

143 FERC ¶ 61,161
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Alcoa Power Generating Inc.
Alcoa Power Marketing LLC

Docket Nos. ER10-3069-003
ER10-3070-003

ORDER CONDITIONALLY ACCEPTING UPDATED MARKET POWER
ANALYSIS

(Issued May 23, 2013)

1. On June 29, 2012, as amended on August 23, 2012, December 4, 2012, and February 14, 2013, Alcoa Power Generating Inc. (APGI) and Alcoa Power Marketing LLC (APM) (collectively, the Alcoa Companies) filed an updated market power analysis for the Central region in compliance with the regional reporting schedule adopted in Order No. 697.¹ In this order, the Commission conditionally accepts the Alcoa Companies' updated market power analysis and concludes that the Alcoa Companies continue to satisfy the Commission's standards for market-based rate authority in the Central region, subject to the compliance filing ordered below.

I. Background

2. The Alcoa Companies are authorized to sell energy, capacity, and ancillary services at market-based rates.² The Alcoa Companies state that they are both wholly-

¹ *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 PP 848-50, *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).

² *See Alcoa Power Marketing, Inc.*, Docket No. ER02-2074-000 (July 31, 2002) (delegated letter order); *Alcoa Inc.*, 88 FERC ¶ 61,045 (1999).

owned subsidiaries of Alcoa Inc. (Alcoa), a producer of aluminum, fabricated aluminum, and alumina.

3. The Alcoa Companies state that APGI generates, purchases, and/or manages electricity for Alcoa's use in its aluminum smelters and other industrial processes, makes limited sales into the wholesale market, and owns transmission facilities. They also state that APM is a wholly-owned subsidiary of APGI and acts as a power marketer, purchasing electric energy (including ancillary services) and reselling it at wholesale.

4. The Alcoa Companies represent that in the Central region they own or control approximately 723 megawatts (MW) of generation, all located in the market operated by the Midwest Independent Transmission System Operator, Inc. (MISO).

II. Notice of Filing

5. Notice of the Alcoa Companies' filings was published in the *Federal Register*,³ with interventions or protests due on or before March 7, 2013. None was filed.

III. Discussion

A. Market-Based Rate Authorization

6. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, horizontal and vertical market power.⁴ As discussed below, we find that the Alcoa Companies satisfy the Commission's standards for market-based rate authority, subject to the compliance filing ordered below.

1. Horizontal Market Power

7. The Commission has adopted two indicative screens for assessing horizontal market power: the pivotal supplier screen and the wholesale market share screen.⁵ The Commission has stated that passage of both screens establishes a rebuttable presumption that the applicant does not possess horizontal market power, while failure of either screen creates a rebuttable presumption that the applicant has horizontal market power.⁶

³ 77 Fed. Reg. 41,178 (2012); 77 Fed. Reg. 53,193 (2012); 77 Fed. Reg. 74,656 (2012); 78 Fed. Reg. 13,049 (2013).

⁴ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

⁵ *Id.* P 62.

⁶ *Id.* PP 33, 62-63.

8. The Alcoa Companies prepared the pivotal supplier and wholesale market share screens for the MISO market, consistent with the requirements of Order No. 697.⁷ The Alcoa Companies state that the Alcoa Companies' uncommitted capacity is less than the total net uncommitted supply in the MISO market, and therefore that the Alcoa Companies pass the pivotal supplier screen. The Alcoa Companies state that the Alcoa Companies' market shares are approximately three percent in all seasons, and therefore that the Alcoa Companies also pass the market share screen.

9. We have reviewed the Alcoa Companies' pivotal supplier screen and wholesale market share screen and determined that the Alcoa Companies pass both screens in the MISO market. Accordingly, we find that the Alcoa Companies satisfy the Commission's requirements for market-based rates regarding horizontal market power in the Central region.

2. Vertical Market Power

10. In cases where a public utility, or any of its affiliates, owns, operates, or controls transmission facilities, the Commission requires that there be a Commission-approved Open Access Transmission Tariff (OATT) on file or that the seller has received waiver of the OATT requirement before granting a seller market-based rate authorization.⁸

11. In this case, as discussed more fully below, the Commission finds that the Alcoa Companies satisfy the Commission's requirements for market-based rates regarding vertical market power, conditioned on APCI filing an OATT or a request for waiver of the requirement to have an OATT on file.

12. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.⁹ The Commission requires a seller to provide a description of its ownership or control of, or affiliation with an entity that owns or controls, intrastate natural gas transportation, storage or distribution facilities; sites for generation capacity development; and physical coal supply sources and ownership of or control over who may access transportation of coal supplies (collectively, inputs to electric power production).¹⁰ The Commission also requires sellers to make an affirmative statement that they have not erected barriers to entry into the relevant market

⁷ *Id.* PP 231-232.

⁸ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

⁹ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 440.

¹⁰ Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

and will not erect barriers to entry into the relevant market.¹¹ The Commission adopted a rebuttable presumption that the ownership or control of, or affiliation with any entity that owns or controls, inputs to electric power production does not allow a seller to raise entry barriers but will allow intervenors to demonstrate otherwise.¹²

13. Regarding other barriers to entry, the Alcoa Companies state that they have no ownership or control of intrastate natural gas transportation or intrastate natural gas storage or distribution facilities or sites for generation capacity development. The Alcoa Companies state that an affiliate of APGI controls approximately 200 million tons of coal reserves in Illinois, Indiana and Kentucky, which are used primarily to serve APGI's generation. The Alcoa Companies state that neither they nor their affiliates control assets for the transportation of coal supplies other than limited rail tracks that are dedicated for private local transportation of coal to the companies' respective generating stations.

14. The Alcoa Companies affirmatively state that they have not erected barriers to entry into the relevant markets and they will not erect barriers to entry into the relevant markets.¹³

15. Regarding the requirement to have an OATT on file or a Commission waiver of the OATT obligation, the Alcoa Companies state that three APGI divisions operate transmission facilities – Tapoco, Yadkin, and Long Sault. They state that Tapoco and Yadkin operate under APGI's OATT and that Long Sault owns limited and discrete facilities for which APGI has been granted a waiver of the requirement to maintain an OATT on file.¹⁴ The Alcoa Companies represent that, except for APGI or the three APGI divisions, neither APM nor any other affiliate owns, operates, or controls transmission facilities in the United States.

16. However, the Alcoa Companies represent that APGI's AGC Division (AGC) and Southern Indiana Gas and Electric Company (Southern Indiana) jointly own a 2.2 mile, 138 kilovolt (kV) line (Tie Line 3). We note that APGI has neither filed an OATT for this line nor requested waiver of the obligation to file an OATT.

¹¹ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

¹² *Id.* P 446.

¹³ We interpret this statement to apply to the Alcoa Companies and their affiliates. *See id.* P 447.

¹⁴ June 29, 2012 Filing at 8-9 (citing *Alcoa Power Generating Inc.*, 135 FERC ¶ 61,272 (2011) and *Alcoa Power Generating Inc. (Long Sault Division)*, 120 FERC ¶ 61,035 (2007)).

17. The Alcoa Companies state that Tie Line 3 runs from a generating unit (Unit 4) jointly-owned by AGC and Southern Indiana¹⁵ to a 138 kV ring bus, and then to Southern Indiana's Culley Substation. They note that additional distribution lines connect the Culley Substation to Alcoa's Warrick plant near Evansville, Indiana and are used to meet the energy needs of Alcoa's smelting and rolling mill operations. They further state that the Culley Substation also interconnects with other generation and transmission facilities that Southern Indiana uses to serve load. The Alcoa Companies explain that, because Tie Line 3 is jointly owned, each party is entitled to up to half of the capacity of the line.¹⁶ They state that any APCI power delivered on Tie Line 3 that is not consumed at the Warrick Plant "is sold by APCI as it shall see fit" and "[a]ny [Southern Indiana] power flowing on Tie Line 3 that is not consumed by the Warrick plant is utilized by [Southern Indiana] as it shall see fit."¹⁷ The Alcoa Companies contend that Tie Line 3 functions as a distribution facility when analyzed under the Commission's seven factor test, most recently applied in *City of Pella, Iowa v. Midwest Indep. Transmission Sys. Operator, Inc.*, 134 FERC ¶ 61,081, *order on reh'g*, 140 FERC ¶ 61,029 (2012).¹⁸

18. We disagree with the Alcoa Companies' contention that Tie Line 3 qualifies as a distribution facility per the seven factor test. First, bilateral flows are possible. Second, not all of the power that flows into Tie Line 3 is consumed at the Warrick plant, as acknowledged by the Alcoa Companies. Third, Tie Line 3 operates at a high voltage. We therefore find that Tie Line 3 is a transmission facility for which APCI is required to file an OATT. Alternatively, APCI may submit a request for waiver of the obligation to file an OATT.

19. Based on the Alcoa Companies' representations and conditioned on APCI filing, within 30 days of the date of this order, an OATT or a request for waiver of the requirement to have an OATT on file, we find that the Alcoa Companies' submittal

¹⁵ The Alcoa Companies explain that each Unit 4 owner has full authority to consume or sell up to half of the output of Unit 4. February 14, 2013 Filing at 2.

¹⁶ February 14, 2013 Filing at 2.

¹⁷ February 14, 2013 Filing at 2.

¹⁸ The seven factors are as follows: (1) local distribution facilities are normally in close proximity to retail customers; (2) local distribution facilities are primarily radial in character; (3) power flows into local distribution systems; it rarely, if ever, flows out; (4) when power enters a local distribution system, it is not reconsigned or transported on to some other market; (5) power entering a local distribution system is consumed in a comparatively restricted geographical area; (6) meters are based at the transmission/local interface to measure flows into the local distribution system; and (7) local distribution systems will be of reduced voltage.

satisfies the Commission's requirements for market-based rates regarding vertical market power.

B. Reporting Requirements

20. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rate authorization must electronically file an Electric Quarterly Report (EQR) with the Commission containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or longer) market-based power sales during the most recent calendar quarter.¹⁹ Public utilities must file EQRs no later than 30 days after the end of the reporting quarter.²⁰

21. The Alcoa Companies must 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.²¹

¹⁹ *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334, *order refining filing requirements*, Order No. 2001-E, 105 FERC ¶ 61,352 (2003), *order on clarification*, Order No. 2001-F, 106 FERC ¶ 61,060 (2004), *order revising filing requirements*, Order No. 2001-G, 120 FERC ¶ 61,270, *order on reh'g and clarification*, Order No. 2001-H, 121 FERC ¶ 61,289 (2007), *order revising filing requirements*, Order No. 2001-I, FERC Stats. & Regs. ¶ 31,282 (2008). Attachments B and C of Order No. 2001 describe the required data sets for contractual and transaction information. Public utilities must submit EQRs to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/docs-filing/eqr.asp>.

²⁰ The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2012). Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in an Electric Quarterly Report, may result in forfeiture of market-based rate authority, requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

²¹ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005); 18 C.F.R. § 35.42 (2012).

22. Additionally, the Alcoa Companies must file updated market power analyses for any region in which they are designated as Category 2 sellers in compliance with the regional reporting schedule adopted in Order No. 697. The Commission also reserves the right to require an updated market power analysis at any time for any region.

The Commission orders:

(A) APCI is hereby directed to submit a compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

(B) The Alcoa Companies' updated market power analysis is hereby conditionally accepted for filing, as discussed in the body of this order.

(C) The Alcoa Companies are hereby directed to file updated market power analyses according to the regional reporting schedule adopted in Order No. 697, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.