

151 FERC ¶ 61,068
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

Alcoa Power Generating Inc.
(Yadkin Division)

Docket No. ER14-1052-000

ORDER GRANTING WAIVER OF ORDER NO. 1000

(Issued April 24, 2015)

1. On January 17, 2014, Alcoa Power Generating Inc. (APGI) on behalf of its Yadkin Division (Yadkin) requested waiver of the requirements of Order No. 1000.¹ This order grants Yadkin a waiver of the requirements of Order No. 1000, as discussed below.

Background

2. In Order No. 1000, the Commission amended the transmission planning and cost allocation requirements of Order No. 890² to ensure that Commission-jurisdictional services are provided at just and reasonable rates and on a basis that is just and reasonable and not unduly discriminatory or preferential. Order No. 1000's transmission planning reforms require that each public utility transmission provider: (1) participate in a regional transmission planning process that produces a regional transmission plan; (2) amend its Open Access Transmission Tariff (OATT) to describe procedures for the consideration of transmission needs driven by public policy requirements established by

¹ *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), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

² *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, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

local, state, or federal laws or regulations in the local and regional transmission planning processes; (3) remove federal rights of first refusal from Commission-jurisdictional tariffs and agreements for certain new transmission facilities; and (4) improve coordination between neighboring transmission planning regions for new interregional transmission facilities.

3. Order No. 1000 also requires that each public utility transmission provider participate in a regional transmission planning process that has: (1) a regional cost allocation method for the cost of new transmission facilities selected in a regional transmission plan for purposes of cost allocation; and (2) an interregional cost allocation method for the cost of certain new transmission facilities that are located in two or more neighboring transmission planning regions and are jointly evaluated by the regions in the interregional transmission coordination procedures required by Order No. 1000.

4. On October 11, 2012, in Docket No. ER13-88-000, APCI submitted an Order No. 1000 compliance filing for Yadkin. APCI stated that Yadkin complied with the requirements of Order No. 1000 by participating in the North Carolina Transmission Planning Collaborative (NCTPC) with Duke-Progress.³ On February 21, 2013, the Commission issued an order rejecting APCI's October 11, 2012 compliance filing for Yadkin.⁴ The Commission found that the proposed NCTPC region did not satisfy Order No. 1000's regional scope requirement⁵ and thus rejected APCI's compliance filing for Yadkin.⁶ On May 22, 2013, in Docket No. ER13-88-002, APCI submitted a further compliance filing for Yadkin to comply with the February 21 Order. APCI stated that it indicated to the Southeastern Regional Transmission Planning process (SERTP) that it would like Yadkin to be included at some level in any transmission planning arrangements that Duke-Progress finalized with SERTP.⁷ On December 19, 2013, the Commission issued an order rejecting APCI's further Order No. 1000 compliance filing for Yadkin.⁸ The Commission found that Yadkin failed to provide any tariff provisions that demonstrated participation or enrollment in a transmission planning region that complies with Order No. 1000. The Commission directed APCI to submit, within

³ APCI October 11, 2012 Compliance Filing at 1.

⁴ *Duke Energy Carolinas LLC*, 142 FERC ¶ 61,130 (2013) (February 21 Order).

⁵ *Id.* P 38.

⁶ *Id.* P 42.

⁷ APCI October 11, 2012 Compliance Filing at 3.

⁸ *Duke Energy Carolinas LLC*, 145 FERC ¶ 61,252 (2013).

60 days of the issuance of the order, a revised compliance filing or, in the alternative, to request a waiver of the requirements of Order No. 1000.⁹

Description of Applicant

5. Yadkin states that APGI is a wholly-owned subsidiary of Alcoa Inc. (Alcoa), which owns and operates limited and discrete transmission facilities and limited generation facilities in various locations throughout the United States that are used in conjunction with APGI's primary focus of providing electric power to aluminum smelters owned in whole or in part by Alcoa. Yadkin states that APGI has no franchised service territory or captive customers, and serves no traditional public utility retail load. Yadkin states that APGI has five business divisions, one of which is Yadkin.¹⁰

6. Yadkin states that it owns and operates approximately 21 miles of 13.8 kV and 100 kV transmission lines that interconnect with the Duke Energy Carolinas, LLC and Carolina Power & Light Company (collectively Duke-Progress) balancing authority areas. According to Yadkin, service over these transmission facilities is provided pursuant to an OATT on file with the Commission.¹¹ Yadkin also owns and operates the Yadkin Hydroelectric Project (Yadkin Project), which consists of four hydroelectric developments near Badin, North Carolina, with a total summer rating of approximately 212 MW.¹²

Request for Waiver

7. Yadkin requests waiver of the requirements of Order No. 1000. Yadkin states that it qualifies for a waiver because its transmission facilities are limited and discrete. Yadkin states that the Commission noted in the February 21 Order that Yadkin owns only "very limited transmission facilities that serve its own hydroelectric facility."¹³ Specifically, Yadkin states that it owns and operates approximately 21 miles of 13.8 kV and 100 kV transmission lines, the primary purpose of which is to transmit energy produced from the Yadkin Project to the grid. In addition, Yadkin states that the only load located on its system is the auxiliary load and building lighting at the Yadkin

⁹ *Id.* P 92.

¹⁰ Waiver Request at 2.

¹¹ *Alcoa Power Generating, Inc.*, Docket No. ER12-2480-002 (Jan. 10, 2013) (unpublished letter order) (accepting Yadkin's OATT for filing).

¹² Waiver Request at 2.

¹³ *Id.* at 5 (quoting February 21 Order, 142 FERC ¶ 61,130 at P 38).

Project, which is less than 300 kW/hr, and Yadkin's facilities are rarely used to provide transmission service to unaffiliated third parties. In this regard, Yadkin argues that its facilities are similar to the facilities at issue in *Smoky Mountain*, where the Commission determined that the facilities were limited and discrete because they were used to transmit power produced by a single hydroelectric project to the interstate transmission grid and were rarely used to provide transmission service to third parties.¹⁴

8. Yadkin asserts that it also qualifies for a waiver because it meets the definition of a small public utility. Yadkin states that a small public utility is a utility that disposes of no more than 4 million MWh annually,¹⁵ and even assuming that the Yadkin Project operated at a 100 percent capacity factor for a period of one year, the Yadkin Project's output would be approximately 1.8 million MWh, well below the threshold used by the Commission to determine if a utility qualifies for waiver as a small public utility.¹⁶

9. Yadkin asserts that, moreover, there are no circumstances that would render the granting of waiver to Yadkin inappropriate or indicate that granting waiver would undermine the goals of Order No. 1000. Yadkin argues that the Commission has explained that one of the primary purposes of Order No. 1000 is to "ensure that transmission planning processes at the regional level consider and evaluate . . . possible transmission alternatives and produce a transmission plan that can meet transmission needs more efficiently and cost-effectively."¹⁷ Yadkin asserts that, as the Commission recognized in the February 21 Order, due to the limited nature of Yadkin's transmission facilities, Yadkin does not have a need to engage in transmission planning on a scale comparable to transmission providers with significant load on their systems and inclusion of Yadkin in a regional transmission planning process is unnecessary to ensure the development of a regional transmission plan that identifies solutions that more efficiently

¹⁴ *Id.* (citing *Smoky Mountain Transmission LLC*, 145 FERC ¶ 61,230, at P 14 (2013) (*Smoky Mountain*)).

¹⁵ *Id.* (citing *Smoky Mountain*, 145 FERC ¶ 61,230 at n.20).

¹⁶ Yadkin states that the Commission previously recognized that Yadkin is a small public utility and granted Yadkin waiver of Order No. 889 on this basis. Waiver Request at n.24 (citing *Soyland Power Coop., Inc.*, 78 FERC ¶ 61,095, at 61,341 (1997)). Yadkin states that, subsequently, APCI voluntarily relinquished waiver of Order No. 889 in order to facilitate the Commission's authorization of a corporate reorganization pursuant to Section 203 of the Federal Power Act. *Id.* n.24.

¹⁷ *Id.* at 6 (quoting Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 4).

or cost-effectively meet regional transmission needs.¹⁸ Accordingly, Yadkin requests that the Commission grant it a waiver of the requirements of Order No. 1000.

Procedural Matters

10. Notice of the filing was published in the *Federal Register*, 79 Fed. Reg. 4683 (2014), with interventions, comments and protests due on or before February 17, 2014. No protests or adverse comments were filed.

Discussion

11. In Order No. 1000, the Commission stated that the criteria for waiver of the requirements of the Final Rule are unchanged from that used to evaluate requests for waiver under Order Nos. 888, 889, and 890.¹⁹ The Commission subsequently clarified that it would “entertain requests for waiver of Order No. 1000 on a case-by-case basis.”²⁰

12. In *Black Creek Hydro, Inc.*,²¹ 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 (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 an OATT with the Commission 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. The Commission also explained that waiver of Order No. 889 would be appropriate: (1) if the applicant owns, operates, or controls only limited and discrete transmission facilities; or (2) if the applicant is a small public utility that owns, operates, or controls an integrated transmission grid, unless other circumstances are present which indicate that a waiver would not be justified.²²

¹⁸ *Id.* (citing February 21 Order, 142 FERC ¶ 61,130 at P 38).

¹⁹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 832.

²⁰ Order No. 1000-A, 139 FERC ¶ 61,132 at P 753.

²¹ 77 FERC ¶ 61,232 (1996).

²² *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), the Commission explained that membership in a tight power pool is no longer a factor in the determination for waiver of Standards of Conduct.

13. Under the circumstances presented, we grant Yadkin's request for a waiver of the requirements of Order No. 1000.²³ Based on the statements in Yadkin's filing, we find that the Yadkin transmission lines are limited and discrete facilities. Yadkin owns and operates only approximately 21 miles of 13.8 kV and 100 kV transmission lines whose primary purpose is to transmit energy produced from the Yadkin Project to the grid. In addition, the only load located on Yadkin's system is the auxiliary load and building lighting of its own hydroelectric facility, and Yadkin states that its transmission facilities are rarely used to provide transmission service to third parties.²⁴ In light of these circumstances, we grant Yadkin a waiver of the Order No. 1000 requirements related to OATT revisions. However, while we are granting waiver here of the requirements of Order No. 1000, this does not mean that Yadkin is immune from the potential of being allocated costs of regional transmission facilities that are selected in the regional transmission plan for purposes of cost allocation. As noted in Order No. 1000-A, the public utility transmission providers in each transmission planning region, in consultation with their stakeholders, may consider proposals to allocate costs directly to entities (for example, generators or network customers) as beneficiaries that could be subject to regional or interregional cost allocation.²⁵

The Commission orders:

Yadkin's request for waiver of the Order No. 1000 requirements is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

²³ Yadkin requests a waiver only of the requirements of Order No. 1000, and not the underlying requirement to have an OATT on file, and therefore we act herein on the waiver as requested.

²⁴ We note that to the limited extent Yadkin provides transmission service over its facilities, it has an OATT governing such service.

²⁵ Order No. 1000-A, 139 FERC ¶ 61,132 at P 680.