

141 FERC ¶ 61,031
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Alcoa Power Generating, Inc.

Docket Nos. ER12-2457-000
ER12-2480-000

ORDER ACCEPTING TARIFF REVISIONS AND GRANTING WAIVERS

(Issued October 15, 2012)

1. In this order, the Commission accepts Alcoa Power Generating, Inc.'s (Alcoa Power) proposed filings to separate service for its Yadkin and Tapoco transmission systems into two different Open Access Transmission Tariffs (OATT). We also grant Alcoa Power the waivers it requests of Order Nos. 888,¹ 889,² and 890,³ 717

¹ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

² *Open Access Same-Time Information System and Standards of Conduct*, Order No. 889, FERC Stats. & Regs. ¶ 31,035 (1996), *order on reh'g*, Order No. 889-A, FERC Stats. & Regs. ¶ 31,049, *reh'g denied*, Order No. 889-B, 81 FERC ¶ 61,253 (1997).

³ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

and section 35.28 and Parts 37 and 358 of the Commission's regulations⁴ for certain transmission facilities.

I. Background

2. On August 16, 2012, in Docket No. ER12-2480-000 (Yadkin Filing), Alcoa Power submitted, pursuant to section 205 of the Federal Power Act (FPA),⁵ proposed revisions to its OATT for its Yadkin and Tapoco divisions' facilities to eliminate reference to the Tapoco division facilities (Yadkin OATT). Also on August 16, 2012, in Docket No. ER12-2457-000 (Tapoco Filing), Alcoa Power submitted, pursuant to section 205 of the FPA, a new OATT to cover services provided over the Tapoco division facilities (Tapoco OATT).

3. Alcoa Power states that it is a wholly-owned subsidiary of Alcoa Inc., and owns and operates limited and discrete transmission facilities and limited generation facilities in various locations throughout the United States that are used in conjunction with Alcoa Power's primary focus of providing electric power to aluminum smelters owned by Alcoa Inc.⁶ Alcoa Power explains that its transmission facilities connect its industrial plants to either generation owned by Alcoa Power or to other electric utilities and are rarely used for transmission to others. Alcoa Power states that it has no franchised service territory or captive customers, serves no traditional public utility retail load, and makes only certain limited sales into the wholesale market.

⁴ 18 C.F.R. Part 358 (2012); *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs. ¶ 31,155 (2003), *order on reh'g*, Order No. 2004-A, FERC Stats. & Regs. ¶ 31,161, *order on reh'g*, Order No. 2004-B, FERC Stats. & Regs. ¶ 31,166, *order on reh'g*, Order No. 2004-C, FERC Stats. & Regs. ¶ 31,172 (2004), *order on reh'g*, Order No. 2004-D, 110 FERC ¶ 61,320 (2005), *vacated and remanded as it applies to natural gas pipelines sub nom. National Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 (D.C. Cir. 2006); *see Standards of Conduct for Transmission Providers*, Order No. 690, FERC Stats. & Regs. ¶ 31,237, *order on reh'g*, Order No. 690-A, FERC Stats. & Regs. ¶ 31,243 (2007); *see also Standards of Conduct for Transmission Providers*, Order No. 717, FERC Stats. & Regs. ¶ 31,280 (2008), *order on reh'g*, Order No. 717-A, FERC Stats. & Regs. ¶ 31,297, *order on reh'g*, Order No. 717-B, 129 FERC ¶ 61,123 (2009), *order on reh'g*, Order No. 717-C, 131 FERC ¶ 61,045 (2010), *order on reh'g*, Order No. 717-D, 135 FERC ¶ 61,017 (2011).

⁵ 16 U.S.C. § 824d (2006).

⁶ Alcoa Power was formed effective January 1, 2000. *See Alcoa Inc.*, 88 FERC ¶ 62,173 (1999).

4. Alcoa Power states that its Yadkin division owns and operates approximately 21 miles of 13.8 kV and 100 kV transmission lines that interconnect between the Duke Power Company (Duke) and Progress Carolinas Energy – East balancing authority areas. Alcoa Power also states that Yadkin owns and operates four hydroelectric developments near Badin, North Carolina totaling approximately 212 MW. Alcoa Power states that its Tapoco division owns and operates approximately 86 miles of transmission lines (including 161 kV lines) that connect the Tapoco Project generation facilities with each other,⁷ Alcoa's industrial plants, and the transmission systems of Duke and the Tennessee Valley Authority (TVA). Alcoa Power further states that, at the Santeetlah substation in North Carolina, the Tapoco transmission facilities interconnect between both the TVA and Duke transmission systems. Alcoa Power also explains that, at its substation located near Knoxville, Tennessee, the Tapoco transmission facilities interconnect to both the TVA transmission system and Alcoa's South Plant industrial site. Alcoa Power states that its Tapoco subdivision also owns the transmission facilities connecting Alcoa's South Plant industrial site to its North Plant industrial site.

5. In 1996 Tapoco filed an OATT,⁸ and in 2007 the Commission granted Tapoco a waiver of the Open Access Same-Time Information System (OASIS) requirements under Order No. 889, and a partial waiver of the requirements under Order No. 890 with respect to its 161 kV transmission lines, subject to conditions.⁹ In granting these waivers, the Commission found that the Tapoco transmission lines were limited and discrete facilities, and that the only transmission service that Tapoco provided was based on pre-OATT agreements with TVA.¹⁰

6. Effective June 30, 2011, Alcoa Power relinquished its waivers and revised the Yadkin OATT to incorporate the Tapoco transmission facilities and rates.¹¹ Alcoa Power explains that it relinquished its waivers because the pre-OATT agreements with TVA

⁷ The Tapoco Project consists of four individual hydroelectric generation facilities located in eastern Tennessee and western North Carolina: Calderwood (140.4 MW); Cheoah (118.0 MW); Chilhowee (52.2 MW); and Santeetlah (40.4 MW).

⁸ See *Atlantic City Elec. Co.*, 77 FERC ¶ 61,144 (1996) (approving non-rate terms and conditions of Tapoco's *pro forma* OATT); *Allegheny Power System, Inc.*, 80 FERC ¶ 61,143 (1997) (approving the rates in Tapoco's OATT).

⁹ See *Alcoa Power Generating Inc.*, 120 FERC ¶ 61,037 (2007) (Order Granting Waiver).

¹⁰ *Id.* P 15.

¹¹ See *Alcoa Power Generating Inc.*, 135 FERC ¶ 61,272 (2011) (Order Rescinding Waiver).

were set to expire on June 30, 2011 and the parties were entering into new arrangements for power sales and the coordination of their transmission and hydroelectric facilities. Alcoa Power states that, to date, it has not received any third party requests for transmission service over the Tapoco transmission lines, and that Alcoa Power does not provide transmission service to third parties, including TVA.¹²

7. Alcoa Power further states that, on June 29, 2012, it entered into an agreement with BAIF U.S. Renewable Power Holdings LLC (BAIF U.S.) under which BAIF U.S. would purchase the Tapoco Project along with the transmission facilities that connect the Tapoco Project to the grid at the Santeelah substation and the Alcoa South Plant substation.¹³ Alcoa Power states that it will retain the Tapoco transmission facilities that connect the Alcoa South Plant to the North Plant, on which Alcoa Power provides service to Alcoa under its Electric Rate Schedule FERC No. 18.¹⁴ Additionally, Alcoa Power states that, as part of the transaction, it will transfer limited transmission facilities to TVA in order to create a three-way interconnection point among itself, TVA, and BAIF U.S. Alcoa Power explains that its filing to split the Yadkin OATT into two separate OATTs is necessary in order to effectuate this transaction, including the transfer of the resulting Tapoco OATT to BAIF U.S.

II. Yadkin Filing (Docket No. ER12-2480-000)

8. Alcoa Power proposes to amend the Yadkin OATT in order to remove all references to Tapoco and any Tapoco-specific rates and provisions. Alcoa Power states that these changes return the OATT to its form prior to the June 30, 2011 revisions that added the Tapoco transmission system.¹⁵ Accordingly, Alcoa Power states that it is not requesting the approval of new rates but rather is providing information required by the abbreviated filing obligations for non-rate amendments of Section 35.13(a)(2). Alcoa Power also states that it is also proposing to amend certain provisions in order to make

¹² Alcoa Power states that the only customer taking service over the Tapoco facilities under the Yadkin OATT is Alcoa Power Marketing, an affiliate of Alcoa Power. Yadkin Filing at n.8.

¹³ On July 31, 2012, in Docket No. EC12-127-000, Alcoa Power and BAIF U.S. filed, pursuant to section 203 of the FPA, a request for Commission authorization to transfer the Tapoco project and transmission facilities to BAIF U.S. *See Alcoa Power Generating Inc.*, 140 FERC ¶ 62,151 (2012). Concurrently, Alcoa Power and BAIF U.S. filed in Docket No. P-2169-104 an application to transfer the Tapoco project license. *See Alcoa Power Generating Inc.*, 141 FERC ¶ 62,010 (2012).

¹⁴ The most recent schedule was filed in Docket No. ER07-343.

¹⁵ Yadkin Filing at 5.

minor “house-keeping” changes.¹⁶ Alcoa Power requests that the revised Yadkin OATT become effective on the date the transaction with BAIF U.S. closes, which it anticipates will be the fourth quarter of 2012, and commits to inform the Commission when the transaction is consummated. Alcoa Power requests waiver of the Commission’s notice requirement to allow for the revisions to become effective on the date of closing.

A. Notice of Filing

9. Notice of the Yadkin Filing in Docket No. ER12-2480-000 was published in the *Federal Register*, 77 Fed. Reg. 51,986 (2012), with motions to intervene, comments, and protests due on or before September 6, 2012. None was filed.

B. Discussion

10. As noted by Alcoa Power, the proposed revisions essentially return the Yadkin OATT to the form prior to the addition of the Tapoco facilities in 2011 without changes to rates, terms, or conditions for service over the Yadkin facilities. We find the proposed revisions to the Yadkin OATT remain just and reasonable and will accept them, effective on the date the transaction with BAIF U.S. closes, as requested, subject to the additional compliance obligation discussed below.

III. Tapoco Filing (Docket No. ER12-2457-000)

11. Alcoa Power submits the Tapoco OATT to cover service over the facilities that are owned by its Tapoco division and are being transferred to BAIF U.S. Alcoa Power states that the Tapoco OATT is based on FERC’s *pro forma* OATT and is identical to the revised Yadkin OATT except that it contains Tapoco-specific rates and provisions that were previously approved by the Commission.¹⁷ Alcoa Power asserts that the filing does

¹⁶ *Id.* Alcoa Power’s proposed house keeping-changes include: clarifying language in Section 3; deleting references in Section 17 and Attachments A, B, and F to the Engineering Manager as a representative to whom certain notices may be sent; clarifying, consistent with Commission requirements, in Schedules 3-6 that rates and services under those schedules are not negotiable and that to the extent the Control Area Operator performs this service for Alcoa Power, charges to the Transmission Coordinator shall be passed through to the Transmission Provider by that Control Area Operator; noting on Attachments E and I that the index of customers is posted on the Open Access Same-Time Information System (OASIS); removing references in Attachment J to FERC orders and specific North American Electric Reliability Corporation standards that are subject to change; and clarifying language and removing outdated references in Attachment K.

¹⁷ Tapoco Filing at 5 (citing Order Rescinding Waiver, 135 FERC ¶ 61,272 at P 8).

not request the acceptance of new rates and instead only seeks to incorporate rates previously approved by the Commission; therefore, Alcoa Power is providing the information required by the abbreviated filing obligations for non-rate amendments of section 35.13(a)(2).

12. Alcoa Power also seeks waiver of certain open access requirements for the existing Tapoco facilities that are not being transferred to BAIF U.S, i.e., the facilities that connect Alcoa's South Plant to North Plant (Post-Transaction Facilities). Specifically, Alcoa Power requests waiver of the requirements under Order Nos. 888, 890 and section 35.28 of the Commission's regulations to file an OATT, the requirements under Order No. 889 and Part 37 of the Commission's regulations to establish an OASIS, and the requirements under Order No. 717 and Part 358 of the Commission's regulations to comply with the Standards of Conduct.¹⁸

13. Alcoa Power states that the Post-Transaction Facilities will consist of 3.5 miles of two parallel 161 kV lines and appurtenances. Alcoa Power states that the Post-Transaction Facilities will be limited and discrete, will not comprise an integrated transmission system, and do not serve, and are not designed to serve third-party customers. Therefore, Alcoa Power requests that waiver should be granted on the same basis as the Commission has granted in connection with other limited and discrete transmission facilities.¹⁹ Alcoa Power states that it is unlikely that any party will ever request service over the lines, as the Commission has recognized when granting Alcoa Power a waiver for the facilities in the past.²⁰ Furthermore, Alcoa Power asserts, while it has never received a request for transmission over the facilities, it will comply with Commission precedent and file an OATT with the Commission and satisfy any other applicable requirements if such a request is made.

14. Alcoa Power requests that the Commission accept the Tapoco OATT effective as of the date the transaction with BAIF U.S. closes. Therefore, Alcoa Power also requests waiver of the Commission's notice requirement to allow for the revisions to become effective on the date of closing. Alcoa Power commits that, upon closing of the transaction, it will file a notice to inform the Commission that the transaction was consummated.

¹⁸ *Id.* at 7.

¹⁹ *Id.* at 6 (citing *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232, at 61,941 (1996) (*Black Creek*); *Entergy Mississippi, Inc.* 112 FERC ¶ 61,228, at P 22 (2005); and *Interstate Power and Light Company*, 139 FERC ¶ 61,196, at P 13 (2012)).

²⁰ *Id.* at 7 (citing Order Granting Waiver, 120 FERC ¶ 61,037).

A. Notice of Filing

15. Notice of the Tapoco Filing in Docket No. ER12-2457-000 was published in the *Federal Register*, 77 Fed. Reg. 51,989 (2012), with motions to intervene, comments, and protests due on or before September 6, 2012. Motions to intervene raising no issues were filed by Smoky Mountain Transmission, LLC and TVA.

B. Discussion

16. Pursuant to Rule 214 of the Commission's Rules and Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

17. As noted by Alcoa Power, the Tapoco OATT provides the same rates, terms, and conditions of service previously approved by the Commission for these facilities in the combined Yadkin OATT.²¹ The Tapoco OATT merely separates these facilities into a new stand-alone tariff. We find that the terms of the proposed Tapoco OATT remain just and reasonable and will therefore accept the Tapoco OATT for filing, effective on the date the transaction with BAIF U.S. closes, as requested, subject to the additional compliance obligation discussed below.

18. Order Nos. 888 and 890 require public utilities to file an OATT prior to providing transmission service. Order No. 889 requires public utilities to establish an OASIS and abide by certain standards of conduct. In prior orders, the Commission has enunciated the standards for waiver of, or exemption from, some or all of the requirements of Order Nos. 888 and 889.²² The Commission has stated that the criteria for waiver of the requirements of Order No. 890 and Order No. 2004 are unchanged from those used to evaluate requests for waiver under Order Nos. 888 and 889.²³ Order No. 717 did not change those criteria.²⁴

19. The Commission may grant requests for waiver of Order No. 888 to file an OATT to public utilities that can show that they own, operate, or control only limited and discrete transmission facilities (facilities that do not form an integrated transmission

²¹ See Order Rescinding Waiver, 135 FERC ¶ 61,272 at P 8.

²² See, e.g., *Black Creek*, 77 FERC ¶ 61,232 at 61,941 (1996); *Entergy Mississippi, Inc.*, 112 FERC ¶ 61,228, at P 22 (2005) (*Entergy*).

²³ See Order Granting Waiver, 120 FERC ¶ 61,037 at P 3; *Alcoa Power Generating Inc.*, 108 FERC ¶ 61,243, at P 27 (2004).

²⁴ See Order No. 717, FERC Stats. & Regs. ¶ 31,280 at P 54.

grid), until such time as the public utility receives a request for transmission service. Should the public utility receive such a request, the Commission has determined that the public utility must file with the Commission a *pro forma* OATT within 60 days of the date of the request, and must comply with any additional requirements that are effective on the date of the request.²⁵

20. The Commission has also determined that waiver of Order No. 889 requirements to establish an OASIS and abide by the Standards of Conduct would be appropriate for a public utility: (1) if the applicant owns, operates, or controls only limited and discrete transmission facilities (rather than an integrated transmission grid); or (2) if the applicant is a small public utility that owns, operates, or controls an integrated transmission grid, unless other circumstances are present that indicate that waiver would not be justified.²⁶ Moreover, the Commission has held that waiver of Order No. 889 will remain in effect until the Commission takes action in response to a complaint to the Commission that an entity evaluating its transmission needs could not get the information necessary to complete its evaluation (for OASIS waivers) or an entity complains that the public utility has unfairly used its access to information about transmission to benefit the utility or its affiliate (for Standards of Conduct waivers).²⁷

21. Based on the statements in Alcoa Power's filing, we find that the Post-Transaction Facilities that Alcoa Power will retain after the transfer of the Tapoco facilities to BAIF U.S. are limited and discrete facilities for which Alcoa Power is unlikely to receive requests for transmission service. They only connect the two Alcoa plants with each other and are designed only to serve these affiliated industrial plants. Accordingly, we will grant Alcoa Power waiver of the requirements of Order Nos. 888 and 890 and section 35.28 of the Commission's regulations to have an OATT on file. However, if

²⁵ See *Black Creek*, 77 FERC ¶ 61,232 at 61,941.

²⁶ *Id.* Although the Commission originally precluded waiver of the requirements for OASIS and the Standards of Conduct for a small public utility that is a member of a tight power pool, in *Black Hills Power, Inc.*, 135 FERC ¶ 61,058, at PP 2-3 (2011), the Commission explained that membership in a tight power pool is no longer a factor in the determination for waiver of Standards of Conduct. Additionally, size is not relevant to whether waivers are granted to public utilities that participate in a Commission-approved Independent System Operator or Regional Transmission Organization. See 18 C.F.R. § 358.1(c) (2012).

²⁷ *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota Municipal Power Agency*, 79 FERC ¶ 61,260, at 62,127 (1997); *Easton Utilities Commission*, 83 FERC ¶ 61,334, at 62,343 (1998)).

Alcoa Power receives a request for transmission service, it must file with the Commission a *pro forma* OATT within 60 days of the date of the request.

22. The Commission will also grant Alcoa Power waiver of the requirements of Order No. 889 and Part 37 of the Commission's regulations with respect to OASIS and Order Nos. 889, 2004, and 717 and Part 358 with respect to the Standards of Conduct. We note that Alcoa Power's waiver of the requirement to establish an OASIS will remain in effect until the Commission takes action in response to a complaint to the Commission that an entity evaluating its transmission needs could not get the information necessary to complete its evaluation.²⁸ Likewise, Alcoa Power's waiver of the Standards of Conduct will remain in effect unless and until the Commission takes action on a complaint by an entity that Alcoa Power has unfairly used its access to information to unfairly benefit itself or its affiliate.²⁹

IV. Effective Date and Compliance Obligation

23. Alcoa Power requests that the Yadkin OATT and Tapoco OATT be effective as of the date that the transaction with BAIF U.S. closes, which it states is expected to occur in the fourth quarter of 2012. Alcoa Power commits to file notices in these proceedings informing the Commission when this takes place and states that BAIF U.S. will file a Notice of Succession to the Tapoco OATT.³⁰ We find that Alcoa Power has demonstrated good cause to grant waiver of the notice requirements and make the Yadkin OATT and the Tapoco OATT effective on the date the transaction with BAIF U.S. closes.³¹ We also will direct Alcoa Power to file within ten (10) days from the date the transaction closes revised OATTs to reflect the effective date and to make necessary revisions to the Tapoco OATT to reflect the new transmission provider.

²⁸ *Id.*

²⁹ *Id.* Alcoa Power must notify the Commission if there is a material change in facts that affect its waiver, within 30 days of the date of such change. *Material Changes in Facts Underlying Waiver of Order No. 889 and Part 358 of the Commission's Regulations*, 127 FERC ¶ 61,141, at P 5 (2009).

³⁰ Tapoco Filing at 8; Yadkin Filing at 2 n.1 & 6.

³¹ *See Central Hudson Gas and Electric Corp.*, 60 FERC ¶ 61,106, at 61,338, *order on reh'g*, 61 FERC ¶ 61,089 (1992) (good cause exists for uncontested filings that do not change rates).

The Commission orders:

(A) The Yadkin OATT and Tapoco OATT are hereby accepted for filing, effective the date the transaction that transfers the Tapoco facilities closes, as requested.

(B) Alcoa Power must submit compliance filings within ten (10) days of the consummation of the transfer of the Tapoco facilities revising the Yadkin OATT and the Tapoco OATT to reflect the effective date and reflecting the new transmission provider.

(C) Alcoa Power's request for waiver of the requirements under Order Nos. 888 and 890 and section 35.28 of the Commission's regulations to file an OATT, the requirements under Order No. 889 and Part 37 of the Commission's regulations to establish and maintain an OASIS, and the requirements under Order Nos. 889, 2004, and 717, and Part 358 of the Commission's regulations to comply with the Standards of Conduct, is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Document Content(s)

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