

147 FERC ¶ 61,136  
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. ER14-1515-000

ORDER DENYING REQUEST FOR WAIVER

(Issued May 20, 2014)

1. On March 14, 2014, Alcoa Power Generating Inc. (Alcoa Power) requested waiver of the filing and reporting requirements of Part 141 of the Commission's regulations (with the exception of sections 141.14 and 141.15),<sup>1</sup> including waiver from the requirements related to FERC Form No. 1.<sup>2</sup> For the reasons discussed below, the Commission denies Alcoa Power's request for waiver.

**I. Background**

2. Alcoa Power is a wholly-owned subsidiary of Alcoa Inc. (Alcoa). It owns and operates limited and discrete transmission facilities and limited generation facilities throughout the United States to provide electric power to aluminum smelters wholly or partially owned by Alcoa. Alcoa Power states that it has no franchised service territory or captive customers and serves no traditional public utility retail load. Alcoa Power also

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<sup>1</sup> 18 C.F.R. pt. 141 (2013). Sections 141.14 and 141.15 of the Commission's regulations apply specifically to licensed hydropower projects. 18 C.F.R. §§ 141.14, 141.15 (2013).

<sup>2</sup> FERC Form No. 1 is an annual report required of major electric utilities (and certain others) engaged in generation, transmission, distribution, or sales of electric energy. These reports are designed to collect financial and operational information from electric utilities, licensees, and others subject to the jurisdiction of the Commission. *Midwest Indep. Trans. Sys. Operator, Inc.*, 130 FERC ¶ 61,152, at n.3 (2010).

states that the Commission has authorized it to make wholesale sales of energy, capacity, and ancillary services at market-based rates.<sup>3</sup>

3. Alcoa Power states that its transmission facilities connect Alcoa's industrial plants to Alcoa Power-owned generation or other electric utilities and that third parties rarely make use of Alcoa Power's transmission facilities. While Alcoa Power contends that it is "only incidentally" in the electric transmission business, it acknowledges that it owns transmission facilities and that it has an Open Access Transmission Tariff (OATT) on file with the Commission, which is designated as an Alcoa Power rate schedule.<sup>4</sup> Alcoa Power further states that it makes limited sales into the wholesale market and that it does not have market power in any market.

4. Alcoa Power explains that it has five groups of transmission and generation assets. First, Alcoa Power states it has limited and discrete transmission facilities that connect Alcoa industrial plants located near Knoxville, Tennessee to the grid operated by the Tennessee Valley Authority (TVA) and Smoky Mountain Transmission for which the Commission has granted Alcoa Power waivers of Order Nos. 888,<sup>5</sup> 889,<sup>6</sup> 890,<sup>7</sup>

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<sup>3</sup>Alcoa Power May 14, 2014 Transmittal at 2 (Transmittal) (citing *Alcoa, Inc.*, 88 FERC ¶ 61,045 (1999)).

<sup>4</sup> *Id.*

<sup>5</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 No. 888), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (Order No. 888-A), *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>6</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>7</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 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).

717,<sup>8</sup> and section 35.28<sup>9</sup> and Parts 37 and 358<sup>10</sup> of the Commission's Regulations.<sup>11</sup> Second, Alcoa Power states that it owns and operates 21 miles of transmission lines that interconnect with the Duke and Progress Carolinas Energy-East balancing authority areas (Yadkin Facilities), the primary purpose of which is to transmit energy from Alcoa Power's Yadkin Hydroelectric Project (Yadkin Project) to the grid. Alcoa Power states that the Yadkin Facilities rarely provide transmission service to unaffiliated third parties and adds that the only load located on Yadkin's system is the auxiliary load and building lighting at the Yadkin Project.<sup>12</sup>

5. Third, Alcoa Power owns limited and discrete 115 kV transmission facilities, the Long Sault Facilities, which are approximately seven miles in length and connect Alcoa's smelting and fabricating facility near Massena, New York with the New York Power Authority and Cedar Rapids Transmission Company, Limited (Cedar Rapids Transmission). Alcoa Power states that the Commission has granted waiver of the requirement to have an OATT on file and the requirements of Order No. 1000<sup>13</sup> for these facilities.<sup>14</sup> Alcoa Power also notes that the Long Sault Facilities provide transmission service for the Town of Massena under a long-term contract that predates Order Nos. 888 and 889. It further states that it makes the Long Sault Facilities' entire capacity available

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<sup>8</sup> *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. ¶ 1,297, *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).

<sup>9</sup> 18 C.F.R. § 35.28 (2013).

<sup>10</sup> *Id.* pts. 37 and 358 (2013).

<sup>11</sup> Transmittal at 2-3 (citing *Alcoa Power Generating, Inc.*, 141 FERC ¶ 61,031 (2012)).

<sup>12</sup> *Id.* at 3.

<sup>13</sup> *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).

<sup>14</sup> Transmittal at 4 (citing *Alcoa Power Generating, Inc. (Long Sault Division)*, 120 FERC ¶ 61,035 (2007); *Alcoa Power Generating Inc. (Long Sault Division)*, 143 FERC ¶ 61,038 (2013)).

to Cedar Rapids Transmission pursuant to a pre-OATT Transmission Service Agreement pursuant to which Cedar Rapids Transmission has the right to market all of the transmission capacity and Alcoa Power has no control over that capacity.<sup>15</sup>

6. Fourth, Alcoa Power states that it and Southern Indiana Gas and Electric Company jointly own a 2.2 mile, 138 kV transmission line designated as Tie Line 3. Alcoa Power states that the Commission granted its request for waiver of the requirement to have an OATT on file and the Open Access Same-Time Information System (OASIS) and Standards of Conduct requirements under Order No. 889 for Tie Line 3, as Tie Line 3 qualifies as a limited and discrete facility.<sup>16</sup>

7. Finally, Alcoa Power owns and operates approximately 1,000 feet of transmission facilities that interconnect Bonneville Power Administration's Valhalla substation and the Public Utility District No. 1 of Chelan County's McKenzie substation with Alcoa's smelting plant near Wenatchee, Washington (Colockum Facilities). Alcoa Power states that the Commission granted Alcoa Power's request for waiver of the requirement to have an OATT on file and the OASIS and Standards of Conduct requirements under Order No. 889 for the Colockum Facilities, as they qualify as limited and discrete facilities.<sup>17</sup>

## **II. Request for Waiver of Part 141 of the Commission's Regulations**

8. Alcoa Power requests waiver of Part 141 of the Commission's regulations, with the exception of sections 141.14 and 141.15. Alcoa Power asserts that one of the primary purposes of FERC Form No. 1 is ensuring that the cost-of-service rates of traditional utilities are just and reasonable. Alcoa Power notes that the Commission has granted waiver for transmission owners that charge negotiated rates and that do not have captive customers because, under those circumstances, the cost-based rate data in FERC Form No. 1 is not necessary to ensure that rates are just and reasonable.<sup>18</sup> Alcoa Power further notes that the Commission has granted waiver from the requirements of Part 141 to entities, such as the owners of divested hydroelectric facilities, that do not have cost-based rates and that are not traditional utilities.<sup>19</sup> Moreover, Alcoa Power argues

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.* (citing *Alcoa Power Generating Inc.*, 145 FERC ¶ 61,201 (2013)).

<sup>17</sup> *Id.* at 5 (citing *Alcoa Power Generating Inc.*, 131 FERC ¶ 61,177 (2010)).

<sup>18</sup> *Id.* (citing *Cross-Sound Cable Co, LLC*, 108 FERC ¶ 61,277 (2004) (*Cross-Sound Cable*)).

<sup>19</sup> *Id.* (citing *Niagara Mohawk Power Corp.*, 89 FERC ¶ 61,189 (1999)).

that the Commission has granted waiver of Part 141's requirements to transmission owners that do not have captive customers and that do not provide transmission service pursuant to cost-based rates.<sup>20</sup>

9. Moreover, Alcoa Power explains that in approving waiver of the FERC Form No. 1 requirements, the Commission reviews the request for concerns of affiliate abuse.<sup>21</sup> Alcoa Power contends that it meets the Commission criteria for waiver of the requested portions of Part 141 because it is not a traditional utility and it is "only incidentally in" the transmission business.<sup>22</sup> Additionally, Alcoa Power states that it has no captive customers, serves no traditional public utility retail load, and has no market power where it operates. Alcoa Power states that its situation is similar to merchant transmission facilities that have received waiver of the FERC Form No. 1 requirements because Alcoa Power has market-based rate authority and does not have cost-based rates. In support of this contention, it states that its facilities either have an OATT on file or have received a waiver of the requirement to have an OATT. For these reasons, Alcoa Power concludes that no Alcoa Power affiliate has an undue transmission preference, and there is no opportunity for affiliate abuse.

10. Finally, Alcoa Power commits to continue to maintain its books and records in accordance with generally accepted accounting principles, regardless of the outcome of the instant request for waiver.

### **III. Notice of Filings and Responsive Pleadings**

11. Notice of Alcoa Power's filing was published in the *Federal Register*, 79 Fed. Reg. 16,321 (2014), with interventions and protests due on or before April 4, 2014. None was filed.

### **IV. Discussion**

12. We deny Alcoa Power's request for waiver of Part 141. Alcoa Power has cited decisions in which the Commission has granted waiver to merchant transmission owners

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<sup>20</sup> *Id.* (citing *Lake Erie CleanPower Connector*, 144 FERC ¶ 61,203 (2013); *Neptune Regional Transmission System, LLC*, 139 FERC ¶ 61,110, at P 12 (2012); *Wyoming Colorado Intertie, LLC*, 127 FERC ¶ 61,125, at P 65 (2009); *Linden VFT, LLC*, 119 FERC ¶ 61,066, at P 44 (2007); *Montana Alberta Tie Ltd.*, 116 FERC ¶ 61,071, at P 66 (2006)).

<sup>21</sup> *Id.* (citing *Cross-Sound Cable*, 108 FERC ¶ 61,277 at P 8).

<sup>22</sup> *Id.* at 2, 6.

with negotiated transmission rates and for merchant generators with market-based rates.<sup>23</sup> However, Alcoa Power is not similarly situated to the entities to whom the Commission has granted waiver of Part 141.

13. As noted in Order No. 697, the Commission has granted waiver of Part 141 to certain entities with market-based rate authority, finding that “little purpose would be served to require compliance with accounting regulations for entities that do not sell at cost-based rates and do not have captive customers.”<sup>24</sup> However, unlike the cases cited by Alcoa Power, which involved transmission owners and merchant generators that did not have cost-based rates, Alcoa Power has a cost-based tariff on file with the Commission, the Alcoa Power OATT (Yadkin), and cost-based Alcoa Power Transmission Agreements.<sup>25</sup>

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<sup>23</sup> See *Cross-Sound Cable*, 108 FERC ¶ 61,277; *Niagara Mohawk Power Corp.*, 89 FERC ¶ 61,189.

<sup>24</sup> *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 984, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh’g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *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), *aff’d sub nom. Mont. Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied*, 133 S. Ct. 26 (2012).

<sup>25</sup> See Alcoa Power, OATT, Part III, § 34.1, (1.0.0) (“[t]he Network Customer shall pay a Monthly Demand Charge, which shall be determined by multiplying its Load Ratio Share by one twelfth (1/12) of the Transmission Provider’s Annual Transmission Revenue Requirement specified in Schedule H); *see also* Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at P 30,239 (“While Order No. 888 does not establish any specific pricing methodology for tariff transmission service, the Commission expects all transmission rate proposals filed on compliance to be cost based and to meet the standard for conforming proposals set out in the Commission’s Transmission Pricing Policy Statement”).

The Alcoa Power Transmission Agreements include the Alcoa Power-Smoky Mountain Transmission Interconnection Agreement, Alcoa Power-TVA Interconnection Agreement, and a Transmission Service Agreement with Cedar Rapids Transmission, Rate Schedule 13.

14. The information provided in FERC Form No. 1 “is necessary to carry out our jurisdictional responsibilities and is used, among other things, to evaluate the reasonableness of cost-based rates subject to our jurisdiction and the operation of power markets.”<sup>26</sup> While Alcoa Power may argue that it has no captive customers, it serves no traditional retail load, and has no market power in any of the markets where it operates, its arguments cannot overcome the fact that the Commission requires FERC Form No. 1 data to evaluate the reasonableness of cost-based rates subject to its jurisdiction. Given that Alcoa Power owns and operates transmission facilities for which it has cost-based transmission rates, we deny Alcoa Power’s request for waiver.

15. Finally, regarding Alcoa Power’s commitment to maintain books and records, Alcoa Power shall maintain its books and records as required by Commission rules.<sup>27</sup>

The Commission orders:

Alcoa Power’s request for waiver of Part 141 of the Commission’s regulations is hereby denied, 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>26</sup> Order No. 888, FERC Stats. & Regs. ¶ 31,036 at P 31,851; *see also Hudson Trans. Partners, LLC*, 135 FERC ¶ 61,104, at P 43 (2011) (“The Commission has traditionally granted waivers . . . only to those entities that are not subject to traditional cost-based regulation.”).

<sup>27</sup> 18 C.F.R. pt. 101 (2013); 18 C.F.R. §§ 125.1-125.3 (2013).