

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Alcoa Power Generating Inc.
(Tapoco Division)

Docket No. OA07-23-000

ORDER GRANTING REQUEST FOR WAIVER OF ORDER NOS. 889 AND 890

(July 13, 2007)

1. On May 14, 2007, the Tapoco Division (Tapoco) of Alcoa Power Generating Inc. (APGI) requested waiver of the Commission's Open Access Same-Time Information System (OASIS) requirements under Order No. 889,¹ and a partial waiver of the requirements under Order No. 890,² with respect to its 161 kV transmission lines. This order grants APGI's request for waiver subject to certain conditions, described below.

Background

2. In Order No. 890, the Commission reformed the *pro forma* OATT to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis.³ Among other things, Order No. 890 amended the *pro forma* OATT to require greater consistency and transparency in the calculation of available transfer capability, open and coordinated planning of transmission systems, and standardization of charges for generator and energy imbalance services. The

¹ *Open Access Same-Time Information System and Standards of Conduct*, Order No. 889, January 1991- June 1996 FERC Stats. & Regs., Regs. Preambles ¶ 31,035, *clarified*, 77 FERC ¶ 61,335 (1996), *order on reh'g*, Order No. 889-A, July 1996-December 2000 FERC Stats. & Regs., Regs. Preambles ¶ 31,049, *reh'g denied*, Order No. 889-B, 81 FERC ¶ 61,253 (1997), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000).

² *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (March 15, 2007), FERC Stats. & Regs., ¶ 31,241 (2007) (Order No. 890).

³ *See id.* at P 26-61.

Commission also revised various policies governing network resources, rollover rights, and reassignments of transmission capacity.

3. Each public utility transmission provider is required to file revisions to its OATT to conform to the revised *pro forma* OATT. The Commission stated that the criteria for waiver of the requirements of Order No. 890 is unchanged from that used to evaluate requests for waiver under Order Nos. 888⁴ and 889.

Request for Waiver

4. APCI states that it is a wholly-owned subsidiary of Alcoa Inc. (Alcoa), which exists primarily to generate, purchase and/or manage electricity for Alcoa's use in its aluminum smelters and other industrial processes. APCI states that it serves no traditional public utility retail load, and that it makes certain limited sales into the wholesale market.

5. One of APCI's five divisions, Tapoco owns and operates a number of 161 kV transmission lines. Most of these transmission lines pre-date the existence of the Tennessee Valley Authority (TVA) and primarily connect Tapoco's hydroelectric generating facilities to the Alcoa Tennessee Operations smelting plant, but also connect to the facilities of Duke that were formerly owned by APCI's corporate parent, Alcoa. APCI states that as the TVA's regional transmission network grew, the Alcoa-Tapoco transmission lines were electrically connected on both ends to the TVA transmission system to improve operational reliability and flexibility. All 20.58 miles of Tapoco's transmission system are considered to be part of the interconnected transmission grid system.

6. On December 22, 1982, TVA and Tapoco entered into an Exchange Agreement providing for the coordinated operation of power production and transmission facilities owned by TVA and Tapoco and the exchange of power between TVA and Tapoco. The

⁴ *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 (1997), *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).

Exchange Agreement has been amended by agreements numerous times to reflect the changing nature of the transmission grid and system operation.

7. Tapoco requests waiver of the Commission's 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.

8. Tapoco states that it has never received a request for transmission service under its OATT. Furthermore, Tapoco does not provide transmission service to third parties other than that service utilized by TVA. Thus, Tapoco states that its transmission lines serve no users except for Alcoa and TVA and they exist in parallel with substantially larger network transmission paths operated by TVA that are not congested; therefore, Tapoco has no transmission market power in the region and no captive customers.

9. Accordingly, Tapoco requests waiver of Order No. 889 and Part 37 of the Commission's regulations and certain of the requirements of Order No. 890. Specifically, Tapoco requests waiver of the requirements of 18 C. F. R. §§ 37.5 (Obligations of Transmission Providers and Responsible Parties), 37.6 (Information to be Posted on the OASIS), and 37.7 (Auditing Transmission Service Information) with respect to its transmission lines, including but not limited to the requirements of § 37.6(b), (c), (d), (e), (f), and (g) to post on an OASIS: (1) average and real-time ATC and TTC and calculations for each posted path; (2) prices and a summary of the terms and conditions associated with all transmission products offered to transmission customers; (3) information on ancillary services offered under the *pro forma* tariff; (4) information on requests and responses for transmission and ancillary services by APGI; (5) transmission service schedules information; and (6) other communications related to transmission services. Tapoco requests waiver of the requirements of Order No. 890 except for the requirement for coordinated, open and transparent transmission planning.⁵

10. Tapoco asserts that, in granting its recent waiver request of the OASIS requirements under Order No. 889 for its Long Sault Division, the Commission reasserted the standards for waiver of some or all of the requirements of Order No. 889.⁶ That is, waiver of Order No. 889 is appropriate for a public utility: (1) if the applicant

⁵ Tapoco further states that it does not seek waiver of the obligations relating to standards of conduct.

⁶ See *Alcoa Power Generating Inc. (Long Sault Div.)*, 116 FERC ¶ 61,257 at P 7 (2006) (citations omitted).

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 it is a member of a tight power pool, or other circumstances are present which indicate that a waiver would not be justified.⁷

11. Tapoco states that numerous factors demonstrate that waiver of Order No. 889's OASIS requirements and most of the requirements of Order No. 890 are appropriate for it due to the nature and configuration of its system. That is, its 161 kV transmission grid exists for the purpose of serving Alcoa's manufacturing facilities and that because it is connected on both ends to the TVA it cannot serve any users other than Alcoa and TVA. Additionally, Tapoco states that the TVA has the right to any of its unused transmission capacity and thus, it would not be able to provide service to any other parties even if it desired to do so. Tapoco claims that complying with Order No. 890 requirements would place a substantial and undue burden on it while granting waiver would not cause harm to any party.

12. Finally, Tapoco commits to filing a revised OATT with the Commission, within 60 days of the date, if and when it receives a request for transmission service. This revised OATT would comply with any additional requirements under Order No. 890 that are effective on the date of the request.

Procedural Matters

13. Notice of the filing was published in the *Federal Register*, 72 Fed. Reg. 29,139 (2007), with interventions, comments and protests due on or before June 13, 2007. No protests or adverse comments were filed.

Discussion

14. In *Black Creek Hydro, Inc.*,⁸ 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. However, if the public utility receives a request for transmission service, it would have 60 days to file a *pro forma* OATT with the Commission and to comply with any additional requirements that are effective on the date of the request. The Commission also explained that waiver of Order No. 889 would be appropriate: (1) if the applicant owns, operates, or controls only

⁷ *Id.* at P 7.

⁸ 77 FERC ¶ 61,232 (1996) (*Black Creek*).

limited and discrete transmission facilities; or (2) if the applicant owns, operates, or controls an integrated transmission grid, if it is a small public utility, unless it is a member of a tight power pool or other circumstances are present which indicate that the waiver would not be justified. The Commission clarified that waiver would be granted unless and until an entity evaluating its transmission complains that it could not get information necessary to complete its evaluation, at which time, compliance must be made within 60 days of the complaint.

15. The criteria for waiver of Order No. 890 is unchanged from that used to evaluate requests for waiver under Order Nos. 888 and 889. Although APCI requested waiver of Order No. 890, we interpret this as a request for waiver of the requirement to have an OATT on file. Based on the statements in APCI's filings, we find that the Tapoco transmission lines are limited and discrete facilities. The only transmission service that Tapoco provides is based on pre-OATT agreements. Further, due to the nature of Tapoco's transmission lines, it is unlikely that Tapoco will receive transmission requests for service under its OATT in the future. Additionally, any unused capacity on Tapoco's transmission lines is owned by TVA; there is no residual capacity to be offered under the Tapoco OATT. Therefore, we grant APCI's request for waiver of the requirement to have a *pro forma* OATT on file and its requested waiver of the requirements in sections 37.5, 37.6 and 37.7 of the Commission's regulations, 18 C.F.R. §§ 37.5-.7 (2006), including but not limited to waiver of sections 37.6(b), (c), (d), (e), (f), and (g).

16. The Commission grants the waiver of the requirement to have an OATT on file on two conditions. First, consistent with *Black Creek*, APCI must file a *pro forma* OATT in compliance with Order Nos. 888 and 890, and any additional requirements, within 60 days of Tapoco receiving a request for transmission service from a customer. Second, consistent with the commitments made by APCI in its request, APCI must participate in the regional planning activities undertaken by transmission providers in Tapoco's region pursuant to Order No. 890.⁹

The Commission orders:

(A) APCI's request for waiver of the requirement to have a *pro forma* OATT on file is granted, subject to the conditions stated above.

(B) APCI's request for waiver of the requirements in sections 37.5, 37.6 and 37.7 of the Commission's regulations, 18 C.F.R. §§ 37.5-.7 (2006), including but not

⁹ Because we are waiving the requirement for Tapoco to have an OATT on file, it is not necessary for Tapoco to file a formal Attachment K to its OATT.

limited to waiver of sections 37.6(b), (c), (d), (e), (f), and (g) is granted, subject to the conditions stated above.

By the Commission. Commissioner Wellinghoff is concurring in part with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

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Docket No. OA07-23-000

(Issued July 13, 2007)

WELLINGHOFF, Commissioner, concurring:

Alcoa Power Generating Inc. (APGI) has committed its Tapoco Division to comply with the requirements of Order No. 890 regarding coordinated, open and transparent transmission planning. The Commission has conditioned the grant to Tapoco of a waiver of the requirement to have an OATT on file on APGI's participation in the regional planning activities undertaken by the transmission providers in Tapoco's region pursuant to Order No. 890. I commend APGI for its commitment to the goals of coordinated, open and transparent transmission planning and agree with the Commission's action here. Nonetheless, I take this opportunity to reiterate that APGI must fully participate in all planning activities required by Order No. 890, including but not limited to the identification of demand resources to be assessed in the transmission planning process.

For these reasons, I respectfully concur.

Jon Wellinghoff
Commissioner