

157 FERC ¶ 61,104
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Alcoa Power Generating Inc.

Docket No. ER16-2437-000

ORDER GRANTING WAIVER OF ORDER NO. 1000

(Issued November 17, 2016)

1. On August 16, 2016, Alcoa Power Generating Inc. (APGI), on behalf of APGI's Tapoco Division (Tapoco), filed a request for waiver of the requirements of Order No. 1000.¹ This order grants Tapoco a waiver of the requirements of Order No. 1000, as discussed below.

I. Background

2. In Order No. 1000, the Commission amended the transmission planning and cost allocation requirements of Order No. 890² to ensure that Commission-jurisdictional services are provided at just and reasonable rates and on a basis that is just and reasonable and not unduly discriminatory or preferential. Order No. 1000's transmission planning reforms require that each public utility transmission provider: (1) participate in a regional transmission planning process that produces a regional transmission plan;

¹ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

² *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, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

(2) amend its Open Access Transmission Tariff (OATT) to describe procedures for the consideration of transmission needs driven by Public Policy Requirements established by local, state, or federal laws or regulations in the local and regional transmission planning processes; (3) remove federal rights of first refusal from Commission-jurisdictional tariffs and agreements for certain new transmission facilities; and (4) improve coordination between neighboring transmission planning regions for new interregional transmission facilities.

3. Order No. 1000 also requires that each public utility transmission provider must participate in a regional transmission planning process that has: (1) a regional cost allocation method for the cost of new transmission facilities selected in a regional transmission plan for purposes of cost allocation; and (2) an interregional cost allocation method for the cost of certain new transmission facilities that are located in two or more neighboring transmission planning regions and are jointly evaluated by the regions in the interregional transmission coordination procedures required by Order No. 1000.³

II. Description of APCI and Tapoco

4. APCI is a wholly-owned subsidiary of Alcoa Inc. (Alcoa). APCI states that it owns and operates limited generation and transmission facilities that are used to provide electric power to Alcoa's aluminum manufacturing facilities.⁴ APCI further states that it generates, purchases and/or manages electricity for its only customer, Alcoa. APCI states that it has no franchised service territory or captive customers, and serves no traditional public utility retail load.

5. APCI states that Tapoco owns limited transmission facilities to deliver energy to Alcoa's industrial plants near Knoxville, Tennessee.⁵ In particular, APCI states that Tapoco's transmission facilities include approximately three miles of double-circuit 161 kV transmission lines that are used to transmit energy from the transmission grid to Alcoa's industrial plants.⁶

6. APCI explains that, until 2012, Tapoco had owned and operated approximately 86 miles of transmission lines (including 161 kV lines) that connected Tapoco's four hydroelectric generating facilities to Alcoa's plants, and to the transmission systems of

³ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 9.

⁴ APCI August 16, 2016 Transmittal Letter at 2.

⁵ *Id.* at 3.

⁶ *Id.* at 6.

Duke Power Company and Tennessee Valley Power Authority.⁷ APCI states that, in 1996, Tapoco filed an OATT in accordance with Order No. 888.⁸ APCI states that, in 2007, the Commission granted Tapoco a waiver of the requirement to have an OATT on file for Tapoco's 161 kV transmission lines, subject to conditions.⁹ APCI states that, in granting the waiver, the Commission found that Tapoco's 161 kV transmission lines were limited and discrete facilities, and that the only transmission service that Tapoco provided was based on pre-OATT agreements.¹⁰ APCI explains that, effective June 31, 2011, APCI relinquished its waivers for Tapoco's 161 kV transmission lines,¹¹ and APCI made a filing to include all of Tapoco's transmission facilities and rates in APCI's OATT for service over the transmission facilities of APCI's Yadkin Division.¹²

7. In 2012, APCI entered into an agreement to sell Tapoco's hydroelectric generating facilities and related transmission facilities necessary to connect this generation to the transmission grid to BAIF U.S. Renewable Power Holdings LLC. Subsequently, APCI filed to separate Tapoco's transmission facilities from APCI's OATT for the Yadkin Division, and it sought waiver of the requirement to have an OATT for Tapoco's remaining transmission facilities. The Commission again granted Tapoco a waiver of the requirement to have an OATT for Tapoco's transmission facilities, which then consisted of approximately three miles of 161 kV transmission lines that connected Alcoa's plants, the North and South Plants, in Tennessee.¹³ The Commission found

⁷ *Id.* at 3.

⁸ *Id.* at 3 & n.4 (citing *Atlantic City Elec. Co.*, 77 FERC ¶ 61,144 (1996); *Allegheny Power Sys., Inc.*, 80 FERC ¶ 61,143 (1997)).

⁹ *Id.* at 3 & n.5 (citing *Alcoa Power Generating Inc. (Tapoco Division)*, 120 FERC ¶ 61,037 (2007)).

¹⁰ APCI August 16, 2016 Transmittal Letter at 3-4 & n.6 (citing *Alcoa Power Generating Inc. (Tapoco Division)*, 120 FERC ¶ 61,037 at P 15).

¹¹ APCI explains that it relinquished its waivers for Tapoco's 161 kV transmission lines because its pre-OATT agreement with TVA was set to expire on June 30, 2011, and it was negotiating new power sales and other arrangements with TVA. *Id.* at 4. APCI states that, ultimately, its new arrangements with TVA did not require TVA to take transmission service over any APCI transmission facilities. *Id.* at 5 n.14.

¹² *Id.* at 4.

¹³ *Alcoa Power Generating Inc.*, 141 FERC ¶ 61,031, at PP 7, 12-13, 21 (2012). See APCI August 16, 2016 Transmittal Letter at 4.

that Tapoco's 161 kV transmission lines were limited and discrete facilities.¹⁴ APGI states that the Commission instructed APGI to file a *pro forma* OATT for Tapoco within 60 days of the date that Tapoco receives a request for transmission service.¹⁵

III. Alcoa's Reorganization

8. APGI states that, on September 28, 2015, Alcoa announced that its Board of Directors approved a plan to separate its operations into two independent, publicly-traded companies: (1) Alcoa Corporation (Alcoa Corp.) and (2) Arconic Inc. (Arconic).¹⁶ APGI states that APGI, including Tapoco, will become a subsidiary of the Alcoa Corp., and Arconic will own the Alcoa plants near Knoxville, Tennessee.

9. APGI explains that, upon Alcoa's reorganization, Arconic will need to obtain transmission service from Tapoco so that Tapoco may continue to provide transmission service to Arconic's plants near Knoxville, Tennessee. APGI states that, because Tapoco will not be affiliated with Arconic after the Alcoa reorganization, Arconic's request for transmission service from Tapoco will constitute a third-party request for transmission service. As a result, APGI states that it filed, on July 18, 2016, a proposed *pro forma* OATT for transmission service over Tapoco transmission facilities (OATT Filing).¹⁷ APGI states that it did not incorporate the Order No. 1000 requirements into its proposed *pro forma* OATT, because APGI would be filing a request for waiver of the Order No. 1000 requirements for Tapoco.¹⁸

IV. Request for Waiver

10. APGI requests a waiver of the Order No. 1000 requirements for Tapoco on the basis that it: (1) owns limited and discrete transmission facilities; and (2) meets the

¹⁴ *Alcoa Power Generating Inc.*, 141 FERC ¶ 61,031 at P 21.

¹⁵ APGI August 16, 2016 Transmittal Letter at 4 (citing *Alcoa Power Generating Inc.*, 141 FERC ¶ 61,031 at P 21).

¹⁶ See Alcoa and APGI July 12, 2016 Section 203 Application (Docket No. EC16-147-000) at 1-2. *Alcoa Inc.*, 156 FERC ¶ 62,140 (2016) (order authorizing the transfer of jurisdictional facilities in Alcoa's reorganization).

¹⁷ On October 28, 2016, the Commission accepted Tapoco's OATT for filing, subject to the outcome of APGI's filing in this proceeding. *Alcoa Power Generating, Inc.*, Docket Nos. ER16-2223-000, *et al.* (October 28, 2016) (delegated letter order).

¹⁸ APGI August 16, 2016 Transmittal Letter at 5.

definition of a small public utility. APGI states that its facilities consist of approximately three miles of 161 kV transmission lines, the primary purpose of which is to transmit energy from the grid to Alcoa's plants near Knoxville, Tennessee.¹⁹ APGI states that, in 2007, the Commission found that Tapoco's facilities were limited and discrete transmission facilities, and Tapoco's facilities are more limited today than when the Commission made that finding because most of Tapoco's transmission facilities have been sold to a third party.²⁰ APGI argues that therefore Tapoco's remaining transmission facilities are limited and discrete transmission facilities. APGI also states that Tapoco meets the definition of a small public utility because, at most, Alcoa's plants near Knoxville, Tennessee would consume approximately 244,500 MWh annually, which is below the 4 million MWh threshold the Commission uses to determine if a utility qualifies for waiver as a small public utility.²¹ APGI also states that Tapoco does not currently provide transmission service to any third parties.²² However, APGI states that the separation of the Alcoa businesses will constitute a request for Tapoco to provide transmission service to Arconic to serve Arconic's plants near Knoxville, Tennessee.²³

V. Notice of Filing

11. Notice of the filing was published in the *Federal Register*, 81 Fed. Reg. 57,896 (2016), with interventions, comments and protests due on or before September 6, 2016. None were filed.

VI. Discussion

12. In Order No. 1000, the Commission stated that the criteria for waiver of the requirements of the Final Rule is unchanged from that used to evaluate requests for waiver under Order Nos. 888, 889, and 890.²⁴ The Commission subsequently clarified that it would "entertain requests for waiver of Order No. 1000 on a case-by-case basis."²⁵

¹⁹ *Id.* at 6.

²⁰ *Id.*

²¹ *Id.* at 6-7.

²² *Id.* at 5.

²³ *Id.*

²⁴ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 832.

²⁵ Order No. 1000-A, 139 FERC ¶ 61,132 at P 753.

13. In *Black Creek Hydro, Inc.*,²⁶ the Commission stated that it would grant requests for waiver of Order No. 888 by public utilities that could show that they own, operate, or control only limited and discrete transmission facilities (facilities that do not form an integrated transmission 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 an OATT with the Commission 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.²⁷ The Commission also explained that a waiver of Order No. 889 would be appropriate: (1) if the applicant owns, operates, or controls only limited and discrete transmission facilities; or (2) if the applicant is a small public utility²⁸ that owns, operates, or controls an integrated transmission grid, unless other circumstances are present which indicate that a waiver would not be justified.²⁹

14. Under the circumstances presented, we grant APGI's request for a waiver of the requirements of Order No. 1000 for Tapoco. The Commission has previously held that the Tapoco transmission lines constitute limited and discrete transmission facilities.³⁰ APGI states that Tapoco will provide open access transmission service over its facilities to Arconic and, as a result, has an OATT governing transmission service. While Tapoco will provide OATT transmission service to Arconic after the Alcoa reorganization, its facilities will continue to consist of the same three miles of 161 kV transmission lines that will primarily serve Arconic's plants near Knoxville, Tennessee.³¹ Therefore, we

²⁶ *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232, at 61,941 (1996).

²⁷ *Id.*

²⁸ The Commission stated that to qualify as a small public utility, the applicant must be a public utility that meets the Small Business Administration definition of a small electric utility, i.e., one that disposes of no more than 4 million MWh annually. *Id.*

²⁹ *Id.* Although the Commission originally precluded waiver of the requirements for Open Access Same-Time Information System 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.

³⁰ *Alcoa Power Generating Inc. (Tapoco Division)*, 120 FERC ¶ 61,037 at P 15; *Alcoa Power Generating Inc.*, 141 FERC ¶ 61,031 at P 21.

³¹ The Commission has granted waiver of Order No. 1000 requirements to applicants that have an OATT and an OATT customer. *See, e.g., SU FERC L.L.C.*, 143 FERC ¶ 61,139 (2013); *Electric Energy Inc.*, 144 FERC ¶ 61,028 (2013).

find that the Tapoco transmission lines continue to comprise limited and discrete facilities. We also find that, as APGI states, Tapoco meets the definition of a small public utility because, at most, Alcoa's plants near Knoxville, Tennessee would consume approximately 244,500 MWh annually, which is below the 4 million MWh threshold the Commission uses to determine if a utility qualifies for waiver as a small public utility.³²

15. While we are granting Tapoco a waiver of the requirements of Order No. 1000, this does not mean that APGI and Tapoco are immune from the potential of being allocated costs of regional transmission facilities that are selected in the regional transmission plan for purposes of cost allocation.³³

The Commission orders:

APGI's request for Tapoco's waiver of the Order No. 1000 requirements is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

³² See, e.g., *Terra-Gen Dixie Valley, LLC*, 145 FERC ¶ 61,240 (2013).

³³ See, e.g., *Alcoa Power Generating Inc.*, 143 FERC ¶ 61,038, at P 12 (2013).

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