160 FERC ¶ 61,089
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, and Robert F. Powelson.

Alcoa Corporation Docket No. EL17-34-000

ORDER GRANTING PETITION FOR DECLARATORY ORDER

(Issued September 20, 2017)

1. On December 22, 2016, Alcoa Corporation (Alcoa) filed a petition for declaratory order under Rule 207(a) of the Commission's Rules of Practice and Procedure and sections 366.3(b)(1), 366.3(d), and 366.4(b)(3) of the Commission's regulations,[1] requesting that the Commission exempt Alcoa from certain of the Commission's regulations under the Public Utility Holding Company Act of 2005 (PUHCA 2005).[2] These regulations, as relevant here, provide for Commission access to the books, accounts, memoranda, and other records of holding companies and associate companies to the extent necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.[3]

2. For the reasons stated below, we will grant Alcoa's petition for declaratory order.

I. Background

3. Alcoa states that it became a holding company on November 1, 2016 as a result of Alcoa Inc. separating into two independent, publicly-traded companies (Separation). Alcoa states that, prior to the Separation, Alcoa Inc. was a vertically-integrated company producing an array of aluminum products, ranging from the raw materials of bauxite and electric energy to finished industrial products such as parts for automobiles and aircraft. The Separation created two companies: Alcoa and Arconic Inc. (Arconic).

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[1] 18 C.F.R. §§ 385.207(a), 366.3(b)(1), 366.3(d), and 366.4(b)(3) (2017).

[2] 42 U.S.C. § 16451 *et seq*. (2012).

[3] *See* 18 C.F.R. pt. 366 (2017).

4. In the United States, Alcoa Inc. had invested directly, or through its direct and indirect subsidiaries, in certain utility assets that primarily serve to supply its refining and smelting operations. These assets were held through Alcoa Inc.'s wholly-owned subsidiary, Alcoa Power Generating Inc. (APGI). As a result of the Separation, APGI became a direct, wholly owned subsidiary of Alcoa.

5. Alcoa states that APGI exists largely to generate, purchase, and/or manage electricity for use in Alcoa's aluminum smelters and other industrial facilities. Alcoa states that APGI serves no traditional public utility role and has no retail customers that are not part of Alcoa (other than APGI's former affiliate Arconic that takes transmission service from APGI pursuant to Open Access Transmission Tariffs (OATTs) on file with the Commission). Alcoa notes that APGI makes certain sales in the wholesale market at market-based rates when available capacity and market conditions permit.[4]

6. Alcoa states that APGI owns transmission assets and provides transmission service pursuant to OATTs on file with the Commission.[5] In several locations, APGI's transmission assets include limited transmission facilities that connect the electric generation facilities constructed to supply industrial power to Alcoa's smelting plants as well as interconnect with neighboring public utilities. Alcoa explains that, generally, in each of APGI's locations, APGI's transmission facilities consist of essentially radial lines between the power source and Alcoa's and Arconic's industrial loads. Alcoa states that its transmission systems were not designed to transmit bulk power to regional markets. However, Alcoa states that the transmission facilities occasionally are used by third parties under grandfathered agreements or pursuant to APGI's OATTs on file with the Commission or for sales of power at market-based rates.[6]

7. Alcoa also states that Alcoa Power Marketing LLC (APM), which is a wholly owned subsidiary of APGI, sells power at wholesale pursuant to a market-based rate on file with the Commission.[7] APM does not own generation or transmission assets.

8. In addition, Alcoa owns and operates smelters in other countries, and in some of those locations Alcoa owns utility facilities that are used to supply power to Alcoa industrial facilities. On May 19, 2006, Alcoa Inc. filed a self-certification with the

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[4] Alcoa Petition at 3-4.

[5] *Id*. at 2.

[6] *Id*. at 5.

[7] *Id*. at 2 (citing *Alcoa Power Generating Inc. & Alcoa Power Mktg. LLC,* 152 FERC ¶ 61,231 (2015)).

Commission claiming foreign utility company (FUCO) status under 18 C.F.R. § 366.7(a) for its foreign utility facilities.[8]

9. Alcoa states that its utility operations are incidental to its principal aluminum manufacturing business. For the same reason, Alcoa states that its predecessor, Alcoa Inc., received an exemption from the Commission's regulations under PUHCA 2005.[9] Due to the recent Separation of Alcoa Inc., Alcoa seeks the same exemption that the Commission granted its predecessor in 2006.

II. <u>Petition</u>

10. In its Petition, Alcoa requests that the Commission declare it exempt from sections 366.2, 366.21, 366.22, 366.23 of the Commission's regulations (Applicable Regulations)[10] pursuant to the exemption provision of section 366.3(b)(1)(i) of the Commission's regulations.[11]

11. Alcoa explains that it is a holding company as a result of its ownership of APGI and the FUCOs, which are public utility companies under PUHCA 2005 and the Commission's regulations. Alcoa's subsidiary utility operations in the United States are limited to one public utility company, APGI.[12] Alcoa states that APGI is a Commission-jurisdictional utility by virtue of its ownership of interstate transmission facilities and sales of power at wholesale.

[8] Alcoa notes that in accordance with section 366.7(c) of the Commission's regulations, it submitted a notice of material change in facts regarding the FUCOs' status as a result of the ownership changing to Alcoa. Alcoa Petition at 2, n.3.

[9] Alcoa Petition at 3 (citing *Alcoa Inc*., 117 FERC ¶ 61,059, at PP 10-15 (2006)).

[10] 18 C.F.R. §§ 366.2, 366.21, 366.22, 366.23 (2017). Section 366.2 provides for Commission access to books and records of a holding company and each of its associate companies. Section 366.21 establishes accounts and records-related requirements for holding companies. Section 366.22 establishes accounts and records-related requirements for holding company service companies. Section 366.23 establishes reporting requirements for holding company centralized service companies.

[11] 18 C.F.R. § 366.3(b)(1)(i) (2017).

[12] Alcoa Petition at 6. Alcoa states that APM as a power marketer does not fall within the definition of electric utility company under section 366.1 of the Commission's regulations and is accordingly not a public utility company. *Id*.

12. Alcoa argues that Commission access to Alcoa's books, accounts, memoranda and other records and reports under PUHCA 2005 is not relevant to the jurisdictional rates of its public utility because there are no captive customers to be protected through the application of the Commission's regulations under PUHCA 2005 to Alcoa. The Commission has previously found that APGI had no captive customers, and Alcoa represents that the circumstances upon which the Commission relied in that decision have not changed by the Separation.[13]

13. Alcoa goes on to state that the Commission's statement in Order No. 667-A that "a utility is considered to have captive customers if it sells electric energy at wholesale or retail under cost-based regulation" does not apply to sales made by APGI to Alcoa.[14] Alcoa explains that the two locations that APGI serves Arconic are at its Long Sault and Tapoco Divisions. APGI does not own or operate any generation at these locations, and makes no wholesale or retail electric or gas sales to Arconic. Arconic is responsible for procuring its power needs from other entities. APGI's Long Sault and Tapoco Divisions simply provide limited transmission services to Arconic pursuant to OATTs on file with the Commission. Neither Alcoa nor Arconic are required to purchase power from APGI and they both have the ability to switch suppliers as they deem appropriate. Consequently, Alcoa argues that it and Arconic are not captive customers of APGI.

14. Additionally, Alcoa represents that APM makes sales of power at market-based rates[15] and does not own jurisdictional assets other than its tariff and power sales contracts.

15. Alcoa argues that neither APGI nor its affiliates have any captive customers that would benefit from the Commission's access to Alcoa's books and records, and there is no potential for cross-subsidization. Moreover, Alcoa notes the Commission already has access to all books, accounts, memoranda and other records concerning APGI's jurisdictional transmission rates pursuant to section 301 of the Federal Power Act

[13] *Id.* at 8.

[14] *Id*. (citing *Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005*, Order No. 667, FERC Stats. & Regs. ¶ 31,197 (2005), *order on reh'g*, Order No. 667-A, FERC Stats. & Regs. ¶ 31,213 at n.35, *order on reh'g*, Order No. 667-B, FERC Stats. & Regs. ¶ 31,224 (2006), *order on reh'g*, Order No. 667-C, 118 FERC ¶ 61,133 (2007)).

[15] *Id*. at 9 (citing *Alcoa Power Mktg., Inc*., Docket No. ER02-2074-000 (July 31, 2002)).

(FPA).[16] Accordingly, Alcoa states there is no reason for the Commission to impose the recordkeeping and other requirements of the Applicable Regulations on Alcoa and its non-power affiliates.

III. Notice of Filing

16. Notice of Alcoa's filing was published in the *Federal Register*, 82 Fed. Reg. 6496 (2017), with interventions or protests due on or before February 2, 2017. None was filed.

IV. Discussion

17. Section 366.3(b)(1)(i) of the Commission's regulations authorizes the Commission to grant exemptions from the Applicable Regulations if it "finds that the books, accounts, memoranda, and other records of any person are not relevant to the jurisdictional rates of a public utility or natural gas company."[17]

18. Based on the representations made by Alcoa, we find, pursuant to section 366.3(b)(1) of the Commission's regulations, that Alcoa's books, accounts, memoranda, and other records are not relevant to the jurisdictional rates of APGI and thus it is appropriate to exempt Alcoa from the requirements of the Applicable Regulations. Alcoa represents that neither APGI nor its affiliates have any captive customers that would benefit from the Commission's access to Alcoa's books and records. Alcoa states that the Commission has previously found that APGI had no captive customers,[18] and Alcoa represents that the circumstances upon which the Commission relied in that decision have not changed by the Separation.

19. We find that it is appropriate to exempt Alcoa from the requirements of the Applicable Regulations, notwithstanding APGI's ownership of jurisdictional transmission facilities. In Order No. 667-B, the Commission stated that there is a strong regulatory interest in requiring a holding company (or a holding company with a subsidiary) that owns jurisdictional transmission facilities or provides jurisdictional transmission service and that does not otherwise qualify for exemption under one of the stated exemptions in 18 C.F.R. § 366.3(b) to apply formally for exemption. The Commission stated that the formal application process gives the Commission the opportunity to determine on the facts and circumstances of each case if an exemption is appropriate. The Commission

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[16] *Id.* at 9 (citing 16 U.S.C. § 825(b) and (c) (2012)).

[17] 18 C.F.R. § 366.3(b)(1)(i) (2017).

[18] Alcoa Petition at 8 (citing *Alcoa Inc*., 88 FERC ¶ 61,045 (1999) (finding that APGI's predecessors in interest do not have captive customers)).

explained that the process gives the Commission the opportunity to determine whether there might be significant potential for transmission service customers to subsidize wholesale sales and, if so, whether the cross-subsidies could be adequately addressed through rate regulation.[19]

20. Alcoa states that APGI's transmission facilities are limited, and, similar to APGI's generation facilities, primarily serve Alcoa's industrial operations. Alcoa also states that APGI has no captive customers or franchised service territory and is not affiliated with any jurisdictional utility that has captive customers.[20] Therefore, there is no significant potential for transmission service customers to subsidize wholesale sales. Finally, we note that APGI's transmission facilities are subject to Commission-jurisdictional OATTs, and under section 301 of the FPA the Commission has access to books, accounts, memoranda and other records concerning APGI's jurisdictional transmission rates.[21]

The Commission orders:

(A) The petition for declaratory order is hereby granted, as discussed in the body of this order.

(B) In accordance with the requirements of the Commission's regulations, Alcoa is required to notify the Commission of any material change in facts that may affect its exemption. Alcoa and its subsidiaries may not rely upon the exemption if they fail to conform with any material facts or representations presented in Alcoa's petition.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

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[19] Order No. 667-B, FERC Stats. & Regs. ¶ 31,224 at P 26.

[20] Alcoa Petition at 6.

[21] 16 U.S.C. § 825 (2012).