

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Aero Energy, LLC

Docket Nos. TX06-2-000,
TX06-2-002,
TX06-2-003,
TX06-2-004

FINAL ORDER DIRECTING INTERCONNECTION
AND TRANSMISSION SERVICE

(Issued March 15, 2007)

1. On October 13, 2006, the Sagebrush Partnership (Sagebrush) and Aero Energy, LLC (Aero Energy) filed briefs in support of their proposals for the rates, terms, and conditions of interconnection and transmission service ordered by the Commission¹ to be provided by Sagebrush to Aero Energy under sections 210 and 211 of the Federal Power Act (FPA).² In response to the Modification Order, Sagebrush filed the Sagebrush Line System Impact Study Report (SIS), which establishes that an additional 120 MW of transmission capacity is available on the Sagebrush Line (Line).³ It also filed an

¹ *Aero Energy, LLC*, 116 FERC ¶ 61,149 (Modification Order).

² 16 U.S.C. §§ 824i, 824j (2000), *as amended by* the Energy Policy Act of 2005, Pub. L. No. 109-58, § 1231, 119 Stat. 594, 955 (2005).

³ Brief of the Sagebrush Partnership Regarding Proposed Rates, Terms and Conditions of Interconnection And Transmission Service To Be Provided to Aero Energy LLC Across The Sagebrush Line at Appendix A (October 13, 2006) (Sagebrush October Brief).

unexecuted Interconnection Agreement and an unexecuted Transmission Service Agreement (TSA) between Sagebrush and Aero Energy.⁴ As described below, this order makes findings regarding those filings. It also makes findings regarding filings by several of the Sagebrush Partners claiming that they have pre-existing, specific plans to expand their generating facilities that will require additional transmission service.

2. While Sagebrush and Aero Energy have reached agreement on many issues, there are still some points of contention. These are: whether the available firm transmission capacity on the Line is needed to serve specific, pre-existing expansion plans of certain of the Sagebrush Partners (Eurus Energy America Corporation (Eurus Energy), Oasis Power Partners, LLC (Oasis) and Caithness Sagebrush 20, LLC (Caithness)); whether Aero Energy is required to have qualifying facility (QF)⁵ status to prevent loss of QF status for the Line; what method of curtailment should be used on the Line; whether Aero Energy should pay for any additional SIS that might have to be conducted to take into account the transmission capacity needed by the claimed expansion plans of the three Sagebrush Partners mentioned above; and whether Aero Energy may own any interconnection facilities that are integral to the Line.

3. This order finds that the SIS shows that firm transmission capacity exists on the Line to accommodate Aero Energy's request for firm transmission service. Additionally, we find that Caithness has shown that it had pre-existing expansion plans and that at some future date, it will require up to 33 MW of firm transmission capacity; however, Oasis and Eurus Energy have not made such a showing. Next, we accept Aero Energy's commitment to obtain QF status so that the QF status of the Sagebrush Partners and the Line are not jeopardized. On the issue of firm transmission service curtailment, we find that firm transmission service to Aero Energy should be curtailed on a pro-rata basis. With respect to who should be responsible for paying the cost of any additional SIS that may be needed, we find that with the exception of Caithness (with its planned expansion of 33 MW), in the future, all those requesting interconnection and transmission service on the Line will be responsible for the cost of performing any additional SIS that is or may be needed. Last, on the issue of ownership of interconnection facilities, we find that Aero Energy is not entitled to own certain facilities, as discussed in the body of this order.

⁴ *Id.* at Appendices B and C.

⁵ These are facilities that qualify for special treatment under the FPA. 16 U.S.C.A. § 824a-3 (West Supp. 2006).

I. Background

A. The Proposed Order

4. The background to this case is described in detail in the Proposed Order.⁶ Briefly, Aero Energy filed an application under sections 210 and 211 requesting that the Commission direct Sagebrush and Eurus Toyowest Management LLC (Eurus Toyowest)⁷ to (1) allow Aero Energy to interconnect with the Line, a 46-mile, 230 kV transmission line that extends from the Tehachapi region of California to Southern California Edison Company's (Edison) Vincent Substation, and (2) provide at least 50 MW and up to 120 MW of firm or non-firm transmission service for Aero Energy to deliver power to Edison's Vincent Substation. The Proposed Order required Sagebrush and Eurus Toyowest to interconnect with and provide transmission service to Aero Energy. The Commission also ordered further procedures to establish the rates, terms and conditions of the service.⁸

5. The parties filed a joint motion for extension of time, which the Commission granted, to allow an SIS to be completed and the interconnection and transmission agreements negotiated. Sagebrush filed the SIS as an appendix to its brief on rates, terms and conditions.⁹ The SIS concluded that a new 120 MW project, the size of Aero Energy's project, can be added on a firm basis to the existing power flows on the Line. Aero Energy claims that the Line is capable of accommodating additional resources beyond 120 MW.¹⁰

⁶ *Aero Energy, LLC*, 115 FERC ¶ 61,128, at P 2 (2006) (Proposed Order).

⁷ Sagebrush is the owner and Eurus Toyowest is the operator of the Line.

⁸ In the Proposed Order, the Commission directed the parties to negotiate the rates, terms and conditions of service and then to file their positions on issues on which they could not agree. Proposed Order at P 2, 16-18, 43.

⁹ Sagebrush Brief at Appendix A.

¹⁰ Sagebrush had previously claimed that there was only 3 MW of spare capacity on the Line, but now, after an SIS, the Line has been shown to have at least 120 MW more capacity. *See* Sagebrush Motion to Intervene at 8.

B. The Modification Order

6. On June 29, 2006, the parties sought clarification of the Commission's Proposed Order. Sagebrush proposed to provide Aero Energy first with non-firm transmission service and next with inferior "firm" transmission service, conditioned on the Sagebrush Partners' senior rights to use transmission capacity identified by the recent SIS.¹¹ Consequently, Aero Energy sought clarification or modification of the Commission's order.

7. In the Modification Order, the Commission clarified that Sagebrush must provide firm transmission to the extent that the SIS shows that firm service is available without impairing service to existing generators. The Modification Order also noted that some of the Sagebrush Partners may have had specific pre-existing generation expansion plans that would require additional firm transmission use of the Line that should take precedence over Aero Energy's use of the Line.¹² The Commission provided that any Sagebrush Partner claiming such plans must demonstrate that it in fact had pre-existing specific plans to expand its generation that would require additional transmission capacity on the Line. We stated that if we found such a demonstration had been made, Aero Energy's firm transmission service would be limited to the period before the expansion, to the extent that such service would impair firm transmission service to that Sagebrush Partner.

C. Claimed Specific Expansion Plans

8. On September 13, 2006, Oasis, Eurus Energy and Caithness responded to the Modification Order and filed descriptions of claimed specific wind generation expansion plans that they argue will require additional firm transmission capacity across the Line. Oasis claims that it intends to expand its generating capacity by 10 MW. Oasis supports its expansion plans by referring to its power purchase agreement (PPA) with San Diego Gas and Electric (SDG&E). It asserts that the PPA provides for SDG&E to purchase 70 MW of power from the Oasis Project, which currently has a nameplate capacity of 60 MW.

¹¹ See note 1.

¹² Modification Order at P 28.

9. Eurus Energy, which owns Sagebrush Partner Alpha Willow, LLC (Alpha Willow) and is affiliated with Sagebrush Partner Mojave 16/17/18 LLC (Mojave), claims to have worked for several years to transfer 3.85 MW of transmission capacity from Alpha Willow for use by Mojave to accommodate generation by the latter's currently unused wind turbines.¹³ This capacity was included in the SIS conducted at Aero Energy's request.

10. The submission by Caithness regarding its pre-existing expansion plans included definite dates and milestones for construction of additional wind generation that it declares will need additional firm transmission capacity. According to its submission, some of the milestones have already been met. Caithness requested confidential treatment for this evidence.¹⁴

III. Notice of Filings and Responsive Pleadings

11. Notice of Oasis' filing providing an affidavit as evidence showing that a portion of the Line is needed for its future expansion plans was published in the *Federal Register*, 71 Fed. Reg. 57,491 (2006), with protests and comments due on October 4, 2006. Notices of Eurus Energy's and Caithness' filings of affidavits as evidence showing that a portion of the Line is needed for their future expansion plans and as a detailed description of specific wind development plans, respectively, was published in the *Federal Register*, 71 Fed. Reg. 57,492 (2006), with protests and comments due on October 4, 2006. Aero Energy filed comments on September 20, 2006 and supplemental comments and an answer to Caithness's answer on October 4, 2006. Caithness filed an answer to Aero Energy's comments on September 26, 2006. With regard to the rates, terms and conditions of the interconnection and transmission service, Aero Energy filed a Reply Brief to Sagebrush's Brief, Sagebrush filed an Affidavit in response to Aero Energy's Reply to Sagebrush's Brief, and Eurus Energy also filed a Response to Aero Energy's Position Statement.

¹³ See Sagebrush Motion to Intervene at 8.

¹⁴ On January 24, 2007, the Commission issued a Protective Order, upon the signing of which the Commission released Caithness's confidential information to Aero Energy and to the attorney for the City of Industry (the City), an intervenor in this proceeding.

12. On January 12, 2007, the Commission issued a Notification and Opportunity to Comment regarding Caithness's materials submitted under seal. Caithness filed a Response to the Notification and Opportunity to Comment on January 19, 2007. The Commission issued its Order Adopting the Protective Order on January 24, 2007. Nondisclosure Certificates were filed by the attorneys for Aero Energy and the City of Industry (the City) on January 29, 2007, and by appropriate personnel at Aero Energy on January 31, 2007 and at the City on February 6, 2007.

13. On February 8, 2007, Aero Energy filed comments on the expansion plan filings. With regard to Oasis and Caithness, Aero Energy urges the Commission to consider how they could have specific and definite expansion plans that exceed their allocation of the original 420 MW, given that the Sagebrush Partners claim they did not know there was any additional capacity until after the SIS was completed for Aero Energy.¹⁵ Aero Energy argues that if there was no known capacity over 420 MW until after the SIS, any specific expansion plans before that would had to have been limited to the Sagebrush Partners' existing allocation of the 420 MW, including the 10% safety margin. Any expansion plan that would exceed such allocation would have required negotiation among the Sagebrush Partners to determine whether there was additional capacity or how to increase capacity and how such capacity (and associated costs) would be allocated among the Sagebrush Partners. Aero Energy claims that, unlike Eurus, both Oasis and Caithness are claiming expansion plans that are well outside their allocations of the original 420 MW without showing that they had negotiated with the other Sagebrush Partners.

14. Aero Energy also argues that the information presented by Oasis does not show that Oasis has a contractual commitment to expand its generation. The evidence only shows that Oasis accounted for the estimated 60 MW project it had built, plus a 10% safety margin required by Sagebrush.¹⁶ As for Caithness, Aero Energy argues that there is no evidence that it had a purchase agreement with Edison prior to the Modification Order.

¹⁵ See Answer of the Sagebrush Partnership and Eurus ToyoWest Management LLC to the Motion for Clarification of Aero Energy LLC at 7-8 ("it has now become apparent to the Sagebrush Partners that the Sagebrush Line can accommodate additional generating capacity").

¹⁶ See Aero Energy Supplemental Comments at 5 (February 7, 2007).

15. The City, an intervenor, requests that the Commission determine the queue priority for each Sagebrush Partner. It also requests that the Commission order an additional SIS to determine how much of the additional transmission currently in the queue may be added on a firm basis.¹⁷

16. On February 23, 2007, Caithness filed an answer to Aero Energy and the City's comments on Caithness's materials submitted in support of its claimed pre-existing expansion plans.

IV. Discussion

A. Procedural matters

17. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2)(2006), prohibits an answer to a protest and/or answer unless otherwise ordered by the decisional authority. We will accept Aero Energy's and Caithness's answers of September 20, 2006 and September 26, 2006, respectively, because they have provided information that assisted us in our decision-making process. We are not persuaded to accept Caithness's answer of February 23, 2007 and will, therefore, reject it.

18. Although we did not direct responses to the Briefs or to any further pleadings, we will accept all except Eurus Energy's Response to Aero Energy's Position Statement because they have provided us with information that assisted us in our decision-making. However, we are not persuaded to accept Eurus's response, and will, therefore, reject it.

B. The claimed need for additional transmission capacity because of specific, pre-existing expansion plans of three Sagebrush Partners

19. We find that only Caithness has demonstrated that its expansion plans satisfy the criteria set forth in the Modification Order. Caithness filed specific expansion plans with definite dates and milestones for construction of wind generation that will need an additional 33 MW of firm transmission capacity on the Line. We find that completion of some of these milestones required considerable effort on its part. This is strong evidence of pre-existing expansion plans and thus, in response to the City's request for queue

¹⁷ See City of Industry's Comments on the Confidential Information Supporting the Expansion Plan Filings of Oasis Power Partners, LLC, Eurus Energy America Corporation, and Caithness Sagebrush 20, LLC (February 8, 2007).

priority, we determine that Caithness has priority in the transmission queue over Aero Energy.

20. On the other hand, Oasis claims to have had concrete plans to expand its project's nameplate capacity by 10 MW (from 60 MW to 70 MW). While Oasis relies on a PPA as evidence of its plans, we do not agree that the PPA is evidence of a 10 MW expansion obligation. Because Oasis has no contractual obligation to sell more than 60 MW by expanding its nameplate capacity, and because it has not, like Caithness, presented evidence of milestones having been met, we find that it has not demonstrated that it had pre-existing, specific expansion plans.

21. Finally, Eurus Energy claims that it had concrete plans to expand its generation, and therefore its use of the Line, by 3.85 MW. Although Eurus Energy may have had specific plans to expand its generation before Aero Energy requested service, we find that Eurus Energy will actually be transferring currently unused transmission capacity from Alpha Willow to Mojave. Thus, the required transmission capacity was accounted for and included in the original allocation (420 MW) of transmission capacity amongst the Sagebrush Partners. This possible expansion will not need additional transmission.

22. We conclude that Caithness has shown that it had pre-existing plans that eventually will require additional transmission capacity. However, for now, Sagebrush must provide Aero Energy with its full request of 120 MW of firm transmission capacity. The SIS shows that at present, approximately 370 MW of power is flowing on the Line into the Vincent Substation. The additional 120 MW required by Aero Energy plus the currently flowing 370 MW would increase the flow on the Line to approximately 490 MW into the Vincent Substation. The Line rating used in the SIS was 494 MW, which is greater than the anticipated power flows on the Line. Based on these findings, we conclude that for now, the Line can accommodate Aero Energy's request for 120 MW of firm transmission capacity.

23. We note that the SIS did not establish the maximum load carrying capability of the Line, but only the fact that it could accommodate Aero Energy's requested additional 120 MW of capacity above the existing load. Consequently, it may be necessary to perform additional studies if there is a need to determine the Line's maximum line rating. The Commission is not suggesting that a full SIS needs to be conducted. A simpler sag tension study/calculation historically used by the industry would provide a conservative line rating for the Line based on conductor type, structure type, temperature, and wind conditions. Additionally, we caution the parties that the results of the SIS demonstrate only the ability to interconnect with the Line, and do not establish deliverability. To determine the deliverability of additional energy, particularly beyond the Vincent Substation to locations within Edison or the CAISO, additional studies may have to be performed.

24. However, if and when Caithness's generating capacity is expanded by the 33 MW that we conclude were pre-existing generation plans, then Aero Energy will have the option to (1) reduce its firm transmission capacity requirement of 120 MW by 29 MW to accommodate Caithness,¹⁸ (2) pay to have a new SIS performed to see if the Line can accommodate both uses,¹⁹ or (3) pay for the necessary transmission upgrades required for it to continue to get its requested firm transmission capacity. In the future, with respect to performing additional studies, we encourage the parties to effectively communicate their needs and plans to one another so that a comprehensive SIS may be performed using the most cost-effective means available.

C. Whether Aero Energy is required to be a QF to keep the QF status of the Line

25. Sagebrush has long sought to maintain QF status for the Line. Sagebrush's proposed TSA includes two provisions that would require Aero Energy to be certified as a QF. Article 2.1.1 would establish as a pre-condition to the TSA's effectiveness that: (1) Aero Energy's facility must be certified as a QF; and (2) the Commission has issued a non-appealable finding that providing transmission service to Aero Energy over the Line would not cause the Line or any of the Sagebrush Partners or their affiliates to lose their QF status. Article 16.2 would require Aero Energy to maintain its QF status for the initial term and any renewal terms of the TSA.

26. Sagebrush argues that these provisions will preserve the existing regulatory status of the Sagebrush Partners and the Line.²⁰ Sagebrush points out that when the Sagebrush Partners were certified as QFs, the Commission included the Line in the QF certification; however, the Commission also stated that "[I]f capacity in the transmission facilities is sold after the transmission facilities are placed in service or should . . . any other entity charge for use of the facilities after the facilities are placed in service, such action may result in a finding of jurisdiction under the Federal Power Act."²¹ Sagebrush states that

¹⁸ We find that a 29 MW reduction by Aero Energy is appropriate since 4 MW would account for the difference between *the sum of the existing and requested* transmission capacity of 490 MW and the transmission line rating of 494 MW used in the SIS.

¹⁹ Payment for any future SIS is discussed in section E, *infra*.

²⁰ Sagebrush Brief at 12.

²¹ *Gamma Mariah, Inc.*, 44 FERC ¶ 61,442, at 62,399, Ordering Paragraph (A) (1988).

the Proposed Order sought to address the concerns of Sagebrush concerning the effect of Aero Energy receiving transmission service over the Line on the Line's QF status; however, Sagebrush says it remains uncertain as to the Line's continued QF status.²²

27. In reply, Aero Energy states that the Proposed Order makes it unnecessary for it to become a QF. However, if the Commission requires Aero Energy to be a QF in order for the Line and the Sagebrush Partners to retain their QF status, Aero Energy will obtain QF status for its project.²³

28. Section 292.101(b)(1) of the Commission's regulations provides that:

(i) A qualifying facility may include transmission lines and other equipment used for interconnection purposes (including transformers and switchyard equipment), if:

(A) Such lines and equipment are used to supply power output to directly and indirectly interconnected electric utilities, and to end users, including thermal hosts, in accordance with state law; or

(B) Such lines are used to transmit supplementary, standby, maintenance and backup power to the qualifying facility, including its thermal host . . . or

(C) If such lines and equipment are used to transmit power from other qualifying facilities or to transmit standby, maintenance, supplementary and backup power to other qualifying facilities.²⁴

29. Thus, a QF may include transmission lines and other equipment used for interconnection if such lines are used: (1) to deliver the QF power; (2) for the QF to receive supplementary, standby, maintenance and backup power; or (3) to transmit power from other QFs or to transmit standby, maintenance, supplementary and backup power to other QFs. Currently, the Sagebrush Line satisfies the requirements for QF status. If Aero Energy does not obtain QF status, Sagebrush's providing transmission service to

²² Sagebrush Brief at 14-15.

²³ Aero Energy Reply at 2.

²⁴ 18 C.F.R. § 292.101(b)(i) (2006).

Aero Energy over the Line will cause loss of the QF status of the Line.²⁵ The reason is that if Aero Energy is not a QF, the Line will be used to transmit power from a non-QF; under section 292.101(b)(1) of the Commission's regulations, quoted above, transmission lines used to transmit non-QF power may not be certified as part of a QF. Because Aero Energy has agreed to obtain QF status if it is necessary for the Line to maintain QF status, we find Articles 2.1.1 and 16.2 of the proposed TSA to be reasonable. We also find that this order meets the requirement of Article 2.1.1 for a non-appealable finding that if Aero Energy becomes a QF, providing transmission service to Aero Energy will not cause any loss of QF status.

D. Method of curtailment

30. Section 205(b)²⁶ requires comparable service, and that policy is a general one that applies under sections 210-211 as well. Under the current method of curtailment in the Sagebrush Partnership Agreement, a group of original Sagebrush partners are subject to curtailment on a *pro rata* basis, while newer Sagebrush Partners are subject to a Last In, First Out (LIFO) system.²⁷ Aero Energy would prefer to be subject to curtailment on a *pro rata* basis, rather than being subject to the LIFO system. According to Aero Energy, the LIFO system only applies to some of the newer Sagebrush Partners (new or LIFO

²⁵ The QF status of the QF owners of the Line would not be affected by the Line's loss of QF status. The Line would, however, no longer be part of those qualifying facilities. Each of the QF owners would need to file applications for recertification or notices of recertification indicating that the Line was no longer part of each qualifying facility.

²⁶ 16 U.S.C. 824d(b) (2000). *See also Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002). Order No. 888 was designed to remedy undue discrimination. The Commission found that this requires that the transmission provider offer comparable service to others.

²⁷ If curtailment is necessary, under this form of curtailment, the last Partner to join the particular group of Sagebrush Partners who subscribe to this method of curtailment would be the first to be curtailed.

Partners), as a group separate from the original Sagebrush Partners, and as a group they decide the order of curtailment amongst them. Even if Aero Energy were to be put on par with the LIFO Partners, it would have to come to some separate agreement with them regarding curtailment rights. Aero Energy notes also that the LIFO provision was put in place at the insistence of lenders to the original Sagebrush Partners to help guarantee the revenue stream for the repayment of debt. The debt has apparently been paid, and thus, Aero Energy argues that there is no need for any “super-firm” service for the original Partners through the LIFO provision.²⁸

31. Sagebrush wants Aero Energy to be subject to LIFO curtailment. It points out that the newer Partners are subject to LIFO. Sagebrush argues that Aero Energy said it wanted the same terms as the Sagebrush Partners and that this includes LIFO for the newer Partners. It also argues that Aero Energy was willing, at one point, to take non-firm service. In other words, Sagebrush argues that Aero Energy should be curtailed before any of the original Partners.²⁹

32. We will require that *pro rata* curtailment be applied to Aero Energy rather than LIFO because that is what comparability of service requires.³⁰ The reasons for some of the Sagebrush Partners having a LIFO arrangement amongst themselves are peculiar to their own circumstances. These conditions do not apply to Aero Energy since it is not a LIFO Partner and thus subject to those circumstances. Also, the fact that Aero Energy was willing to take non-firm service if firm transmission was not available is not a valid reason to subject Aero Energy to a LIFO system. Aero Energy was only willing to take non-firm transmission service if the SIS showed that only non-firm service was available, not because it wanted to join in the LIFO agreement. Finally, not following a LIFO agreement does not give Aero Energy more rights than the Sagebrush Partners

²⁸ Position Statement of Aero Energy, LLC at 3-6.

²⁹ Sagebrush October Brief at 17

³⁰ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,749 (1996), *order on reh’g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997); *order on reh’g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh’g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff’d in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff’d sub nom. New York v. FERC*, 535 U.S. 1 (2002).

themselves. Some partners are subject to LIFO because of a contractual arrangement among themselves, while others are not. We will not involve ourselves in individual arrangements that are agreed to by the Partners.

E. Payment for possible additional system impact studies

33. Aero Energy argues that any Sagebrush Partner with specific pre-existing plans to expand its generation should be responsible for the cost of a new SIS.³¹ Aero Energy points out that it has already paid for an SIS, and argues that it should not have to pay for another because the Sagebrush Partners failed to mention their pre-existing plans until after the initial SIS was completed. Aero Energy also requests that, if the Commission approves a higher priority in the queue for any of the Sagebrush expansion projects than Aero Energy, the Commission should require the Sagebrush Partner in question to have an SIS completed within sixty days so as not to delay Aero Energy's project any longer than necessary.

34. Sagebrush argues that if Aero Energy wants 120 MW of firm transmission, then Aero Energy should pay for any further SIS, because Caithness, Eurus Energy and Oasis need 43 MW for their expansion plans and should take priority.³² Sagebrush argues that the SIS that was done in response to Aero Energy's filing establishes only that the Line can accommodate the additional 120 MW of firm transmission that Aero Energy wants *before* those expansion projects come on line. Sagebrush also argues that it could not predict how the Commission would modify its Proposed Order and thus did not include the expansion projects in the SIS. A study to establish the maximum line rating will cost more and will require an aerial survey, at which Aero Energy previously balked; instead, a rating based on a WECC database was used. Sagebrush argues that if the Commission finds that the Sagebrush Partners' pre-existing plans have priority over Aero Energy, then a new SIS needs to be performed to see if there is any more available transmission capacity on the Line, above the Partners' planned expansion of 43 MW, unless Aero Energy is willing to use non-firm transmission service for that portion of its output.

³¹ Position Statement of Aero Energy, LLC at 7-8; Aero Energy, LLC's Supplemental Comments on Expansion Plans of Oasis, *et al.* at 12-14.

³² According to Sagebrush, there is not enough firm transmission for each entity that seeks it. It says that when all the firm transmission required by the Partners who claim expansion plans is taken into account, Aero Energy will be left with only 77 MW of firm transmission and will have to take non-firm for the balance of its transmission service request of 120 MW.

Sagebrush also argues that paying for this study is Aero Energy's responsibility under FPA section 212(a).³³

35. As discussed above, the SIS shows that for now, the Line will accommodate Aero Energy's additional 120 MW. In the future, if Caithness's 33 MW expansion comes on line, and the current capacity plus Aero Energy's requested 120 MW is still flowing then, Aero Energy will be required to either reduce its firm transmission by 29 MW, pay for upgrades to accommodate the additional 33 MW, or pay for a new SIS to demonstrate that capacity is available to serve Caithness' 33 MW expansion. However, we will not require Aero Energy to pay for a new SIS if one of the Partners other than Caithness wants to bring more generation on line because we have not found them to have any pre-existing plans for expansion. Such future expansion must fall into the queue with all other requests for new service. Section 212(a) says only that the section 211 applicant must pay for those costs that are "properly allocable" to the provision of wholesale transmission services to it as part of the application.³⁴ In other words, the party seeking more transmission (or in Aero Energy's case, wanting to keep getting the full amount of firm transmission after Caithness' expanded generation comes on line, since that expanded generation takes priority) must pay for the SIS (or for upgrades); that cost is "properly allocable" to the entity that seeks more transmission capacity. Therefore, if a Sagebrush Partner seeks a new SIS to determine the availability of capacity for expansion on the Line, that Partner must pay for the SIS.

F. Ownership of any interconnection facilities integral to the Line

36. The parties dispute who should own any interconnection facilities integral to the Line. According to Sagebrush, Aero Energy should not own any such facilities. Although Aero Energy proposes that it have the right to own a looped transmission facility, Sagebrush claims this could affect the reliability of the Line.³⁵ Aero Energy

³³ "...to the extent practicable, costs incurred in providing the wholesale transmission services and properly allocable to the provision of such services, are to be recovered from the [section 211] applicant for such [an] order...." 16 U.S.C. 824k(a) (2000).

³⁴ 16 U.S.C. § 824k (2000).

³⁵ Sagebrush wants an interconnection switching station that is configured as a ring bus to avoid interrupting service to the existing users of the Line if there is a fault on Aero Energy's 220 kV bus work or a failure of Aero Energy's 22kV circuit breakers, and to provide proper isolation of any faults on the Line that might otherwise affect Aero Energy.

recommends that any decision regarding ownership of interconnection facilities be postponed until after Edison has finished an SIS and interconnection study to determine the available firm transmission capacity at and beyond the Vincent Substation.³⁶ However, Aero Energy says that if the Commission does decide the ownership issue now, Aero Energy should be able to own any facilities that may be completely disconnected from the Line upon termination of the TSA and the Interconnection Agreement without impairing the reliability of the Line. Given the unusual circumstances on the Line and the difficulties faced to date, Aero Energy argues that its ownership of such facilities will ensure that it will not be forced to finance improvements to the Line that are not required and that could preclude Aero Energy from easily expanding its operations.

37. We find that Sagebrush has the right to own the interconnection facilities because as the owner of the transmission line in question, it has an interest and responsibility to control the interconnection facilities that goes beyond the interests of an interconnection customer.³⁷ Although Order No. 2003-A does not apply here, it explains that in this situation, reliability concerns dictate that the transmission provider retain ownership of interconnection facilities unless it agrees otherwise.³⁸ That is as true of an interconnection under FPA section 210 as it is of interconnection under section 205. Ownership gives the right and the responsibility to upgrade and maintain such facilities, and ownership by the interconnection customer could cause reliability problems on a transmission line because the interconnection customer is not subject to any reliability rules.³⁹ Additionally, regarding Aero Energy's concern that its ownership of the interconnection facilities is necessary to avoid being forced to pay for improvements not needed, this concern is not ripe for adjudication at this time, and is currently best addressed in the agreement between the parties. Should Aero Energy think that

³⁶ Aero Energy Reply Brief to Sagebrush Brief at 2-4 (October 30, 2006).

³⁷ *Cf. Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. National Association of Regulatory Utility Commissioners v. FERC*, No. 04-1148, 2007 U.S. App. LEXIS 626 (D.C. Cir. Jan. 12, 2007).

³⁸ Order No. 2003-A at PP 27 and 230.

³⁹ *Id.* at PP 221 and 231.

Sagebrush is requesting that it pay for unnecessary improvements, it may bring the matter to our attention.

The Commission orders:

(A) Sagebrush and Eurus Toyowest are hereby directed to interconnect with and provide firm transmission service to Aero Energy under sections 210 and 211, as discussed in the body of this order.

(B) Within 30 days of the issuance of this order, Aero Energy, Sagebrush, and Eurus Toyowest shall file an executed interconnection agreement and TSA with the Commission setting forth terms and conditions of interconnection and transmission service that are consistent with this order.

By the Commission.

(S E A L)

Philis J. Posey,
Acting Secretary.