

145 FERC ¶ 61,201  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Alcoa Power Generating Inc.

Docket No. OA13-6-000

ORDER ON REQUEST FOR WAIVERS

(Issued December 6, 2013)

1. In this order, the Commission grants Alcoa Power Generating, Inc.'s (Alcoa Power) request for waiver of the Commission's requirements to file an Open Access Transmission Tariff (OATT), to establish and maintain an Open Access Same-Time Information System (OASIS), and to comply with the Commission's Standards of Conduct.

**I. Background**

2. On June 21, 2013, in response to a recent Commission order,<sup>1</sup> Alcoa Power requested waiver of the Commission's requirements applicable to transmission providers, including the requirements of Order Nos. 888<sup>2</sup> and 890<sup>3</sup> to file an OATT, the requirement

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<sup>1</sup> In *Alcoa Power Generating, Inc.*, 143 FERC ¶ 61,161 (2013), the Commission determined that Tie Line 3 is a transmission facility for which Alcoa Power is required to file an OATT. The Commission stated that, alternatively, Alcoa Power may submit a request for waiver of the obligation to file an OATT.

<sup>2</sup> *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).

<sup>3</sup> *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  
(continued...)

of Order No. 889<sup>4</sup> to establish and maintain an OASIS, and the Standards of Conduct under Part 358 of the Commission's regulations.<sup>5</sup>

3. Alcoa Power states it is a wholly-owned subsidiary of Alcoa, Inc. (Alcoa). Alcoa Power further states that it owns and operates limited and discrete transmission facilities and limited generation facilities in various specific locations throughout the United States and that its primary focus is to provide electric power to aluminum smelters owned in whole or in part by Alcoa. Alcoa Power states that its transmission facilities connect Alcoa's industrial plants to either generation owned by Alcoa Power or to other electric utilities and rarely are used for transmission by others.

4. Alcoa Power states that it jointly owns the Tie Line 3 facility, a 2.2 mile, 138 kV line, with the local utility, Southern Indiana Gas and Electric Company (Southern Indiana), which is a subsidiary of Vectren Corp. Alcoa Power states that Tie Line 3 is part of the AGC Division (AGC) of Alcoa Power. Alcoa Power states that AGC owns a four-unit, coal-fired station adjacent to Alcoa's Warrick smelting and rolling operations (the Warrick plant) in Evansville, Indiana, which is a very large industrial plant that consumes almost 600 MW of power. Alcoa Power states that AGC and Southern Indiana jointly own other facilities in that area, including a 138 kV bus located at the Warrick plant to service the Warrick plant's operation. Alcoa Power explains that Tie Line 3 runs from a jointly-owned generating unit (Warrick Unit 4) to the 138 kV ring bus, and then to

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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).

<sup>4</sup> *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).

<sup>5</sup> 18 C.F.R. Part 358 (2013); *See also 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). *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).

Southern Indiana's Culley Substation. Alcoa Power further explains that additional distribution lines connect the Culley Substation to the Warrick plant and are used to meet the energy needs of Alcoa's smelting and rolling mill operations. Alcoa Power adds that the Culley Substation also interconnects with other generation and transmission facilities that Southern Indiana uses to serve its other load.

5. Alcoa Power states that waiver of the Commission's open access requirements with respect to the limited transmission facilities is warranted on the same basis that the Commission has granted waivers in connection with other limited and discrete transmission facilities. Alcoa Power states that Tie Line 3 is a limited and discrete transmission facility, does not comprise an integrated transmission system, and does not serve, and is not designed to serve, third party customers. Alcoa Power also states that Tie Line 3 is not part of a looped transmission network linked with multiple markets and power sources.

6. Alcoa Power adds that Tie Line 3's primary purpose is to ensure reliable provision of electricity to the Warrick plant. Alcoa Power states that it has not received a request for transmission service over the facilities, and, should it receive such a request, Alcoa Power will file with the Commission an OATT and satisfy any other applicable requirements.

7. On October 21, 2013, Alcoa Power submitted supplemental information to clarify the statement made in its request for waiver that "[Alcoa Power's] transmission facilities connect Alcoa's industrial plants to either generation owned by [Alcoa Power] or to other electric utilities which are rarely used for transmission by others."<sup>6</sup> Alcoa Power explains that Tie Line 3 was originally designed and installed to be a purely radial feed that facilitated balancing of interchange for Alcoa and as an outlet for Vectren's share of the jointly-owned Warrick Unit 4. Alcoa Power states that, in the original configuration of circuits at that location, there was no condition where Tie Line 3 could be utilized for transmission by other parties, but, with the installation of the Vectren-owned Tie Line 5 two years ago, there are now multiple paths in and out of the Warrick 138 kV substation that could allow for loop and other inadvertent flows of power across Tie Line 3. However, Alcoa Power states that Tie Line 3 does not serve any other consumers and it is not a natural transmission path to reach customers; therefore, it would be rare for Tie Line 3 to be utilized by others for transmission, although that could happen as a loop or inadvertent flow in an abnormal system condition. Alcoa Power reiterates there have never been any third party requests for transmission service to utilize Tie Line 3.

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<sup>6</sup> Alcoa Power Request for Waiver at 2.

## II. Notice of Filings and Pleadings

8. Notice of the Alcoa Power's filing was published in the *Federal Register*, 78 Fed. Reg. 40,135 (2013), with interventions or protests due on or before July 12, 2013. None was filed.

## III. Discussion

9. Order Nos. 888 and 890 and section 35.28 of the Commission's regulations<sup>7</sup> require public utilities that own, operate, or control facilities used for the transmission of electric energy in interstate commerce to file an OATT prior to providing transmission service. Order No. 889 and Part 37 of the Commission's regulations<sup>8</sup> require public utilities to establish and maintain an OASIS and Order Nos. 889, 2004, and 717 and Part 358 of the Commission's regulations<sup>9</sup> require public utilities to abide by the Commission's Standards of Conduct.<sup>10</sup> 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, 889, and 890.<sup>11</sup> The Commission has stated that the criteria for waiver of the requirements of Order No. 890 and Order No. 2004<sup>12</sup> are unchanged from those used to

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<sup>7</sup> 18 C.F.R. § 35.28 (2013).

<sup>8</sup> 18 C.F.R. Part 37 (2013).

<sup>9</sup> 18 C.F.R. Part 358 (2013).

<sup>10</sup> Order No. 889, FERC Stats. & Regs. ¶ 31,035 at 31,590; Order No. 2004, FERC Stats. & Regs. ¶ 31,155 at P 16; Order No. 717, FERC Stats. & Regs. ¶ 31,280 at P 313.

<sup>11</sup> 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*).

<sup>12</sup> *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*, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,611 (2007); Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,630 (2008).

evaluate requests for waiver under Order Nos. 888 and 889.<sup>13</sup> Order No. 717 did not change those criteria.<sup>14</sup>

10. 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. If the public utility receives 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.<sup>15</sup>

11. The Commission has also determined that the waiver of the requirement to establish an OASIS, and abide by 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; or (2) is a small public utility that owns, operates, or controls an integrated transmission grid and no other circumstances are present that indicate that a waiver would be justified.<sup>16</sup> 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).<sup>17</sup>

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<sup>13</sup> See *Alcoa Power Generating Inc.*, 120 FERC ¶ 61,035, at P 3 (2007); *Alcoa Power Generating Inc.*, 108 FERC ¶ 61,243, at P 27 (2004).

<sup>14</sup> See Order No. 717, FERC Stats. & Regs. ¶ 31,280 at P 54.

<sup>15</sup> *Black Creek*, 77 FERC ¶ 61,232 at 61,941.

<sup>16</sup> *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) (*Black Hills*), the Commission explained that membership in a tight power pool is no longer a factor in the determination for waiver of Standards of Conduct. Moreover, *Black Hills* did not affect waivers based on a public utility meeting the Small Business Administration's definition of a small public utility.

<sup>17</sup> *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota Municipal Power Agency*, 79 FERC ¶ 61,260, at 62,127 (1997) (*Central Minnesota*); *Easton Utilities Commission*, 83 FERC ¶ 61,334, at 62,343 (1998) (*Easton*)).

12. Based on Alcoa Power's representations, we find that Tie Line 3 qualifies as limited and discrete. Accordingly, we will grant Alcoa Power waiver of the requirements in Order Nos. 888 and 890 to have an OATT on file. However, if 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, and must comply with any additional requirements that are effective on the date of the request.<sup>18</sup>

13. The Commission will also grant Alcoa Power waiver of the requirement to maintain an OASIS and 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 necessary information to complete its evaluation.<sup>19</sup> 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 affiliates.<sup>20</sup>

The Commission orders:

Alcoa Power's request for waivers is hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>18</sup> *Black Creek*, 77 FERC at 61,941.

<sup>19</sup> *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota*, 79 FERC at 62,127; *Easton*, 83 FERC at 62,343).

<sup>20</sup> *Id.* Alcoa Power must notify the Commission if there is a material change in facts that affect the waiver, within 30 days of the date of the 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).