

145 FERC ¶ 61,230  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Smoky Mountain Transmission LLC

Docket No. ER13-911-000

ORDER GRANTING WAIVER OF ORDER NO. 1000

(Issued December 19, 2013)

1. On February 8, 2013, Smoky Mountain Transmission LLC (Smoky Mountain) submitted a request for waiver of the requirements of Order No. 1000.<sup>1</sup> This order grants Smoky Mountain waiver of the requirements of Order No. 1000, as discussed below.

**I. Background**

2. In Order No. 1000, the Commission amended the transmission planning and cost allocation requirements of Order No. 890<sup>2</sup> 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 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

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<sup>1</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*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012).

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

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 must 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.<sup>3</sup>

## II. Description of Smoky Mountain

4. Smoky Mountain states that it is a wholly-owned indirect subsidiary of BAIF U.S. Renewable Power Holdings LLC (BAIF U.S.), and that it was formed for the specific purpose of owning and operating approximately 86 miles of limited and discrete transmission facilities that BAIF U.S. purchased from Alcoa Power Generating Inc. (Alcoa), as a part of a larger transaction involving the transfer of certain hydroelectric generation assets.<sup>4</sup> Smoky Mountain notes that it acquired only the transmission facilities needed to interconnect the Tapoco Project to the grid.<sup>5</sup>

5. The transmission facilities that Smoky Mountain acquired in the transaction connect the four hydroelectric generating facilities to each other, the Tennessee Valley Authority (TVA) system, and the Duke Carolina system.<sup>6</sup> Smoky Mountain states that, other than the four hydroelectric facilities that make up the Tapoco Project, there are no generation facilities connected to its transmission facilities. In addition, Smoky Mountain states that the only load connected to its transmission facilities belongs to Alcoa; however, Alcoa retains its own direct access to the TVA system without the

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<sup>3</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 9.

<sup>4</sup> Smoky Mountain Request for Waiver at 2-3. Four hydroelectric generation facilities with a combined capacity of 377 MW in Tennessee and North Carolina were sold to Brookfield Smoky Mountain Hydropower LLC as part of the transaction; the facilities are: Calderwood, Cheoah, Chilhowee, and Santeetlah (the Tapoco Project). The transaction closed on November 15, 2012. *See Alcoa Power Generating, Inc.*, 140 FERC ¶ 62,151 (2012); *see also Alcoa Power Generating, Inc.*, Notice of Closing, Docket No. EC12-127-000 (Nov. 16, 2012).

<sup>5</sup> Smoky Mountain Request for Waiver at 3.

<sup>6</sup> *Id.*

need to use the Smoky Mountain transmission facilities.<sup>7</sup> Smoky Mountain further states that the only transmission service provided over Smoky Mountain's transmission facilities is to Smoky Mountain's affiliate, Brookfield Smoky Mountain Hydropower LLC. Smoky Mountain adds that Alcoa Power Marketing, LLC, a subsidiary of Alcoa, holds a 6 MW one-year firm point-to-point reservation on the Smoky Mountain transmission facilities, although it states that no transmission has been scheduled pursuant to this reservation.<sup>8</sup>

6. Smoky Mountain provides service over its transmission facilities pursuant to the Smoky Mountain OATT, which was accepted for filing by the Commission on January 11, 2013.<sup>9</sup> According to Smoky Mountain, its OATT contains an Attachment K that governs how Smoky Mountain will engage in transmission planning consistent with the principles adopted in Order No. 890.<sup>10</sup>

### **III. Request for Waiver**

7. Smoky Mountain states that there is good cause for the Commission to grant its request for waiver of the requirements of Order No. 1000. Smoky Mountain explains that following its purchase of the Tapoco Project and associated transmission facilities, it discussed Order No. 1000 compliance with the Southeastern Regional Transmission Planning region (SERTP). Smoky Mountain states that after those discussions, it decided that enrolling in SERTP was not appropriate because adopting the proposed SERTP provisions in its OATT would require Smoky Mountain, as a SERTP Transmission Owner, to employ additional onerous amounts of software, personnel, and resources.<sup>11</sup>

8. In support of its request for waiver of the requirements of Order No. 1000, Smoky Mountain argues that (1) the Smoky Mountain transmission facilities are limited and discrete, and (2) Smoky Mountain is a small public utility.<sup>12</sup> Smoky Mountain states that the Commission has previously found that, when owned by Alcoa, the

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<sup>7</sup> *Id.* at 4.

<sup>8</sup> *Id.* at 5.

<sup>9</sup> *Id.* (citing *Smoky Mountain Transmission LLC*, Docket No. ER13-403-000 (Jan. 11, 2013) (delegated letter order)).

<sup>10</sup> *Id.* at 2.

<sup>11</sup> *Id.* at 6.

<sup>12</sup> *Id.* at 7.

Smoky Mountain transmission facilities were limited and discrete facilities.<sup>13</sup> Smoky Mountain maintains that the Smoky Mountain transmission facilities remain limited and discrete under its ownership and do not comprise an integrated transmission system. It explains that the facilities at issue are radial in nature and were collectively designed, and are used almost exclusively, to transmit power produced by the Tapoco Project to the grid. Except for a single 6 MW unscheduled reservation, it states that the Smoky Mountain transmission facilities are not used to provide transmission service to non-affiliated third parties. According to Smoky Mountain, the Smoky Mountain transmission facilities provide minimal, if any, benefits to the network transmission system in terms of capability or reliability and the facilities are not used to support coordinated operation of any regional transmission system. Additionally, Smoky Mountain contends that it qualifies for waiver as a small public utility because it transmits fewer than 4 million MWh annually.<sup>14</sup>

9. Nevertheless, Smoky Mountain recognizes that, as a transmission owner with an OATT on file, it is incumbent upon Smoky Mountain to cooperate with other transmission owners in its region. Smoky Mountain notes that its transmission facilities are almost entirely embedded in TVA's system and, therefore, it argues that it is tied to TVA from a transmission planning perspective.<sup>15</sup> Smoky Mountain states that TVA has been an active participant in the SERTP process and Smoky Mountain pledges to fully coordinate with TVA to the extent the Smoky Mountain transmission facilities are affected by TVA's regional or interregional planning activities. Similarly, Smoky Mountain states, in the event that modification of its transmission facilities is needed to support regional or interregional planning by SERTP, it will coordinate with SERTP to consider the allocation of resulting costs in a manner consistent with the transmission cost allocation principles set forth in Order No. 1000. However, Smoky Mountain notes that because there are no loads on its system, other than minimal

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<sup>13</sup> *Id.* (citing *Alcoa Power Generating, Inc.*, 120 FERC ¶ 61,037 (2007) (granting Alcoa a waiver of Order No. 890)). Although Alcoa initially received a waiver of Order No. 890, Smoky Mountain states that the Commission rescinded the waivers of Order Nos. 889 and 890, effective June 30, 2011, due to the expiration of certain transmission agreements that Alcoa had with TVA. *Id.* at 3 (citing *Alcoa Power Generating, Inc.*, 135 FERC ¶ 61,272, at P 9 (2011)).

<sup>14</sup> *Id.* at 7-8.

<sup>15</sup> *Id.* at 8. Smoky Mountain further states that TVA serves as its transmission planner and planning authority for purposes of compliance with the North American Electric Reliability Corporation criteria.

station load supplied by TVA, there is no basis for imposing on Smoky Mountain the costs of transmission system modifications made by neighboring transmission owners.<sup>16</sup>

#### IV. Procedural Matters

10. Notice of the filing was published in the *Federal Register*, 78 Fed. Reg. 11,635 (2013), with interventions, comments and protests due on or before March 1, 2013. None were filed.

#### V. Discussion

11. In Order No. 1000, the Commission stated that the criteria for waiver of the requirements of the Final Rule are unchanged from those used to evaluate requests for waiver under Order Nos. 888, 889, and 890.<sup>17</sup> The Commission subsequently clarified that it would “entertain requests for waiver of Order No. 1000 on a case-by-case basis.”<sup>18</sup>

12. In *Black Creek Hydro, Inc.*,<sup>19</sup> 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<sup>20</sup>

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<sup>16</sup> *Id.* at 9.

<sup>17</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 832.

<sup>18</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 753.

<sup>19</sup> *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232, at 61,941 (1996).

<sup>20</sup> The Commission stated that to qualify as a small public utility, the applicant must be a public utility that meets the Small Business Administration definition of a small electric utility, i.e., one that disposes of no more than 4 million MWh annually.

that owns, operates, or controls an integrated transmission grid, unless other circumstances are present which indicate that a waiver would not be justified.<sup>21</sup>

13. We note that Smoky Mountain provides transmission service over its facilities and, as a result, has an OATT governing transmission service. Under the circumstances presented, we grant Smoky Mountain's request for a waiver of the requirements of Order No. 1000.<sup>22</sup>

14. Based on the statements in Smoky Mountain's filing, we find that the Smoky Mountain transmission facilities are limited and discrete and, therefore, granting waiver of Order No. 1000's requirements is warranted. The Smoky Mountain transmission facilities are radial in nature, and are primarily used to transmit power produced by the Tapoco Project to the transmission grid. Except for a single 6 MW unscheduled reservation, the Smoky Mountain transmission facilities are not used to provide transmission service to non-affiliated third parties. In light of these representations and the circumstances presented, we grant Smoky Mountain a waiver of the Order No. 1000 requirements related to OATT revisions.<sup>23</sup> However, while we are granting waiver here of the requirements of Order No. 1000, this does not mean that Smoky Mountain is immune from the potential of being allocated costs of regional or interregional 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.<sup>24</sup> Further, we accept Smoky Mountain's commitment to

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<sup>21</sup> *Id.* Although the Commission originally precluded waiver of the requirements for the Open Access Same-Time Information System 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.

<sup>22</sup> Smoky Mountain 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.

<sup>23</sup> We note that the Commission has previously granted waiver of Order No. 1000 for similar reasons. See *Alcoa Power Generating, Inc.*, 143 FERC ¶ 61,038 (2013); *Lockhart Power Co.*, 143 FERC ¶ 61,040 (2013); and *SU FERC, L.L.C.*, 143 FERC ¶ 61,139 (2013).

<sup>24</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 680.

participate, as a stakeholder, in the Order No. 1000-compliant regional transmission planning activities undertaken by public utility transmission providers in its region.<sup>25</sup>

The Commission orders:

Smoky Mountain'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.

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<sup>25</sup> Smoky Mountain Request for Waiver at 9 (stating that "Smoky Mountain recognizes that as a transmission owner with an OATT on file with FERC, it is incumbent upon Smoky Mountain to cooperate with other transmission owners in its region in an effort to implement FERC's open access transmission policies.").