

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeem G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Alcoa Inc.

Docket No. EL06-75-000

ORDER GRANTING PETITION FOR DECLARATORY ORDER

(Issued October 19, 2006)

1. On June 1, 2006, Alcoa Inc. (Alcoa) filed a petition for declaratory order, requesting that the Commission find that Alcoa is exempt from the Commission's regulations under the Public Utility Holding Company Act of 2005 (PUHCA 2005).¹ These regulations, as relevant here, provide for Commission access to the books, accounts, memoranda, and other records of holding companies and associate companies to the extent necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.²

2. For the reasons stated below, we will grant Alcoa's petition for declaratory order. We find that Alcoa should be exempted from the Commission's regulations under PUHCA 2005.

Background

3. Alcoa is a producer of primary aluminum, fabricated aluminum, and alumina. In the United States, Alcoa has invested directly, or through its direct and indirect

¹ The Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005) (EPA 2005), among other things, repealed the Public Utility Holding Company Act of 1935, 15 U.S.C. §§ 79 *et seq.* (2000), and enacted the Public Utility Holding Company Act of 2005, Pub. L. No. 109-58, §§ 1261 *et seq.* 119 Stat. 594, 972-78 (2005).

² See 18 C.F.R. Part 366.

subsidiaries (the Alcoa Group),³ in certain utility assets that primarily serve to supply its aluminum operations. In the United States, most of these assets are held through Alcoa's wholly-owned subsidiary Alcoa Power Generating Inc. (APGI).

4. Alcoa explains that, in several locations, APGI's assets include transmission facilities that connect APGI's electric generation facilities to the Alcoa Group's smelters as well as to neighboring public utilities.⁴ In each smelter location, Alcoa also explains, APGI's transmission facilities generally consist of essentially radial lines between the generation facilities and the Alcoa Group's industrial load and were not designed to transmit bulk power to regional markets.

5. Alcoa states that APGI is not a traditional public utility, has no retail customers that are not part of the Alcoa Group, and exists largely to supply electricity to the Alcoa Group's smelters and other industrial facilities. However, APGI occasionally sells power at wholesale and also provides transmission services under open access transmission tariffs. These transmission services are occasionally used by third parties, under grandfathered agreements, for sales of power at market-based rates.⁵ Alcoa adds that APGI has neither captive customers nor a franchised service territory and is not affiliated with any jurisdictional utility that has captive customers.

6. Alcoa Power Marketing, Inc. (APMI), another wholly owned-subsiary of Alcoa, sells power at wholesale at market-based rates. APMI operates as a power marketer, purchasing and selling blocks of power for the benefit of Alcoa's industrial operations. Alcoa adds that APMI has neither captive customers nor a franchised service territory and is not affiliated with any jurisdictional utility that has captive customers.

³ The Alcoa Group owns and/or operates ten aluminum smelters and associated fabricating facilities and other industrial facilities in the continental United States.

⁴ Alcoa also owns generating assets in the Electric Reliability Council of Texas (ERCOT) region of Texas, which provide the full power requirements of an Alcoa smelter there.

⁵ Alcoa states that three divisions of APGI own interstate transmission facilities: the Long Sault Division in and around Massena, New York; and the Tapoco and Yadkin Divisions in Tennessee and North Carolina, respectively. The limited transmission facilities that APGI owns in the states of Indiana, Texas, and Washington are not part of the interstate grid.

7. In addition, the Alcoa Group owns and operates smelters in other countries and in some of those locations the Alcoa Group owns utility facilities that are used to supply power to Alcoa Group industrial facilities. On May 19, 2006, Alcoa filed a self-certification with the Commission claiming foreign utility company (FUCO) status under 18 C.F.R. § 366.7(a)⁶ for its foreign utility facilities.
8. Alcoa requests that the Commission find Alcoa to be exempt from the Commission's regulations under PUHCA 2005.

Notice of Filing

9. Notice of Alcoa's filing was published in the *Federal Register*, 71 Fed. Reg. 34,334 (2006), with interventions or protests due on or before July 3, 2006. None was filed.

Discussion

10. Based on the representations made by Alcoa, we will grant Alcoa's request for declaratory order; we find that Alcoa should be exempted from the Commission's regulations under PUHCA 2005.
11. Alcoa is a holding company as a result of its ownership of APGI and the Alcoa Group's FUCOs. Alcoa also owns generating assets in the ERCOT region of Texas. However, Alcoa states that it is not a public utility under the Federal Power Act (FPA) and that neither it nor its subsidiaries have captive customers or a franchised service territory. Alcoa states that neither APGI nor APMI is affiliated with any jurisdictional utility that has captive customers. Alcoa also states that its utility operations are incidental to its principal aluminum manufacturing business.⁷

⁶ See *Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005*, Order No. 667, 70 Fed. Reg. 75592 (Dec. 20, 2005), FERC Stats. & Regs. ¶ 31,197 (2005), *order on reh'g*, Order No. 667-A, 71 Fed. Reg. 28446 May 16, 2006), FERC Stats. & Regs. ¶ 31,213, *order on reh'g*, Order No. 667-B, 71 Fed. Reg. 42750 (July 28, 2006), FERC Stats. & Regs. ¶ 31,224 (2006).

⁷ Alcoa notes that it had an exemption from the Public Utility Holding Company Act of 1935. *Aluminum Company of America, Holding Co. Act Release No. 1578* (May 21, 1964), *as supplemented by*, *Holding Co. Act Release No. 15262* (June 18, 1965).

12. Alcoa contends that the books, accounts, memoranda and other records of Alcoa are not relevant to the jurisdictional rates of a public utility. Alcoa states that there are no captive customers to be protected. Alcoa notes that the Commission has previously found that APGI had no captive customers⁸ and circumstances have not changed. Therefore, Alcoa asserts that there is no potential for cross-subsidization. Alcoa also explains that the Commission already has access to books, accounts, memoranda and other records relevant to APGI's jurisdictional transmission rates.⁹ Accordingly, Alcoa submits there is no reason that it should be subject to the requirements of the Commission's PUCHA 2005 regulations.

13. Alcoa also states that, since APGI is a wholly-owned subsidiary of Alcoa, Alcoa is not a captive customer of APGI. Alcoa states that it is in no way required to purchase power from APGI and has the ability to switch suppliers.

14. In Order No. 667-B, we stated that, at this early stage in our implementation of PUCHA 2005, there is a strong regulatory interest in requiring a holding company (or a holding company with a subsidiary) that owns jurisdictional transmission facilities or provides jurisdictional transmission service and that does not otherwise qualify for exemption under one of the stated exemptions in 18 C.F.R. § 366.3(b) to apply formally for exemption. The Commission stated that the formal application process gives the Commission the opportunity to determine on the facts and circumstances of each case if an exemption is appropriate. The Commission explained that the process gives the Commission the opportunity to determine whether there might be significant potential for transmission service customers to subsidize wholesale sales and, if so, whether the cross-subsidies could be adequately addressed through rate regulation.¹⁰

15. Based on the facts and circumstances presented by Alcoa, we find, pursuant to 18 C.F.R. § 366.3(b)(1), that Alcoa's books, accounts, memoranda, and other records are not relevant to the jurisdictional rates of APGI and thus that it is appropriate to exempt Alcoa from the requirements of the Commission's PUCHA 2005 regulations notwithstanding APGI's ownership of jurisdictional transmission facilities. APGI's transmission facilities are limited, and, similar to APGI's generation facilities, primarily serve Alcoa's industrial operations. Alcoa states that APGI has no captive customers or

⁸ *Alcoa Inc.*, 88 FERC ¶ 61,045 (1999) (*Alcoa*).

⁹ Sales by APGI's Yadkin and Tapoco Divisions are subject to the Commission's jurisdiction under Part I of the Federal Power Act because the facilities they own are licensed hydroelectric projects. 18 C.F.R. § 35.21 (2006).

¹⁰ Order No. 667-B at P 26.

franchised service territory and is not affiliated with any jurisdictional utility that has captive customers.¹¹ Therefore, there is no significant potential for transmission service customers to subsidize wholesale sales. Finally, we note that APCI's transmission facilities are subject to Commission-jurisdictional open access transmission tariffs, and under section 301 of the FPA the Commission has access to books, accounts, memoranda and other records concerning APCI's jurisdictional transmission rates.¹²

The Commission orders:

(A) Alcoa's petition for declaratory order is hereby granted, as discussed in the body of this order.

(B) Alcoa must inform the Commission of any change in circumstances that would reflect a departure from the facts the Commission relied upon in granting the petition.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

¹¹ APMI is a power marketer and does not fall within the definition of electric utility company under 18 C.F.R. § 366.1 and, accordingly, is not a public-utility company; section 366.1 of the Commission's regulations states that an electric utility company would not include persons that engage only in marketing of electric energy. Alcoa's other utility subsidiaries are self-certified FUCOs pursuant to 18 C.F.R. § 366.7. The fact that Alcoa has a power marketer subsidiary and FUCO subsidiaries does not dictate that we reach a different result here.

¹² 16 U.S.C. § 825 (2000). Section 301(b) of the FPA provides for Commission access to and examination of "all accounts, records, and memoranda" of public utilities, *Id.* § 825(b), and section 301(c) of the FPA provides for Commission access to and examination of the "books, accounts, memoranda, and records of any person who controls, directly or indirectly, a . . . public utility. . . and of any other company controlled by such person, insofar as they relate to transactions with or the business of such. . . public utility. . . ." *Id.* § 825(c).