

101 FERC ¶ 61, 146
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, Linda Breathitt,
and Nora Mead Brownell.

Requests for Waiver of Order No. 2001
Filing Requirements by:

Docket No. RM01-8-000

Bridger Valley Electric Association, Inc.;
Dixie Escalante Rural Electric Association, Inc.;
Flowell Electric Association, Inc.; and
Mt. Wheeler Power

ORDER GRANTING REQUESTS FOR WAIVER OF
ORDER NO. 2001 FILING REQUIREMENTS

(Issued November 1, 2002)

1. In this order, we grant the requests of Bridger Valley Electric Association, Inc., Dixie Escalante Rural Electric Association, Inc., Flowell Electric Association, Inc., and Mt. Wheeler Power, Inc. (collectively "applicants") for waiver of the Order No. 2001¹ filing requirements.
2. As further explained below, we are granting these waivers because the four applicants are small entities with very small workforces that make no sales at market-based rates and serve small, primarily retail loads.

BACKGROUND

¹Revised Public Utility Filing Requirements, Order No. 2001, 67 FR 31043, FERC Stats. & Regs. ¶ 31,127, reh'g denied, Order No. 2001-A, 100 FERC ¶ 61,074, reconsideration denied, Order No. 2001-B, 100 FERC ¶ 61,342 (2002).

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3. On April 25, 2002, the Commission issued Order No. 2001, a final rule establishing revised public utility filing requirements. The rule requires public utilities to electronically file quarterly reports (Electric Quarterly Reports) summarizing pertinent data about their currently effective contracts (contract data) and data about wholesale power sales they made during the reporting period (transaction data). Electric Quarterly Reports replace the filing of: quarterly transaction reports summarizing a utility's market-based rate transactions; short and long term market-based sales agreements; and conforming cost-based agreements. The rule is intended to streamline and reduce the filing burden on public utilities, while providing greater transparency and information accessibility to the public and the Commission. The rule is applicable to all public utilities.

4. However, Order No. 2001 made provision for small entities to apply for a waiver. Specifically, the order provided, at P 362, that:

[w]hile we do not foresee that the rule will have a significant economic impact on a substantial number of small entities, as most entities subject to the rule would not be small entities within the meaning of the Regulatory Flexibility Act ("RFA"), we will consider granting waivers in appropriate circumstances.

5. Four of the six non-profit electric distribution cooperative corporations belonging to Deseret Generation and Transmission Cooperative, Inc. (*i.e.*, applicants) filed requests for waiver of the Commission's reporting requirements established in Order No. 2001. Each of the four cited the Commission's statement (quoted above) in Order No. 2001 on the availability of waivers and argues that it qualifies for a waiver of the Order No. 2001 filing requirements.

6. Each of the four recites the same factors in support of its request for waiver. Each states that it: (1) falls within the definition of a small entity under the RFA and Small Business Regulatory Fairness Act; (2) has only a limited number of contracts, each of which is on file with the Commission; (3) has a small staff, with four or fewer people handling all its accounting, billing, and regulatory workload; (4) is primarily engaged in providing distribution services to retail loads in primarily rural areas; (5) is not used by third parties for wholesale trading activities; (6) does not make, or have authority to make, wholesale power sales at market-based rates; (7) remains obligated to file any new contracts or contract modifications with the Commission, even if the requested waiver is granted; (8) owns facilities that are essentially radial in nature and primarily used for

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distribution to its member-owners; and (9) has obtained a waiver of the Commission's requirements in Order Nos. 888 and 889.

7. Applicants argue that incurring the expenses associated with filing Electric Quarterly Reports would not serve the public interest or their customers and that, although the Commission's new filing requirements might reduce the reporting burden for larger entities and those making sales at market-based rates, the new filing requirements would increase their reporting burden because they do not currently sell electric power at market-based rates and, thus, they were not previously required to file quarterly transaction reports.

DISCUSSION

8. Order No. 2001 provided for the availability of waivers where appropriate for small entities. The applicants are small, non-profit cooperatives primarily engaged in providing distribution services to retail customers.

9. We find, under the circumstances presented, that waiver is appropriate because: (1) each applicant is a small entity within the meaning of the RFA and has qualified for a waiver under Order Nos. 888 and 889, serves a load of 45 MW or less, and has four or fewer employees engaged in accounting, billing, and regulatory activities; (2) none makes, or has authority to make, wholesale power sales at market-based rates; (3) each applicant makes all of its sales under a small number of cost-based rate agreements (four or fewer) that are all on file with the Commission; (4) each is obligated to file for Commission approval any new contracts or revisions to its existing contracts; and (5) each applicant's transmission system is essentially radial in nature and primarily used for distribution to its member-owners.

10. Although the costs of compliance would be small, given the facts presented, we find that the ongoing expenses of compliance could be avoided for these applicants without harming the public interest. Applicants' rates will all remain on file and publicly available, as required by section 205 of the Federal Power Act. The operations of these entities are so limited that granting these waivers will not compromise the ability of the Commission or the public to monitor market conditions or applicants' conduct.

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The Commission orders:

The requests for waiver of Order No. 2001's filing requirements are hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.
Deputy Secretary