Sales by a non-public utility, such as a cooperative or joint action agency, to its members.
- Sales under a long-term, cost-based agreement required to be made under a Federal or state statute.

The rule also makes ministerial changes to the EQR that are applicable to all respondents, among which are requiring respondents to report whether a broker was used to consummate a transaction and whether the respondent reports its sales transactions to an index publisher and, if so, to which index publisher(s).

The final rule is effective 60 days after publication in the *Federal Register*.

Order No. 768 is available [here](#).

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