

150 FERC ¶ 61,075  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;  
Philip D. Moeller, Tony Clark,  
Norman C. Bay, and Colette D. Honorable.

Electricity Market Transparency  
Provisions of Section 220 of the  
Federal Power Act

Docket No. RM10-12-002

ORDER NO. 768-B

ORDER ON REHEARING

(Issued February 6, 2015)

1. On September 21, 2012, the Federal Energy Regulatory Commission (Commission) issued a Final Rule in this proceeding, Order No. 768,<sup>1</sup> to require market participants that are excluded from the Commission's jurisdiction under Federal Power Act (FPA) section 205<sup>2</sup> and have more than a *de minimis* market power presence to file Electric Quarterly Reports (EQR) with the Commission. In addition, and at issue in this order, the Commission revised the EQR filing requirements applicable to both public utility and non-public utility market participants in the interstate wholesale electric markets by adding new fields for data including, but not limited to, reporting electronic tag ID (e-Tag ID) information. In this order, we grant requests for rehearing related to the e-Tag ID requirement, as discussed below.

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<sup>1</sup> *Electricity Market Transparency Provisions of Section 220 of the Federal Power Act*, Order No. 768, FERC Stats. & Regs. ¶ 31,336 (2012) (cross-referenced at 140 FERC ¶ 61,232), *order on reh'g and clarification*, Order No. 768-A, 143 FERC ¶ 61,054 (2013).

<sup>2</sup> 16 U.S.C. § 824d (2012).

## I. Background

2. The Commission originally set forth the EQR filing requirements in Order No. 2001,<sup>3</sup> which requires public utilities to electronically file EQRs summarizing transaction information for short-term and long-term cost-based sales and market-based sales and the contractual terms and conditions in their agreements for all jurisdictional services. 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<sup>4</sup> while making data more useful to the public and allowing public utilities to better fulfill their responsibility under FPA section 205(c)<sup>5</sup> to have rates on file in a convenient form and place.<sup>6</sup> As noted in Order No. 2001, the EQR data is designed to “provide greater price transparency, promote competition, enhance confidence in the fairness of the markets, and provide a better means to detect and discourage discriminatory practices.”<sup>7</sup>

3. The Commission adopted revised EQR reporting requirements in Order No. 768, which built upon the Commission’s prior improvements to the reporting requirements and further enhanced the goals of providing greater price transparency; promoting competition; instilling confidence in the fairness of the markets; and providing better means to detect and discourage anti-competitive, discriminatory, and manipulative practices.<sup>8</sup> As part of these requirements, the Commission required that EQR filers

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<sup>3</sup> *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127 (cross-referenced at 99 FERC ¶ 61,107), *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) (cross-referenced at 125 FERC ¶ 61,103).

<sup>4</sup> Order No. 2001, FERC Stats. & Regs. ¶ 31,127 at PP 13-14.

<sup>5</sup> 16 U.S.C. § 824d(c) (2012).

<sup>6</sup> Order No. 2001, FERC Stats. & Regs. ¶ 31,127 at P 31.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* P 6.

submit e-Tag IDs for each transaction reported in the EQR if an e-Tag<sup>9</sup> was used to schedule the transaction.<sup>10</sup> The e-Tag ID is a subset of information associated with the full e-Tag. The e-Tag ID consists of: (1) Source Balancing Authority Entity Code;<sup>11</sup> (2) Purchasing-Selling Entity Code;<sup>12</sup> (3) e-Tag Code or Unique Transaction Identifier;<sup>13</sup> and (4) Sink Balancing Authority Area Code.<sup>14</sup> Order No. 768 specified that filers report in the EQR the e-Tag ID matched up to the Transaction Unique Identifier, along with the start and end dates for the tags.<sup>15</sup> The Commission found, that while there was an increased burden associated with the requirement to match transactions with associated e-Tag IDs, the burden was justified given the importance of the information for facilitating price transparency in jurisdictional markets.<sup>16</sup>

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<sup>9</sup> An e-Tag is used to schedule physical interchange transactions and contains information about: where the power is sourced and delivered; the responsible parties in the receipt, delivery and movement of the power; the timing; and the volumes and specified details regarding which transmission paths are used. Order No. 768, FERC Stats. & Regs. ¶ 31,336 at P 156.

<sup>10</sup> *Id.*

<sup>11</sup> The Source Balancing Authority is the balancing authority in which the generation is located. *Id.* P 156 n.246.

<sup>12</sup> The Purchasing-Selling Entity is the entity creating and submitting the e-Tag request to the authority service, which authorizes implementation of interchange schedules between balancing authority areas. It is also the entity that purchases or sells, and takes title to, energy, capacity, and interconnected operation services. *Id.* P 156 n.247.

<sup>13</sup> The e-Tag Code is a unique seven-character transaction identified for each bilateral energy transaction scheduled on the transmission network. It is assigned by the e-Tag system when transmission service to accommodate the transaction is reserved. *Id.* P 156 n.248.

<sup>14</sup> The Sink Balancing Authority is the balancing authority in which load is located. *Id.* P 156 n.249.

<sup>15</sup> *Id.* P 156.

<sup>16</sup> *Id.* P 157.

4. Eight requests for rehearing and/or clarification of Order No. 768 were filed, and two requests for a stay of the implementation of Order No. 768 were filed.<sup>17</sup> EEI/EPSA and EQR-Filing Utilities requested that the Commission stay the e-Tag ID information reporting provisions of Order No. 768 pending rehearing because of the large upfront costs associated with implementing these requirements.<sup>18</sup> On February 8, 2013, the Commission issued an order partially granting an extension of time so that EQR filers need not include e-Tag ID information in EQRs beginning in the third quarter of 2013.<sup>19</sup> The extension was intended to allow the Commission more time to fully assess the benefits and burdens associated with e-Tag ID information and did not address any issues raised on rehearing other than the request to delay implementation of the EQR e-Tag ID requirement.<sup>20</sup> Finally, the Commission directed staff to prepare a status report within one year from the issuance of the order, unless the Commission otherwise took action on the matter.<sup>21</sup> The Commission later extended the status report deadline to February 7, 2015.<sup>22</sup>

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<sup>17</sup> Requests for rehearing and/or clarification were filed by the American Public Power Association (APPA) and Large Public Power Council (LPPC) (collectively APPA/LPPC); EDF Trading North America, LLC (EDF Trading); Edison Electric Institute (EEI) and Electric Power Supply Association (EPSA) (collectively EEI/EPSA); Energy Compliance Consulting, LLC (ECC); EQR-Filing Utilities (which includes Direct Energy Marketing Inc., El Paso Electric Co., Exelon Corp., Hess Corp., Shell Energy North America and the Western Power Trading Forum); National Rural Electric Cooperative Association (NRECA); and Powerex Corp. (Powerex). Associated Electric Cooperative, Inc. filed comments in support of NRECA's filing. EEI/EPSA and EQR-Filing Utilities each filed requests for partial stays.

<sup>18</sup> EEI/EPSA at 6.

<sup>19</sup> *Electric Market Transparency Provisions of Section 220 of the Federal Power Act*, 142 FERC ¶ 61,105, at P 3 (2013).

<sup>20</sup> *Id.* PP 3, 5.

<sup>21</sup> *Id.* P 4.

<sup>22</sup> *Electricity Market Transparency Provisions of Section 220 of the Federal Power Act*, Docket No. RM10-12-000, at 1 (Feb. 7, 2014) (Notice of Extension of Time).

5. On April 18, 2013, the Commission issued Order No. 768-A,<sup>23</sup> in which the Commission stated that it would address issues raised on rehearing and clarification pertaining to the e-Tag ID requirement in a future order in this proceeding.<sup>24</sup> Order No. 768-A denied all other requests for rehearing and granted certain requests for clarification.<sup>25</sup>

## II. Discussion

### A. Requests For Rehearing of e-Tag ID Requirement

6. As detailed below, multiple entities request rehearing of the e-Tag ID requirement stating that the Commission has overestimated the benefits of the inclusion of e-Tag ID information and underestimated the substantial burdens of compliance.<sup>26</sup> Commenters estimate that the total costs of collecting e-Tag IDs, multiplied across the entire industry, outweigh the transparency benefits the Commission seeks to achieve in Order No. 768.<sup>27</sup> Commenters assert that the Commission did not adequately demonstrate that the benefit of collecting the data exceeds the burden, as required by Executive Order No. 13,563<sup>28</sup> and the Paperwork Reduction Act,<sup>29</sup> and should therefore eliminate the e-Tag ID requirement.<sup>30</sup>

7. Commenters state that the Commission underestimated the burden and/or overestimated the benefit of collecting e-Tag ID information for the following reasons: (1) there is not a one-to-one relationship between e-Tag IDs and the underlying

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<sup>23</sup> Order No. 768-A, 142 FERC ¶ 61,105.

<sup>24</sup> *Id.* P 12.

<sup>25</sup> *Id.* P 1.

<sup>26</sup> *See, e.g.*, EDF Trading at 3, 9; EEI/EPSC at 3, 5; EQR-Filing Entities at 2-3; NRECA at 7. APPA/LPPC support the concerns raised by EEI/EPSC and continue to be concerned about the burdens associated with the reporting of e-Tag ID information. APPA/LPPC at 2-4.

<sup>27</sup> EEI/EPSC at 12.

<sup>28</sup> Executive Order No. 13,563, *Improving Regulation and Regulatory Review*, 76 Fed. Reg. (Jan. 21, 2011).

<sup>29</sup> 44 U.S.C. § 3506 (2012).

<sup>30</sup> *See, e.g.*, EDF Trading at 3; EEI/EPSC at 6, 17; EQR-Filing Utilities at 3.

transactions;<sup>31</sup> (2) e-Tags may change over time;<sup>32</sup> (3) trading and scheduling are separate activities;<sup>33</sup> (4) trade capture systems are not designed to collect e-Tag information;<sup>34</sup> (5) EQR reporting entities may not have information about the e-Tag recorded by the sinking entity;<sup>35</sup> and (6) the information is likely to be confusing or contain discrepancies that could result in unneeded costly discussions between Commission staff and EQR filing entities due to misinterpretation.<sup>36</sup> EDF Trading asserts that even if e-Tag ID information provided the Commission's expected benefits, the Commission has other, less burdensome, methods to obtain market intelligence to determine if markets remain competitive.<sup>37</sup>

8. Multiple commenters state that e-Tag ID information is likely to be very burdensome to collect and report because collecting the data is likely to involve manual sorting, entry, and/or review to ensure accuracy.<sup>38</sup> EEI/EPSC stress that the Commission should not underestimate the complexity and cost of matching transaction data to e-Tags,

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<sup>31</sup> See EDF Trading at 5, 7; EEI/EPSC at 5; EQR-Filing Utilities at 5 (explaining that there are transactions without e-Tag IDs, multiple transactions with the same e-Tag ID, and transactions with more than one e-Tag ID); Powerex at 1-2.

<sup>32</sup> EEI/EPSC at 5; EQR-Filing Utilities at 5.

<sup>33</sup> See EDF Trading at 5, 8; EEI/EPSC at 13; EQR-Filing Utilities at 8.

<sup>34</sup> See EEI/EPSC at 6, 15-16 (explaining that providing the information will require cross-referencing trade-capture and scheduling systems that are not configured to trace individual transactions in a comparable way and that typical e-Tag formatting will make extracting e-Tag ID information difficult); EQR-Filing Utilities at 6.

<sup>35</sup> EDF Trading at 7.

<sup>36</sup> See EEI/EPSC at 12-13 (explaining that even when EQR filers are able to match transactions to e-Tag ID information, the MWh sum of the associated tags will not necessarily equal the size of the transaction because of scheduling adjustments); EQR-Filing Utilities at 9-10, 12; NRECA at 7.

<sup>37</sup> EDF Trading at 6 (asserting that the Commission may obtain market intelligence from independent system operators and regional transmission operators, market monitors, other EQR information fields, and the Commission's authority to take formal and informal discovery).

<sup>38</sup> See *id.* at 7; EEI/EPSC at 6, 16; EQR-Filing Utilities at 6.

which may require manual review even if the process is automated.<sup>39</sup> EEI/EP SA state that one utility has estimated that it could require two or three more additional full-time personnel to extract, review, and report e-Tag ID information at their customers' expense.<sup>40</sup> EDF Trading estimates that the requirement will add as much as eight hours of additional work each day, or the equivalent of one full-time employee, for each current filer.<sup>41</sup> NRECA states that identification of e-Tag information is a laborious task that may require the hiring of additional employees solely to implement the requirements.<sup>42</sup>

9. Commenters state that automation of the process, which some assert may not be feasible,<sup>43</sup> is likely to be expensive.<sup>44</sup> EEI/EP SA state that they are unaware of any existing off-the-shelf software to perform this task and that building such a resource will tie up substantial company time and resources that could be better spent on other areas.<sup>45</sup> EEI/EP SA estimate such systems will have up-front costs as high as half a million dollars per company.<sup>46</sup> Similarly, the EQR-Filing Utilities state that several members have received estimates for systems to automate the implementation of the e-Tag ID requirement of \$200,000 or more in upfront costs in addition to ongoing costs.<sup>47</sup> EDF Trading also asserts that complying with the e-Tag ID requirement will require additional technology investments.<sup>48</sup>

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<sup>39</sup> See EEI/EP SA at 11-12.

<sup>40</sup> *Id.* at 12.

<sup>41</sup> EDF Trading at 9.

<sup>42</sup> NRECA at 7.

<sup>43</sup> EEI/EP SA at 15.

<sup>44</sup> *Id.* at 12, 16; EQR-Filing Utilities at 6.

<sup>45</sup> EEI/EP SA at 12.

<sup>46</sup> *Id.* at 16.

<sup>47</sup> EQR-Filing Utilities at 7.

<sup>48</sup> EDF Trading at 9.

10. Powerex states that its experience shows it would be arbitrary at best for entities that make purchases and sales from large, diverse resource portfolios to associate transaction data with individual e-Tag IDs.<sup>49</sup> Therefore, Powerex states that the Commission should ensure that its regulations precisely define parties' EQR filing obligations and should provide sufficiently detailed guidance as to how EQR filers should comply with the Commission's requirements.<sup>50</sup> If the Commission is unable to provide these clarifications or additional guidance, Powerex states that such requirements will be impermissibly vague and uncertain and, therefore, fail to provide EQR filers with adequate notice of their reporting requirements.<sup>51</sup>

### **B. Commission Determination**

11. The Commission grants rehearing with respect to the e-Tag ID reporting requirement of Order No. 768. The Commission is mindful that EQR filers would bear potentially substantial costs to comply with the requirement to include e-Tag ID information in the EQR. After further assessment and consideration of the arguments raised in the rehearing requests, we are persuaded that the initial and ongoing compliance burdens and costs may be significantly higher than the Commission's estimates included in Order No. 768.<sup>52</sup> Although the requirement to file e-Tag information in the EQR could improve the usefulness of EQR data,<sup>53</sup> the Commission grants rehearing due to the likely substantial costs of complying with such a requirement at this time. Therefore, the Commission will not require that EQR filers submit e-Tag IDs for each transaction reported in the EQR if an e-Tag was used to schedule the transaction.

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<sup>49</sup> Powerex at 3.

<sup>50</sup> *Id.* at 4.

<sup>51</sup> *Id.* at 5.

<sup>52</sup> Order No. 768, 140 FERC ¶ 61,232 at PP 178-183.

<sup>53</sup> As one example, e-Tag information in the EQR would allow users to better track resales of energy to determine the extent of market activity.

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The Commission orders:

The requests for rehearing are granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

Document Content(s)

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