

131 FERC ¶ 61,177
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

Alcoa Power Generating Inc.
Alcoa Power Marketing, LLC

Docket Nos. ER00-1372-006
ER07-496-003

ORDER ON SELLER CATEGORY STATUS AND GRANTING REQUEST FOR
WAIVER OF ORDER NUMBERS 888, 889 AND 890

(Issued May 27, 2010)

1. In this order, the Commission grants a request for waiver of Order Nos. 888,¹ 889,² and 890³ and Part 358⁴ filed by Alcoa Power Generating Inc. (Alcoa Power

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 reh'g* Order No. 890-D, 129 FERC ¶ 61,126 (2009).

⁴ 18 C.F.R. Part 358 (2009). The Commission, in Order No. 717, amended the Standards of Conduct for Transmission Providers to make them clearer and to refocus the

(continued...)

Generating) and Alcoa Power Marketing, LLC (Alcoa Power Marketing) (collectively Applicants).

2. Additionally, we find that Applicants meet the criteria for a Category 1 seller in the Northwest region and are so designated.⁵ As discussed below, Applicants' revisions to their market-based rate tariffs are accepted, effective May 28, 2010.⁶

I. Background

3. On February 1, 2010, as amended March 29, 2010, Applicants requested a determination by the Commission that they are exempt from the updated market power analyses filing requirements for the Northwest region that are applicable to Category 2 Sellers, as established by Order No. 697. Applicants also request waiver of Order Nos. 888, 889, and 890. Specifically, with respect to certain transmission facilities owned by Alcoa Power Generating, Applicants request waiver of the Open Access Transmission Tariff (OATT), Open Access Same-Time Information System (OASIS) and Standards of Conduct requirements due to the limited nature of the transmission facilities.

4. Applicants state that they are wholly-owned subsidiaries of Alcoa Inc. (Alcoa), which owns and operates aluminum smelters and associated fabricating facilities that

rules on the areas where there is the greatest potential for abuse. *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).

⁵ *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at P 848-50, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055 (2008), *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010).

⁶ Alcoa Power Generating, Inc., FERC Electric Tariff, Third Revised Volume No. 1, First Revised Sheet No. 3 (Supersedes Alcoa Power Generating, Inc., FERC Electric Tariff, Third Revised Volume No. 1, Original Sheet No. 3), Alcoa Power Marketing, LLC, Original Rate Schedule FERC No. 1, First Revised Volume No. 1, First Revised Sheet No. 2 (Supersedes Alcoa Power Marketing, LLC, Original Rate Schedule FERC No. 1, First Revised Volume No. 1, Original Sheet No. 2).

produce aluminum, fabricated aluminum, and alumina. Applicants note that Alcoa is a holding company under the Public Utility Holding Company Act of 2005.⁷

5. Alcoa Power Marketing is authorized to make sales at market-based rates.⁸ According to the application, Alcoa Power Marketing acts as a power marketer, purchasing electric energy (including ancillary services) and reselling it at wholesale; it does not own any generation or transmission facilities. Applicants state that Alcoa Power Marketing may also engage in non-jurisdictional activities such as facilitating the purchase and sale of electrical energy without taking title (e.g. brokering) and/or arranging services in related areas such as transmission and fuel supplies.

6. Alcoa Power Generating is authorized to make sales at market-based rates.⁹ Applicants state that Alcoa Power Generating owns and operates electric generation and transmission facilities that are used in conjunction with its primary focus of providing electric power to aluminum smelters owned by Alcoa.

7. Applicants state that Alcoa Power Generating has transmission facilities connecting Alcoa industrial plants to either generation owned by Alcoa Power Generating or to other electric utilities. According to the application, Alcoa Power Generating does not have any franchised service territory or captive customers; it also is not affiliated with any franchised electric or natural gas utility or any entity with captive wholesale customers.

8. In the Northwest region, Applicants state that Alcoa Power Generating owns and operates approximately 1,000 feet of electric transmission and has the right to purchase a portion of the output of certain generating projects. Alcoa Power Generating represents that these are its only jurisdictional assets in the Northwest region.¹⁰

9. Applicants state that Alcoa Power Generating's Colockum Division has a long-term power purchase arrangement with Public Utility District No. 1 of Chelan County

⁷ 42 U.S.C. §§ 16451 *et seq.* (2006).

⁸ *Alcoa Power Marketing, Inc.*, Docket No. ER02-2074-000 (unpublished letter order) (July 31, 2002).

⁹ *Alcoa, Inc.*, 88 FERC ¶ 61,045 (1999).

¹⁰ Applicants state that Alcoa Power Generating also has jurisdictional transmission and generation facilities located in the Central, Southeast and Northeast regions.

(Chelan) for the purchase of power for use in Alcoa's smelting plant in Wenatchee, Washington. Under the arrangement, Alcoa Power Generating can only resell the power acquired from Chelan to Alcoa for use at Alcoa's smelting plant in Wenatchee. The arrangement provides that until October 31, 2011, Alcoa Power Generating is entitled to purchase power equivalent to 23 percent of the output of the Rocky Reach Hydroelectric Project. Beginning on November 1, 2011 through June 30, 2012, Alcoa Power Generating will be entitled to purchase power equivalent to 27.5 percent of the output of Rocky Reach. Finally, beginning on July 1, 2012, Alcoa Power Generating will be entitled to purchase power equivalent to 26 percent of the output of both the Rocky Reach and Rock Island projects. According to Applicants, the nameplate capacity of the Rocky Reach project is 1,300 MW and the combined nameplate capacity of the two projects is 1,924 MW. However, Applicants state that the average annual energy production from these projects is approximately half of the generation nameplate capacity. Specifically, the 20 year average generation at Rocky Reach is 666 MWh and the 20 year average generation at Rock Island is 337 MWh. Applicants contend that, even if calculated on the basis of the nameplate capacity of the two plants, Alcoa Power Generating's entitlement would only exceed 500 MW (by reaching 500.24 MW) after July 1, 2012. Applicants' filing included a letter of concurrence from Chelan that states that the power sales arrangement between Alcoa Power Generating and Chelan does not provide Alcoa Power Generating with control of any power generated by Chelan at Rocky Reach and Rock Island. Under the arrangement, Alcoa Power Generating can only resell the power acquired from Chelan to Alcoa for use at Alcoa's smelting plant. Alcoa Power Generating is not allowed to sell power purchased from Chelan to any other party. Any power not consumed by the smelter is retained by Chelan for sale to third parties.

II. Notice of Filing

10. Notice of Applicants' February 1, 2010 filing was published in the *Federal Register*,¹¹ with interventions and comments due on or before February 22, 2010. None was filed.

11. Notice of Applicants' March 29, 2010 filing was published in the *Federal Register*,¹² with interventions and comments due on or before April 19, 2010. None was filed.

¹¹ 75 Fed. Reg. 6652 (2010).

¹² 75 Fed. Reg. 17,704 (2010).

III. Discussion

12. In cases where a public utility, or any of its affiliates, owns, operates, or controls transmission facilities, the Commission requires that there be a Commission-approved OATT on file or that the seller has received waiver of the OATT requirement before granting a seller market-based rate authorization.¹³ As discussed below, the Commission grants Alcoa Power Generating's request for waiver of Order Nos. 888, 889, and 890 and Part 358. Additionally, we find that Applicants meet the criteria for a Category 1 seller in the Northwest region and are so designated.

A. Waiver Request

1. Waiver of Order Nos. 888, 889, and 890 and Part 358

13. Applicants seek waiver of Order Nos. 888, 889, and 890 with respect to certain transmission facilities owned by Alcoa Power Generating. In support of the request for waiver, Applicants state that they do not own, operate, or control any transmission-related equipment other than Alcoa Power Generating's interest in the discrete facilities that interconnect Alcoa's switchyard with Bonneville Power Administration's Valhalla substation and the Chelan's McKenzie substation. Specifically, in this regard, Applicants state that Alcoa Power Generating, through its Colockum Division, owns and operates approximately 1000 feet of transmission and that the transmission lines are rated at 13.8 kV. Applicants state that these facilities are used exclusively for delivering power to Alcoa, and Colockum provides no transmission services to others over those facilities.

14. Order Nos. 888 and 890 require public utilities that own, control, or operate facilities used for the transmission of electric energy in interstate commerce to file an OATT. Order No. 889 requires public utilities to establish an OASIS. In prior orders, the Commission has enunciated the standards for exemption from some or all of the requirements of Order Nos. 888 and 889.¹⁴ The Commission has stated that the criteria for waiver of the requirements of Order No. 890 are unchanged from those used to evaluate requests for waiver under Order Nos. 888 and 889.¹⁵

¹³ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

¹⁴ See, e.g., *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) (*Entergy*).

¹⁵ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 36; *Alcoa Power Generating Inc.*, 120 FERC ¶ 61,035, at P 3 (2007).

15. The Commission may grant requests for waiver of Order Nos. 888 and 890 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 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* tariff 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.¹⁶

16. The Commission has also determined that waiver of Order No. 889 and the Standards of Conduct would be appropriate for a public utility if the applicant: (1) owns, operates, or controls only limited and discrete transmission facilities (rather than an integrated transmission grid); or (2) 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 that indicate that a waiver would not be justified.¹⁷ Moreover, the Commission has held that a 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.¹⁸

17. Based on the statements in Applicants' filing, as amended, we find that Alcoa Power Generating's transmission facilities are limited and discrete. The facilities are used solely by Alcoa Power Generating for deliveries of power to Alcoa. Accordingly, with respect to this specific approximately 1000 feet of transmission used for delivering power to Alcoa, we will grant Alcoa Power Generating's request for waiver of the requirements in Order Nos. 888 and 890 to have an OATT on file.¹⁹ Similarly, the

¹⁶ *Black Creek*, 77 FERC ¶ 61,232 at 61,941.

¹⁷ *Id.*

¹⁸ *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).

¹⁹ Consistent with *Black Creek*, Alcoa Power Generating must file a *pro forma* OATT in compliance with Order Nos. 888 and 890 within 60 days of receiving a request for transmission service.

Commission grants Alcoa Power Generating waiver from the OASIS and Standards of Conduct requirements of Order No. 889 with respect to this transmission.²⁰

B. Seller Category Status

18. In Order No. 697, the Commission created two categories of sellers.²¹ Category 1 sellers are not required to file regularly scheduled updated market power analyses. Category 1 sellers are wholesale power marketers and wholesale power producers that own or control 500 MW or less of generation in aggregate per region; that do not own, operate, or control transmission facilities other than limited equipment necessary to connect individual generation facilities to the transmission grid (or have been granted waiver of the requirements of Order No. 888); that are not affiliated with anyone that owns, operates or controls transmission facilities in the same region as the seller's generation assets; that are not affiliated with a franchised public utility in the same region as the seller's generation assets; and that do not raise other vertical market power issues.²² Sellers that do not fall into Category 1 are designated as Category 2 sellers and are required to file an updated market power analysis.²³

19. Applicants state that they do not currently own or control greater than 500 MW in the Northwest region. They further state that they are not affiliated with anyone that owns, operates, or controls transmission facilities in the Northwest region and are not affiliated with a franchised public utility in the Northwest region.

20. Based on Applicants' representations and the Commission's decision herein to grant waiver of the OATT requirement, we find that Applicants meet the criteria for a Category 1 seller in the Northwest region and are so designated. The Commission also reserves the right to require an updated market power analysis at any time.²⁴

²⁰ Alcoa Power Generating must notify the Commission if there is a material change in facts that affects its waiver within 30 days of the date of such change. *See 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); *see also, Wolverine Power Supply Coop. Inc.*, 127 FERC ¶ 61,159 (2009).

²¹ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

²² 18 C.F.R. § 35.36(a) (2009).

²³ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

²⁴ *Id.* P 853.

21. If current circumstances change in a way that would depart from the facts relied upon in granting Applicants' request, for example, owning or controlling over 500 MW of generation, Applicants must notify the Commission within 30 days of such change.

22. Applicants' revisions to their market-based rate tariffs are hereby accepted for filing, effective May 28, 2010, as discussed in the body of this order.

The Commission orders:

(A) Applicants' revisions to their market-based rate tariffs are hereby accepted for filing, effective May 28, 2010, as discussed in the body of this order.

(B) Alcoa Power Generating's request for waiver of the requirements of Order Nos. 888, 889, and 890 and Part 358 is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.