

156 FERC ¶ 62,140

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Alcoa Inc.
Alcoa Power Generating Inc.

Docket No. EC16-147-000

ORDER AUTHORIZING DISPOSITION
OF JURISDICTIONAL FACILITIES

(Issued August 24, 2016)

On July 12, 2016, Alcoa Inc. and Alcoa Power Generating Inc. (Alcoa Power) (collectively, Applicants) filed an application pursuant to section 203(a)(1) of the Federal Power Act (FPA)¹ requesting authorization for the disposition of jurisdictional facilities in connection with the upstream change in ownership of Alcoa Power, including its wholly owned subsidiary, Alcoa Power Marketing LLC (Alcoa Power Marketing), from Alcoa Inc. to a newly-created company, Alcoa Corporation (Proposed Transaction). The jurisdictional facilities involved in the Proposed Transaction consist of Alcoa Power's market-based rate schedules, limited transmission facilities and interconnection facilities, and associated books and records.

According to the application, Alcoa Inc., the parent company of Alcoa Power, will be reorganized to separate into two independent, publicly-traded companies (Reorganization). One will be Alcoa Upstream Corporation (to be renamed Alcoa Corporation prior to the separation). Alcoa Inc.'s present value-add businesses will remain with the present company, which will be renamed, Arconic Inc. (Arconic). The Reorganization and eventual separation of these companies is expected to be completed in the second half of 2016. As a result of the Reorganization, Alcoa Power will move from being a subsidiary of Alcoa Inc., soon to become Arconic, to being a subsidiary of Alcoa Corporation.

¹ 16 U.S.C. § 824b (2012).

Applicants state that Alcoa Inc. is incorporated under the laws of the Commonwealth of Pennsylvania. It is a vertically-integrated company producing an array of aluminum products, ranging from the raw materials of bauxite and electric energy to finished industrial products. Alcoa Inc.'s generating assets that supply its operations in the United States are held through Alcoa Power. Alcoa Inc. is exempt from the Commission's regulations as a holding company under the Public Utility Holding Company Act of 2005.²

Applicants state that Alcoa Power is a wholly owned subsidiary of Alcoa Inc. Alcoa Power owns and operates limited generation and limited and discrete transmission facilities in various locations throughout the United States that are used in conjunction with its primary focus of providing electric power to aluminum manufacturing facilities owned by Alcoa Inc. Alcoa Power is authorized to make wholesale sales of energy, capacity, and ancillary services at market-based rates. Applicants state that Alcoa Power serves no general retail load and generates, purchases and/or manages electricity for its only customer, Alcoa Inc., which utilizes the power in its industrial processes at various locations. Applicants state that Alcoa Power's transmission facilities were constructed to connect Alcoa Inc. industrial plants to either generation owned by Alcoa Power or to other electric utilities. Applicants state that Alcoa Power's parent company, Alcoa Inc., is the only native load customer. Alcoa Power has no franchised service territory in any state for the sale of natural gas or electricity. Alcoa Power has no captive wholesale or retail customers, nor does it have market power in any market in which it operates. Alcoa Power is not affiliated with any franchised electric or natural gas utility or any entity with captive wholesale customers.

Applicants state that Alcoa Power has transmission and generation facilities in five divisions:

- (1) The Tapoco Division owns limited and discrete 161 kilovolt (kV) transmission facilities that connect Alcoa Inc. industrial plants located in Alcoa, Tennessee, in a 3-way interconnection to Smoky Mountain Transmission LLC and the Tennessee Valley Authority.
- (2) The Yadkin Division (Yadkin) owns and operates four hydroelectric developments near Badin, North Carolina, with a total summer rating of approximately 212 megawatt. Applicants state that historically the power generated by the facility was supplied to Alcoa Inc., which is no longer in operation but continues to have an electricity load of approximately 1 MW. Applicants note that today, the bulk of the power is sold into the wholesale market. Yadkin is its own balancing authority

² See *Alcoa Inc.*, 117 FERC 61,059 (2006).

area (BAA), owning and operating approximately 21 miles of 13.8 kV and 100 kV transmission lines that interconnect with the Duke Energy Carolina and Duke Energy Progress BAAs.

- (3) The Long Sault Division (Long Sault) owns certain limited and discrete transmission facilities in New York used to connect Alcoa Inc.'s smelting and fabricating facility near Massena, New York with the New York Power Authority (NYPA), National Grid US (NGrid) and Cedars Rapids Transmission Company (Cedars Rapids). The Cedars Lines are two 115 kV transmission circuits that connect at mid-span at the International Boundary with Canada to corresponding facilities that belong to Cedars Rapids. The Cedars Lines are owned by the Long Sault Division and only connect NGrid to Cedars Rapids. These double-circuit 115 kV transmission lines are each approximately six miles in length and the capacity is under a long-term contract to Cedars Rapids through 2035. Additionally, there are three Moses-Alcoa 115 kV transmission lines that are owned 85 percent by Long Sault and 15 percent by NYPA. These lines connect NYPA's St. Lawrence-FDR hydroelectric project to the Alcoa Inc. manufacturing complex in Massena, New York. Long Sault also uses these lines to provide transmission service for the Town of Massena under a long-term contract.
- (4) The Colockum Division (Colockum) owns and operates approximately 1,000 feet of transmission facilities that interconnect the Bonneville Power Administration's Valhalla substation and the Public Utility District No. 1 of Chelan County's (Chelan) McKenzie substation with Alcoa Inc.'s smelting plant near Wenatchee, Washington. Colockum also has a long-term power purchase agreement with Chelan for the purchase of power for use in Alcoa Inc.'s smelting plant, which is presently curtailed.
- (5) The AGC Division (AGC) owns most of a four-unit, coal-fired generating station adjacent to Alcoa Inc.'s Warrick smelting and rolling operations (Warrick Plant) located in Evansville, Indiana. Applicants state that, in response to global market conditions for aluminum metal, Alcoa Inc. permanently closed the Warrick smelter on March 24, 2016. The rolling mill and power generation at the Warrick Plant continue to operate, and upon completion of the Reorganization, the rolling mill assets will be owned by Alcoa Corporation. Of the four coal-fired generation units at AGC, Alcoa Power wholly owns three of the units (Units 1 through 3) with industrial-classed generators, and owns 50 percent of the larger coal unit (Unit 4), which is a utility-classed

generator. The other 50 percent of Unit 4 is owned by the local utility, Southern Indiana Gas and Electric Company (Southern Indiana), a subsidiary of Vectren Corporation (Vectren). All four of these units interconnect with the grid at Southern Indiana's 138 kV Culley Substation, which is operated by the Midcontinent Independent System Operator, Inc. Alcoa Power also owns certain 138 kV transmission facilities that are used to deliver power from AGC to the Warrick Plant and to Southern Indiana's transmission system. Some of the transmission facilities are fully owned by Alcoa Power, and some are owned jointly with Southern Indiana.

Applicants note that Alcoa Power's Yadkin Division has an Open Access Transmission Tariff (OATT). Applicants state that the other locations where Alcoa Power has transmission facilities, Alcoa Power has obtained OATT waivers.

Applicants state that Alcoa Power Marketing LLC (Alcoa Power Marketing) is a limited liability company under the laws of Delaware and a wholly owned subsidiary of Alcoa Power. Alcoa Power Marketing has no franchised service territory in any state for the sale of natural gas or electricity, nor does it own or operate any generation or transmission facilities. Alcoa Power Marketing has no captive wholesale or retail customers, and is not affiliated with any franchised electric or natural gas utility or any entity with captive wholesale customers. Alcoa Power Marketing sells power at wholesale pursuant to its market-based rate authority.

Applicants state that Alcoa Power Marketing operates as a power marketer, purchasing electricity, including energy and ancillary services, and reselling it at wholesale. In addition, Alcoa Power Marketing makes certain non-jurisdictional retail sales of power, including sales to its affiliated Intalco smelting facility located in Ferndale, Washington and its affiliated Wenatchee smelting facility in Wenatchee, Washington owned by Alcoa Inc. Alcoa Power Marketing also may engage in other, non-jurisdictional activities to facilitate efficient trade in bulk power markets, such as facilitating the purchase and sale of electrical energy without taking title thereto (*e.g.*, brokering) and/or arranging services in related areas such as transmission. Applicants state that all of the wholesale power transactions between Alcoa Power Marketing and its purchasers are at rates negotiated between the parties to the transaction, as set forth in Alcoa Power Marketing's market-based rate tariff. Applicants state that no changes to Alcoa Power Marketing are contemplated by virtue of the Reorganization or the Proposed Transaction, except to the extent that its parent, Alcoa Power, will become a subsidiary of Alcoa Corporation.

According to Applicants, as part of the Reorganization, Alcoa Power will come under ownership of a new upstream entity, Alcoa Corporation, and two of Alcoa Power's presently affiliated customers located in Alcoa, Tennessee and Massena, New York will become non-affiliated as a result of the separation into the two groups. Applicants state that as part of this process, Alcoa Power will retain the same ownership and control of jurisdictional facilities at each of its divisions as it has today.

Applicants state that the upstream company to be eventually named Alcoa Corporation is the company that will hold, directly or indirectly, the stock of Alcoa Power. As a result of the separation, Alcoa Corporation and Arconic will become two independent, publicly traded companies and, consequently, will not be under common control.

Applicants state that the Proposed Transaction is consistent with the public interest and will not adversely affect competition, rates or regulations. With respect to competition, Applicants state that the Proposed Transaction presents no horizontal market power issues. According to Applicants, the Proposed Transaction will not result in any new consolidation of electric generating assets that could have an impact on the competitive situation in any market because the Proposed Transaction does not involve the combination of any generation from merging entities that were previously unaffiliated.

Applicants state that the Proposed Transaction raises no vertical market power concerns. Applicants state that neither Alcoa Power nor any of its affiliates own or control any natural gas interstate or intrastate pipeline assets or any other assets that would allow them to control the inputs to generation facilities and thereby use market power over these other products to obtain an advantage in the wholesale power markets. Applicants state that the change in Alcoa Power's upstream ownership as a result of the Proposed Transaction will not cause Alcoa Power to become affiliated with any new public utility in any way and will not result in Alcoa Power owning or controlling, directly or indirectly, any new transmission or natural gas interstate pipeline assets in any relevant market, or any inputs to generation facilities in any relevant market. Therefore, Applicants state that the change in control and upstream ownership of Alcoa Power will not create any vertical competitive concerns.

With respect to rates, Applicants state that the Proposed Transaction will have no adverse effect on rates. Applicants state that the Proposed Transaction will not have any adverse effect on Alcoa Power's wholesale power customers because Alcoa Power does not sell power to any wholesale customers at cost-based rates. Applicants state that all of Alcoa Power's wholesale power sales of generation are made at market-based rates, and all such sales will continue to be made at market-based rates. Applicants state that the

Proposed Transaction will not have an adverse impact on transmission rates. Applicants note that Alcoa Power's existing transmission rates are regulated by the Commission and cannot be changed without Commission approval. Applicants state that to the extent that the Reorganization and Proposed Transaction create the need for Alcoa Power to create new OATTs for the Tapoco and Long Sault Divisions, Alcoa Power will file new tariffs for Commission approval before commencement of transmission service.³ Applicants state that, after the Proposed Transaction is consummated, any transmission service by Alcoa Power to Arconic in Tennessee and New York will be conducted under a Commission approved OATT.

Applicants state that in order to further ensure that the Proposed Transaction will not result in any adverse effect on wholesale power or transmission rates, Applicants commit to hold customers harmless from transaction-related costs for a period of five years. Applicants assert that Alcoa Power will not seek to recover any transaction-related costs, including costs related to consummating the Proposed Transaction and any transition costs (both capital and operating), from any customer purchasing wholesale power at cost-based rates or any transmission customer of Alcoa Power, including Arconic, as a new customer of Alcoa Power following the Proposed Transaction. Applicant also states that if they seek to recover transitional costs in future jurisdictional rates, they will present the Commission with information showing the operation of this hold harmless commitment.

We accept Applicants' commitment to hold customers harmless from costs related to the Proposed Transaction. We interpret Applicants' hold harmless commitment to apply to all transaction-related costs, including costs related to consummating the Proposed Transaction, incurred prior to the consummation of the Proposed Transaction, or in the five years after the Proposed Transaction's consummation.

The Commission has established that, where applicants make hold harmless commitments in the context of FPA section 203 transactions, in order to recover transaction-related costs, applicants must demonstrate offsetting benefits at the time they apply to recover those costs. The Commission has clarified its procedures for recovery of such costs under FPA sections 203 and 205.⁴ Consistent with those clarifications, and given the commitment by Applicants to hold wholesale power and transmission customers harmless from transaction-related costs, if Applicants seeks to recover transaction-related costs incurred prior to the consummation of the Proposed Transaction or in the five years after the consummation of the Proposed Transaction, then Applicants

³ On July 18, 2016, in Docket Nos. ER16-2222-000 and ER16-2223-000, Alcoa Power filed an application to establish OATT rates for the Tapoco and Long Sault Divisions pursuant to section 205 of the FPA. The applications are currently pending.

⁴ *Exelon Corp.* 149 FERC ¶ 61,148, at PP 106-109 (2014).

must make that filing in a new FPA section 205 docket⁵ and submit that same filing as a concurrent information filing in this FPA section 203 docket.⁶ The Commission will notice the new FPA section 205 filing for public comment.

In the FPA section 205 proceeding, the Commission will determine first, whether Applicants has demonstrated offsetting savings, supported by sufficient evidence, to customers served under Commission jurisdictional rate schedules such that recovery of transaction-related costs is consistent with the hold harmless commitment and, second, whether the resulting new rate is just and reasonable in light of all the other factors underlying the proposed new rate. In the FPA section 205 filing, Applicants must: (1) specifically identify the transaction-related costs it is seeking to recover, and (2) demonstrate that those costs are exceeded by the savings produced by the Proposed Transaction. Applicants must show that the proposed rate is just and reasonable in addition to providing appropriate evidentiary support, such as reasonable documentation and estimates of the costs avoided, demonstrating that transaction-related costs have been offset by transaction-related savings in order to recover those transaction-related costs and comply with its hold harmless commitment. Those savings must be realized prior to, or concurrent with, any authorized recovery of transaction-related costs, and cannot be based on estimates or projections of future savings, but must be based on a demonstration of actual transaction-related savings realized by jurisdictional customers.⁷ The Commission will consider rates not to be “just and reasonable” if they include recovery of costs subject to a hold harmless commitment made in connection with an FPA section 203 application and if applicants fail to show offsetting savings due to the transaction.⁸

The Commission will be able to monitor the Applicants’ hold harmless commitment under its authority under section 301(c) of the FPA⁹ and the books and records provision of the Public Utility Holding Company Act of 2005.¹⁰ Moreover, the commitment is fully enforceable based on the Commission’s authority under section 203

⁵ The Commission will not authorize the recovery of transaction-related costs in an annual informational filing under existing formula rates.

⁶ Upon receipt, the Commission will not act on or notice the concurrent informational filing.

⁷ See *Audit Report of National Grid, USA*, Docket No. FA09-10-000 (Feb. 11, 2011) at 55; see also *Ameren Corp.*, 140 FERC ¶ 61,034, at PP 36-37 (2012).

⁸ *Exelon Corp.*, 149 FERC ¶ 61,148 at P 107.

⁹ 16 U.S.C. § 825(c) 2012).

¹⁰ 42 U.S.C. § 16452 (2012).

of the FPA.

With respect to regulation, Applicants state that the Proposed Transaction will not diminish the Commission's regulatory authority, create a regulatory gap, or shift regulatory authority between the Commission and any state commission. Alcoa Power's jurisdictional status under the FPA will not change as a result of the Proposed Transaction. Alcoa Power will continue to own the same jurisdictional facilities and provide jurisdictional services to essentially the same entities after the Proposed Transaction is consummated, and the Commission will continue to have the authority to regulate Alcoa Power in the same manner. Applicants state that the only approval required under state law for the Proposed Transaction is with The New York State Public Commission (NYPSC), which regulates the Long Sault Division. Alcoa Power anticipates submitting a filing with the NYPSC. Applicant states that a copy of the submission to the NYPSC for approval of the Proposed Transaction will be provided once it is made.

Applicants state that the Proposed Transaction will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company. Applicants assert that the Proposed Transaction falls within one of the "safe harbors" adopted by the Commission for which detailed explanation and evidentiary support to demonstrate a lack of cross-subsidization is not required. Applicants more specifically state that the Proposed Transaction does not involve a franchised public utility with captive customers.

Additionally, Applicants verify that, based on the facts and circumstances known to them or that are reasonably foreseeable, the Proposed Transaction will not result in, at the time of the Proposed Transaction nor in the future: (1) any transfer of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company; (2) any new issuance of securities by a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; (3) any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; or (4) any new affiliate contract between a non-utility associate company and a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and services agreements subject to review under Sections 205 and 206 of the FPA.

This filing was noticed on July 13, 2016 with comments, protests or interventions due on or before August 2, 2016. On July 26, 2016, Southern Indiana Gas and Electric Company d/b/a Vectren Energy Delivery of Indiana, Inc. filed a timely motion to

intervene. Notices of intervention and unopposed timely filed motions to intervene are granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214) (2015).

Information and/or systems connected to the bulk power system involved in this Proposed Transaction may be subject to reliability and cybersecurity standards approved by the Commission pursuant to FPA section 215. Compliance with these standards is mandatory and enforceable regardless of the physical location of the affiliates or investors, information databases, and operating systems. If affiliates, personnel or investors are not authorized for access to such information and/or systems connected to the bulk power system, a public utility is obligated to take the appropriate measures to deny access to this information and/or the equipment/software connected to the bulk power system. The mechanisms that deny access to information, procedures, software, equipment, etc., must comply with all applicable reliability and cybersecurity standards. The Commission, NERC or the relevant regional entity may audit compliance with reliability and cybersecurity standards.

When a controlling interest in a public utility is acquired by another company, whether a domestic company or a foreign company, the Commission's ability to adequately protect public utility customers against inappropriate cross-subsidization may be impaired absent access to the parent company's books and records. Section 301 (c) of the FPA gives the Commission authority to examine the books and records of any person who controls, directly or indirectly, a jurisdictional public utility insofar as the books and records relate to transactions with or the business of such public utility. The approval of the transaction is based on such examination ability.

Order No. 652 requires that sellers with market-based rate authority timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.¹¹ To the extent that a transaction authorized under FPA section 203 results in a change in status, sellers that have market-based rates are advised that they must comply with the requirements of Order No. 652.

After consideration, it is concluded that the Proposed Transaction is consistent with the public interest and is hereby authorized, subject to the following conditions:

- (1) The Proposed Transaction is authorized upon the terms and conditions and for the purposes set forth in the application;

¹¹ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175, order on reh'g, 111 FERC ¶ 61,413 (2005).

- (2) Applicants must inform the Commission of any material change in circumstances that departs from the facts or representations that the Commission relied upon in authorizing the Proposed Transaction within 30 days of the date of the material change in circumstances;
- (3) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determination of cost or any other matter whatsoever now pending or which may come before the Commission;
- (4) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted;
- (5) If the Proposed Transaction results in changes in the status or the upstream ownership of Applicants' affiliated Qualifying Facilities, if any, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 (2015) shall be made;
- (6) The Commission retains authority under sections 203(b) and 309 of the FPA, to issue supplemental orders as appropriate;
- (7) Applicants shall make appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction; and
- (8) Applicants shall notify the Commission within 10 days of the date that the disposition of jurisdictional facilities has been consummated.

This action is taken pursuant to the authority delegated to the Director, Division of Electric Power Regulation – West under 18 C.F.R. § 375.307 (2015). This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order pursuant to 18 C.F.R. § 385.713 (2015).

Steve P. Rodgers, Director
Division of Electric Power
Regulation – West

Document Content(s)

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