

132 FERC ¶ 61,234
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Sagebrush, a California Partnership

Docket Nos. EL10-23-001
EL10-23-002

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued September 16, 2010)

1. On March 5, 2010, Sagebrush, a California partnership (Sagebrush) filed a request for clarification and rehearing of the Commission's February 4, 2010 order issued in this proceeding.¹ The February 4 Order addressed Sagebrush's request for acceptance of its proposed open access transmission tariff (OATT). Subsequently, on April 5, 2010, Sagebrush submitted a filing to comply with the February 4 Order.

2. In this order, we grant in part and deny in part the request for clarification and rehearing filed by Sagebrush. In addition, we conditionally accept Sagebrush's revised tariff sheets, effective April 6, 2010, subject to a further compliance filing. Finally, we clarify what constitutes a "request for service" sufficient to revoke waiver of the obligation to file an OATT.

Background

3. The Sagebrush Line is a 46-mile, 230 kV transmission line with a current total capacity of 459 MW. It is used by several generating projects to deliver power to the Vincent substation owned by Southern California Edison Company (SoCal Edison). The Sagebrush partners receive transmission service on the Sagebrush Line through rights granted to the partners under the Second Amended and Restated Sagebrush General Co-Ownership Agreement, which allocates an undivided share of the Sagebrush Line's capacity to each Sagebrush partner in proportion to the size of the project. Sagebrush states that, while the partnership was originally formed by the owners of a number of qualifying facilities (QF) to hold their respective ownership interests in the Sagebrush

¹*Sagebrush, a California Partnership*, 130 FERC ¶ 61,093 (2010) (February 4 Order).

transmission line, several of the Sagebrush members are no longer operating as QFs, but are now exempt wholesale generators (EWG).²

4. On March 16, 2009, the Commission granted market-based rate authorization to several Sagebrush affiliates for wholesale energy transactions. The Commission conditioned the authorization on the requirement that Sagebrush file an OATT if any third party customer requested transmission service on the Sagebrush Line, within 60 days of receiving such a request.³

5. On July 2, 2009, Sagebrush received a third party-request for transmission service. On December 7, 2009, Sagebrush submitted its proposed OATT to the Commission for acceptance. In the February 4 Order, the Commission accepted in part and rejected in part Sagebrush's proposed OATT. The Commission found that Sagebrush had failed to justify several deviations from the *pro forma* OATT, as well as failing to justify the necessity for waiver of certain OATT responsibilities.

6. Specifically, the Commission rejected: (1) the designation of SoCal Edison as the Transmission Operator under the OATT;⁴ (2) the proposal to limit transmission service on the Sagebrush line solely to QFs;⁵ (3) the request for a waiver of the requirement to establish an Open Access Same-Time Information System (OASIS);⁶ (4) the request for a waiver of a global methodology of calculating Available Transfer Capability (ATC) over the Sagebrush line;⁷ (5) the proposal to plan transmission system requirements on a request-by-request basis;⁸ (6) waiver of section 15.3 of the *pro forma* OATT which pertains to initiation of service in the absence of an executed service agreement; (7) waiver of section 19.8 of the *pro forma* OATT which addresses expedited procedures for new facilities; (8) waiver of section 19.9 of the *pro forma* OATT which lists penalties for failure to meet study deadlines;⁹ (9) omission of Schedule 11 of the *pro*

² Transmittal Letter at 2. *See Investigation of Certain Enron-Affiliated QFs, et al.*, 104 FERC ¶ 61,126 (2003).

³ *EDFD – Handsome Lake*, Docket No. ER09-666-000 (Mar. 16, 2009) (unpublished letter order), *order on reh'g*, 127 FERC ¶ 61,243 (2009) (June 2009 Order).

⁴ February 4 Order, 130 FERC ¶ 61,093 at P 34.

⁵ *Id.* P 36-37.

⁶ *Id.* P 40.

⁷ *Id.* P 42.

⁸ *Id.* P 46.

forma OATT;¹⁰ and (10) the proposal for a single set of generation interconnection procedures and a single generation interconnection agreement.¹¹

7. Also in the February 4 Order, the Commission directed Sagebrush to file revised tariff sheets reflecting: (1) a modified definition of “Transmission Operator,” supporting Sagebrush’s original proposal that SoCal Edison would provide this role, or otherwise clarifying how scheduling services for third party customers will be provided;¹² (2) a modified definition of “Eligible Customer” that removes the exclusion of non-QF customers from receiving transmission service from the Sagebrush Line;¹³ (3) tariff language that satisfies the Commission’s OASIS requirements;¹⁴ (4) an Attachment C, describing how Sagebrush will calculate ATC over the Sagebrush Line;¹⁵ (5) a transmission planning process in a manner that satisfies the Commission’s transmission planning requirements;¹⁶ (6) the addition of sections 15.3 – initiation of service in the absence of an executed service agreement, 19.8 – expedited procedures for new facilities, and 19.9 – penalties for failure to meet study deadlines;¹⁷ (7) a FERC annual charge recovery mechanism that is consistent with or superior to that as set forth in the *pro forma* OATT;¹⁸ and (8) the inclusion of both the Small Generator Interconnection Procedures and Agreement (SGIP and SGIA) as well as the Large Generator Interconnection Procedures and Agreement (LGIP and LGIA).¹⁹

⁹ *Id.* P 49.

¹⁰ *Id.* P 50.

¹¹ *Id.* P 52.

¹² *Id.* P 34.

¹³ *Id.* P 37.

¹⁴ *Id.* P 40.

¹⁵ *Id.* P 42.

¹⁶ *Id.* P 46.

¹⁷ *Id.* P 49.

¹⁸ *Id.* P 50.

¹⁹ *Id.* P 52.

8. On March 5, 2010, Sagebrush filed a request for clarification and rehearing. On March 26, 2010, Sagebrush filed a motion to provide additional support. In this motion, Sagebrush requests permission to provide additional “publicly available” information to support its request for rehearing of the requirement to establish an OASIS.²⁰

9. On April 5, 2010, Sagebrush filed its revised OATT to comply with the Commission’s directives in the February 4 Order. On April 9, 2010, Sagebrush filed a supplemental request for clarification regarding implementation of the Commission’s OASIS requirements.

Sagebrush Requests

10. Sagebrush seeks clarification of several issues. First, Sagebrush requests that the Commission confirm that Sagebrush and the Sagebrush Projects will not be subject to additional regulation under the FPA until a third party non-QF begins taking service on the Sagebrush Line. Sagebrush contends that, under *Gamma Mariah, Inc.*²¹ and *Termoelectrica U.S., L.L.C.*,²² since the Commission granted QF status to the Sagebrush Projects that own undivided interests in the Sagebrush Line and included the undivided interests of each QF in the Sagebrush line as part of the individual QFs, it is appropriate to impute these interests in the Sagebrush Line to Sagebrush as the operator of the Sagebrush Line and therefore to subject Sagebrush only to QF regulatory requirements, until a third party non-QF begins taking service on the Sagebrush Line.²³

11. According to Sagebrush, the Commission previously declared that the Sagebrush Projects and their respective portions of the Sagebrush Line are not subject to additional regulation under the Federal Power Act (FPA), as long as the Sagebrush Line is used solely to transmit power from the Sagebrush Projects and provided that the Sagebrush Projects remain QFs or EWGs.²⁴ Sagebrush further asserts that the Commission has previously found that the transfer of an ownership share in the Sagebrush Line to a new QF would not result in additional regulation of the Sagebrush Line or the Sagebrush partners under the FPA.²⁵ Sagebrush interprets these two cases together as resulting in

²⁰ Motion at 1.

²¹ 44 FERC ¶ 61,442 (1988).

²² 102 FERC ¶ 61,019 (2003).

²³ Sagebrush Request at 5-6.

²⁴ *Id.* at 7 (citing *Sagebrush*, 103 FERC ¶ 61,300 (2003)).

²⁵ *Id.* (citing *Eurus ToyoWest II LLC*, 107 FERC ¶ 61,323 (2004)).

the conclusion that Sagebrush and its partners should not be subject to additional regulation under the FPA at this time, or for so long as only third party QFs take service on the Sagebrush Line, notwithstanding the existence of an OATT on file with the Commission.²⁶

12. Second, Sagebrush requests that the Commission clarify which additional regulations will apply to Sagebrush and the Sagebrush Projects once a third party non-QF begins taking service on the Sagebrush Line.²⁷

13. Sagebrush also requests that the Commission confirm that the pre-approvals and waivers it is requesting in its request for rehearing will continue to apply after a third party non-QF begins taking service on the Sagebrush Line.²⁸ Specifically, Sagebrush requests clarification that it will still be eligible for: (1) waiver of Parts 41, 101, and 141 of the Commission's accounting and periodic reporting regulations; (2) waiver of Subparts B and C of Part 35 of the Commission's regulations;²⁹ and (3) blanket approval under Part 34 for all future issuances of securities and assumptions of liability.

14. According to Sagebrush, since the partnership was formed in 1988, it has not been required to keep its books and records in accordance with the Uniform System of Accounts, which Sagebrush avers is an underlying requirement of many of these regulations. Sagebrush also contends that since 2003 the Commission has provided Sagebrush with an exemption that includes each of the regulations listed above. Sagebrush argues that, due to the unique nature of the Sagebrush Line as a radial generator lead line, any third party transmission service provided by Sagebrush is more analogous to EWGs that own interconnecting transmission facilities and share such facilities with third parties than to transmission service over an integrated transmission system.³⁰

15. Finally, Sagebrush requests that the Commission confirm that Sagebrush qualifies for a waiver from the Standards of Conduct for transmission providers pursuant to 18 C.F.R. § 358.1(d) (2010). According to Sagebrush, Sagebrush is being managed by

²⁶ *Id.*

²⁷ *Id.* at 8.

²⁸ *Id.*

²⁹ The waiver would not apply to sections 35.12(a), 35.13(b), 35.15, and 35.16.

³⁰ *Id.* at 8-9.

an affiliate whose employees would be deemed “market function employees” under the Standards of Conduct.³¹

16. Sagebrush contends that the Sagebrush Line is a limited and discrete transmission facility. According to Sagebrush, the Sagebrush Line is not a looped transmission facility, but is a radial line that is used only to deliver power from a group of location-constrained generators to the transmission system owned by Southern California Edison. Sagebrush argues that the Commission previously has found that similar radial facilities are not part of an integrated transmission grid and that therefore Sagebrush is entitled to be exempt from the Standards of Conduct.³²

17. Sagebrush also contends that it is a small public utility for purposes of the exemption from the Standards of Conduct. According to Sagebrush, to qualify as a small public utility, the applicant for waiver must dispose of no more than 4 million MWh annually. Sagebrush argues that, because the Sagebrush Line has a total capacity of 459 MW, the Line has the ability to dispose of no more than 4,020,840 MWh annually. Thus, Sagebrush argues, the Sagebrush Line could only exceed the 4 million MWh threshold if every MW of capacity were used during every hour of a year.³³ Therefore, according to Sagebrush, it qualifies for a waiver from the Standards of Conduct under either the limited and discrete criteria or as a small public utility.

18. In the alternative, Sagebrush requests clarification that it will not be subject to the Standards of Conduct prior to a third party taking service on the Sagebrush Line. Finally, if the Commission denies either clarification, Sagebrush requests that it be granted 120 days to reorganize the management of the Sagebrush Line in order to separate the management personnel from any market function employees.³⁴

19. Sagebrush also requests rehearing on several issues. First, Sagebrush contends that the Commission erred when it required Sagebrush to establish an OASIS. According to Sagebrush, an applicant is eligible for a waiver of the OASIS requirement if it owns, operates, or controls limited and discrete transmission facilities or the applicant is a small public utility. As discussed in its Standards of Conduct argument, Sagebrush argues that

³¹ *Id.* at 10.

³² *Id.* at 11.

³³ *Id.*

³⁴ *Id.* at 12.

it meets both of these criteria. Thus, Sagebrush requests that the Commission grant the requested waiver of the requirement to establish an OASIS.³⁵

20. On March 26, 2010, Sagebrush filed a request for leave to provide additional support for its request for rehearing of the requirement to establish an OASIS. Sagebrush contends that the additional information is all publicly available.³⁶ According to Sagebrush, it realized after filing the rehearing request that it had failed to address why a “regulatory gap” will not exist if the Commission grants the waiver of the OASIS requirement.

21. Sagebrush asserts that it is a Transmission Owner under the NERC regional registry and therefore must comply with all applicable reliability standards. Sagebrush is implementing procedures to ensure compliance with NERC Standard FAC-001-0, Facility Connection Requirements. Thus, Sagebrush contends, even if it is granted the OASIS waiver, Sagebrush must develop a public website with information sufficient to meet each of the requirements under Standard FAC-001-0.³⁷ Sagebrush argues that the publication of all this information, combined with the publication of the Sagebrush OATT, will give third parties the relevant information necessary for submitting a transmission or interconnection service request to Sagebrush.³⁸ Sagebrush further contends that complying with the OASIS requirement will be overly burdensome without any “corollary benefit.”³⁹

22. Second, Sagebrush argues that the Commission also erred in denying Sagebrush’s request for a waiver of the requirement to file Schedule 11, FERC Annual Charges Recovery. According to Sagebrush, under Order No. 641, the Commission determined that it would assess the annual charge to all public utilities that provide transmission service, noting that these public utilities know the MWh of transmission they are providing because they do so pursuant to tariffs and rate schedules on file at the Commission.⁴⁰ Sagebrush contends that it has no rate schedule on file with regard to

³⁵ *Id.* at 13.

³⁶ Motion at 1.

³⁷ *Id.* at 2.

³⁸ *Id.* at 3.

³⁹ *Id.* at 4.

⁴⁰ *Id.* at 14 (citing *Revision of Annual Charges Assessed to Public Utilities*, Order No. 641, 65 Fed. Reg. 65,757 (Nov. 2, 2000), FERC Stats. & Regs., Regulations

transmission provided to the Sagebrush Projects.⁴¹ Furthermore, each Sagebrush Project meters its power at the Sagebrush Project's point of interconnection and provides such information to SoCal Edison, not Sagebrush. Thus, according to Sagebrush, it has neither a contractual right to the metering information nor any metering equipment that would give it the means to measure the MWh that are being transmitted over the Sagebrush Line for the Sagebrush partners.

23. Sagebrush also contends that the Commission did not suggest that Sagebrush would be subject to these annual charges for service provided to Aero Energy. Had the Commission stated that Sagebrush was subject to Schedule 11, Sagebrush states that it would have included a recovery mechanism in the Aero Energy rate schedule agreement. Sagebrush claims that it is entitled to rely on the Commission's prior orders.⁴²

24. Sagebrush also argues that it is discriminatory to subject the Sagebrush partners to Schedule 11 annual charges when other similarly situated radial generator lead lines have not been subject to the same charges. Sagebrush further contends that any third party customers of the Sagebrush Line will be generators interconnecting to the SoCal Edison transmission grid. Therefore, according to Sagebrush, any such customers will be using the Sagebrush Line only as a generator lead line in the same manner as the Sagebrush Projects.⁴³

25. Finally, Sagebrush contends that, contrary to the Commission's finding, it did not receive a completed application that triggered the filing of the OATT because it did not receive "any required deposit" from the applicant. Sagebrush contends that the Commission's conclusion that it received a completed application conflicts with the terms of the *pro forma* OATT. Under section 1.5 of the *pro forma* OATT a completed application is defined as "an Application that satisfies all of the information and other requirements of the Tariff, including any deposit." Sagebrush argues that it would be arbitrary and capricious to hold Sagebrush or other entities receiving requests under section 211 of the FPA to a higher standard than applied to public utilities with an OATT,

Preambles July 1996 – December 2000 ¶ 31,109 (2000), *order on reh'g*, Order No. 641-A, 94 FERC ¶ 61,290 (2001)).

⁴¹ According to Sagebrush, each Sagebrush Project receives transmission service associated with its proportionate interest in the Sagebrush Line and there is no charge or fee for the use of the Sagebrush Line. *Id.* at 14.

⁴² *Id.* at 15.

⁴³ *Id.*

particularly in light of the Commission's statement that the *pro forma* OATT is based on section 2.20 of the Commission's regulations.⁴⁴

Sagebrush Compliance Filing

26. In its compliance filing, Sagebrush modified its OATT definition of "Eligible Customer." Sagebrush includes *pro forma* tariff sections 15.3, 19.8 and 19.9 in its revised OATT. Sagebrush also includes both an LGIP and LGIA, as well as SGIP and SGIA, in its revised OATT. Additionally, Sagebrush includes the *pro forma* Schedule 11 provision regarding FERC's annual charge recovery mechanism, but stated that this was without prejudice to its request for rehearing on this issue. Similarly, Sagebrush also includes OASIS provisions in its revised OATT. Sagebrush again reiterates that the inclusion of the OASIS provisions is without prejudice to its request for rehearing on this issue.

27. Sagebrush also requests temporary waiver of certain directives set forth in the February 4 Order. First, Sagebrush requests temporary waiver of the Commission's directive that it modify the definition of "Transmission Operator" to support Sagebrush's original proposal that SoCal Edison would provide this role, or otherwise clarifying how scheduling services for third party customers will be provided. According to Sagebrush, it has retained SoCal Edison as the defined entity under the term "Transmission Operator" in the Definitions section of its OATT.⁴⁵ Sagebrush contends that it is working with SoCal Edison to develop a detailed explanation of how SoCal Edison will undertake the responsibility of serving as Transmission Operator. However, Sagebrush asserts that it needs additional time to finalize its proposal to designate SoCal Edison as the Transmission Operator of the Sagebrush Line under the OATT.⁴⁶ Sagebrush states that good cause exists for the granting of this waiver, because it must reach an understanding with SoCal Edison.

28. Similarly, Sagebrush requests waiver of the 60-day compliance requirement with respect to the development of its ATC methodology under Attachment C of the OATT. Sagebrush states that it has been in the process of developing its ATC methodology, but has been unable to finalize it in a timely manner along with the other matters associated with its compliance filing.⁴⁷

⁴⁴ *Id.* at 16.

⁴⁵ Section 1.50 of the Sagebrush OATT.

⁴⁶ Sagebrush's April 5 Filing, Transmittal Letter at 2.

⁴⁷ Sagebrush anticipates that it will be able to satisfy each of these tariff requirements for which it requests waiver on or before June 4, 2010.

Discussion

A. Procedural Matters

29. Notice of Sagebrush's compliance filing was published in the *Federal Register*, with interventions and comments due on or before April 26, 2010.⁴⁸ No interventions or comments were filed.

30. As noted previously, on March 26, 2010, Sagebrush filed a motion to provide additional support, requesting permission to provide additional information to support its request for rehearing of the requirement to establish an OASIS. We will grant this unopposed motion because the information provided by Sagebrush aids us in our decision-making. On April 9, 2010, Sagebrush filed a supplemental request for clarification regarding implementation of the Commission's OASIS requirements. As discussed below, we accept Sagebrush's request for waiver of its OASIS obligation. In light of this decision, we will deny Sagebrush's supplemental request for clarification as moot.

B. Request for Clarification and Rehearing

31. As noted above, Sagebrush requests that the Commission confirm that Sagebrush and the Sagebrush Projects will not be subject to additional regulation under the FPA until a third party non-QF begins taking service on the Sagebrush Line. We will grant this request for clarification. Any Sagebrush Project that is currently a QF will continue to be considered a QF, provided it otherwise meets the requirements for QF status, until such time as a non-QF begins taking service on the Sagebrush Line.⁴⁹ Sagebrush and the Sagebrush Projects are, however, subject to any and all regulations normally applicable to QFs.

⁴⁸ 75 Fed. Reg. 19,643 (2010).

⁴⁹ Once a non-QF begins taking service on the Sagebrush line, the line may no longer be included in the QF certifications of its partners. A QF may include transmission lines if they are used for certain purposes, including to sell the QF's power, to receive supplementary, standby, maintenance, and backup power for the QF itself, and to transmit power to or from other QFs. *See* 18 C.F.R. § 292.101(b)(1) (2010). Accordingly, to the extent that the Sagebrush Line is used for other purposes, the line may no longer be included in the QF certifications of the Sagebrush partner/owner QFs. While the transmission line, if used for a purpose other than those specified in 18 C.F.R. § 292.101(b)(1) (2010), will no longer be able to be included in the QF certifications of the Sagebrush partners, the QF status of the partners will not otherwise be affected.

32. We do not agree with Sagebrush's argument that the OATT Sagebrush has filed should not become effective until a third party non-QF takes service pursuant to the OATT. The request by the third party triggered the Sagebrush obligation to file its OATT and the OATT is effective as of the effective date specified in the February 4 Order, i.e. December 8, 2009.⁵⁰ Sagebrush's request that its OATT not take effect until a third party begins taking service ignores the fact that the OATT contains processes and protections that are designed to benefit the third party seeking service. Thus, while we approved amendments to the pro forma OATT so that the Sagebrush OATT provides that certain service to existing partners and to Aero Energy has been grandfathered, requests for any additional service by the existing partners or Aero Energy are governed by the OATT.⁵¹

33. In addition, we will deny Sagebrush's request that the Commission clarify which additional regulations will apply to Sagebrush and the Sagebrush Projects once a third party non-QF begins taking service on the Sagebrush Line. Sagebrush is requesting an advisory opinion. As a general proposition, the Commission does not render advisory opinions.⁵² Our regulations governing motions for rehearing or clarification cannot be treated as an invitation to raise any and all issues that a party may wish to have the Commission expound upon. Moreover, the applicability of many of our laws and regulations often depends upon the specific factual situation.

34. Sagebrush requests confirmation that the pre-approvals and waivers it is requesting in its rehearing request will apply after a non-QF begins taking service on the Sagebrush Line. We will deny the requests for: (1) waiver of Parts 41, 101, and 141 of the Commission's accounting and periodic reporting regulations;⁵³ (2) waiver of Subparts B and C of Part 35 of the Commission's regulations;⁵⁴ and (3) blanket approval under Part 34 for all future issuances of securities and assumptions of liability. Parts 34, 35, 41, 101, and 141 of the Commission's regulations are critical to our statutory obligation under sections 205 and 206 of the FPA to ensure that rates are just and reasonable and not

⁵⁰ February 4 Order, 130 FERC ¶ 61,093 at P 26-27 & Ordering Paragraph B.

⁵¹ *Id.* at P 27.

⁵² *Western Grid Development, LLC*, 130 FERC ¶ 61,056, at P 111 (2010).

⁵³ Part 41 pertains to adjustments of accounts and reports, Part 101 contains the Uniform System of Accounts for public utilities and licensees, and Part 141 describes required forms and reports.

⁵⁴ These subparts require the filing of cost of service information.

unduly discriminatory or preferential.⁵⁵ Moreover, customers subject to cost-based rates have a right to cost data so that they may evaluate the ongoing reasonableness of their rates.

35. Traditionally, the Commission has granted waivers and blanket authorizations only to those entities that are not subject to traditional cost-based regulation.⁵⁶ In 2007, the Commission reexamined its waiver and blanket authorization policy and elected to continue the applicability of the waivers and blanket authorizations to entities with market-based rate authority, finding that requiring compliance with accounting regulations for entities that do not sell at cost-based rates and do not have captive customers would serve little purpose.⁵⁷ We similarly found that blanket authorization should continue for those entities which do not provide service at cost-based rates.⁵⁸

36. In contrast, Sagebrush will be selling at cost-based rates. Thus, granting the requested waivers and blanket authorization would represent a significant departure from the Commission's long-standing practice. Moreover, Sagebrush provides no justification for this request and offers no argument supporting the requested change in Commission policy.

37. Sagebrush also requests that the Commission confirm that Sagebrush qualifies for a waiver of the Standards of Conduct, pursuant to 18 C.F.R. § 358.1(d). Sagebrush further requests rehearing on the issue of whether it should be required to establish an OASIS. In support of these requests, Sagebrush contends that an applicant is eligible for waiver of both the OASIS requirement and the Standards of Conduct if it owns, operates,

⁵⁵ 16 U.S.C. §§ 824d, 824e (2006).

⁵⁶ See, e.g., *PSEG Fossil LLC, PSEG Nuclear LLC, PSEG Energy Resources & Trade LLC*, 119 FERC ¶ 61,245 (2007); *Ameren Energy Generating Co.*, 93 FERC ¶ 61,024, *reh'g denied*, 95 FERC ¶ 61,009 (2001).

⁵⁷ *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, Order No. 697, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055 (2008), *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).

⁵⁸ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 999-1000. See also *Golden Spread Electric Coop, Inc.*, 97 FERC ¶ 61,025, at 61,070 (2001).

or controls limited and discrete transmission facilities or the applicant is a small public utility. Sagebrush argues that it meets these criteria and thus the waivers should be granted.

38. We note that our denial of the requested waiver in the initial order was based upon Sagebrush's failure to support the request. In its initial filing, Sagebrush failed to address the standards applicable to a waiver request and failed to provide any evidence that it met those standards. We further note that we generally will not consider new evidence on rehearing⁵⁹ and we have discretion to reject evidence that was available but not proffered for consideration at the time of the final order.⁶⁰ However, in this limited circumstance, we will permit Sagebrush to provide new evidence on rehearing to support its request for waiver of the OASIS requirement and the Standards of Conduct.⁶¹

39. We will grant these waivers. While Sagebrush itself concedes that the Sagebrush Line has a total capacity of 459 MW and the Sagebrush Line has the ability to dispose of 4,020,840 MWh annually, we find that as a practical matter the Sagebrush line will never operate at 100 percent capacity and 100 percent efficiency over a one year period.⁶² Thus, we find that the Sagebrush Line meets the small public utility criteria established by the Commission and therefore will grant waiver of both the OASIS requirement and the Standards of Conduct.⁶³

40. With regard to the request for the waiver of the Standards of Conduct, Sagebrush requests that, if the waiver is denied, we clarify that it will not be subject to the Standards of Conduct prior to a third party taking service on the Sagebrush Line. Similarly, Sagebrush requests that, if the Standards of Conduct waiver is denied, Sagebrush be

⁵⁹ *Ocean State Power II*, 69 FERC ¶ 61,146, at 61,548 (1994).

⁶⁰ *Arkansas Power & Light Company*, 52 FERC ¶ 61,029, at 61,156 n.14 (1990).

⁶¹ Sagebrush is reminded that in the future it is to provide the evidentiary support for its requests at the initial stages of the proceeding.

⁶² We note that, if the Sagebrush Line was down for maintenance or emergencies for as little as 46 hours during a one year period, the line would dispose of fewer than 4 million MWhs annually.

⁶³ To qualify as a small public utility, the applicant must meet the Small Business Administration definition of a small electric utility—an electric utility that disposes of no more than four million MWh annually. *See Wolverine Power Supply Coop., Inc.*, 127 FERC ¶ 61,159, at P 15 (2009).

granted 120 days to reorganize management of the Sagebrush Line. We deny these requests as moot.

41. We will deny Sagebrush's request for rehearing of our decision to deny the request for waiver of the requirement to file Schedule 11, FERC Annual Charges Recovery. In Order No. 641, we determined that the annual charge should be assessed to all public utilities that provide transmission service. Sagebrush's own argument demonstrates that the information necessary to calculate these charges is obtainable.⁶⁴ Furthermore, the fact that the *pro forma* OATT contains a Schedule 11 puts all public utilities on notice that these charges are required. Finally, we note that Sagebrush has failed to cite a single instance in which we granted a waiver of Schedule 11 for any other company.

42. Finally, we will deny Sagebrush's request for rehearing of our finding regarding what constitutes a completed application. In the February 4 Order, we found that the absence of a deposit did not invalidate a completed application for transmission service. On rehearing, Sagebrush contends that this conclusion conflicts with the terms of the *pro forma* OATT. Sagebrush also argues that it is arbitrary and capricious to hold entities receiving requests under section 211 of the FPA to a different standard than that applied to public utilities operating pursuant to an OATT.

43. We disagree. Sagebrush's argument ignores the distinction between OATT service requested prior to a utility's filing an OATT and service requested pursuant to an OATT that has been accepted by the Commission. Entities providing service under an OATT have a tariff on file with the Commission. Thus, the deposit is a rate which has been reviewed and accepted by the Commission. A transmission owner who has not yet filed or received Commission approval of an OATT has no such rate on file and, therefore, has no authorization to charge a deposit for jurisdictional transmission service. Under those circumstances, we find that it is appropriate for a request for service without a deposit to trigger the obligation to file an OATT with the Commission.

44. In order to avoid any confusion in the future, we will take this opportunity to clarify that a completed application sufficient to revoke waiver of an obligation to file an OATT must meet the **informational** requirements set forth in the *pro forma* OATT. More specifically, a request for transmission service by a non-affiliated third party⁶⁵ will

⁶⁴ As noted previously, Sagebrush avers that each Sagebrush Project meters its power at the Sagebrush Project's point of interconnection and provides such information to SoCal Edison.

⁶⁵ If such a request for transmission service is merely made by an affiliate, the transmission owner may still be able to qualify for a waiver but must petition the Commission, for review on a case-by-case basis, in order to be considered for a waiver

trigger the requirement to file a *pro forma* OATT in those instances where that request meets the criteria for a completed application set forth in either section 17.2, 18.2 or 29.2, depending upon which type of service is requested.⁶⁶ A deposit is not required before an OATT is accepted by the Commission.⁶⁷ However, once the transmission provider's OATT is accepted, the transmission provider may charge the relevant deposit as provided for in that tariff.

C. Compliance Filing

45. Except for Sagebrush's proposed Attachment K, we find Sagebrush's OATT revisions to be in compliance with the February 4 Order. Sagebrush has properly modified its OATT definition of "Eligible Customer" to be open and non-discriminatory. Sagebrush has included *pro forma* tariff sections 15.3, 19.8, and 19.9, and in addition, has included both an LGIP and LGIA, as well as SGIP and SGIA, in its revised OATT. In light of our decision to deny Sagebrush's request for waiver of its obligation to file Schedule 11 provisions as discussed above, and because the Schedule 11 included in Sagebrush's compliance filing mirrors the relevant *pro forma* OATT provisions, we find Sagebrush's inclusion of the *pro forma* Schedule 11 provision regarding FERC's annual charge recovery mechanism to be acceptable as well.⁶⁸

46. As noted above, Sagebrush requests waiver of the 60-day compliance requirement with respect to the revision of the definition of "Transmission Operator" and

renewal. *See, e.g., Crystal Lake Wind, LLC*, 127 FERC ¶ 61,213 (2009); *see also* Crystal Lake Wind LLC's amended application in Docket No. OA10-3-000 (April 5, 2010).

⁶⁶ Section 17.2 applies to requests for firm point-to-point service, while section 18.2 applies to requests for non-firm service, and section 29.2 is applicable to requests for network service.

⁶⁷ While Sagebrush is correct that the Commission has permitted a slightly different standard for a "prior request" necessary before an applicant can come to the Commission seeking an order directing transmission pursuant to section 211, that standard is actually *lower* and also does not require the filing of a deposit. *See, e.g., Aero Energy, LLC*, 120 FERC ¶ 61,188, at P19-24 (2007). *See also PECO Energy Company*, 98 FERC ¶ 61,308, at 61,505 (2002).

⁶⁸ We note that Sagebrush appears to reference the *pro forma* term "Transmission Provider" in Section II of its proposed Schedule 11, rather than using the term "transmission Operator" which it defined in its tariff. As this term is not defined in its OATT, we will require Sagebrush to file revised tariff sheets to correct for this.

development of its ATC methodology under Attachment C of the OATT. In light of the fact that no entity objected to this delay and no prejudice will result from the delay, we find good cause to grant Sagebrush temporary waiver of its requirement to revise its definition of the term “Transmission Operator,” as well as its requirement to file its ATC methodology. We will require that Sagebrush file these proposed OATT provisions within 60 days of the date of issuance of this order.

47. With respect to Sagebrush’s proposed Attachment K, we note the similarities between it and the transmission planning process accepted by the Commission in *Montana Alberta Tie Line LLP*.⁶⁹ However, while Sagebrush has filed a nearly identical Attachment K to the one that the Commission accepted in *MATL*,⁷⁰ Sagebrush has failed to include provisions regarding economic planning studies, one of the nine planning principles enacted through Order No. 890.⁷¹ Specifically, in Order No. 890 the Commission required that transmission providers (in Sagebrush’s case, the Transmitting Utility) perform economic planning studies at the request of its stakeholders, and allow stakeholders the right to request a defined number of high priority studies annually to address congestion and/or the integration of new resources.⁷² Sagebrush has neither explained nor justified this omission. Therefore we will direct Sagebrush to file, within 60 days of the date of the issuance of this order, either a revised Attachment K that includes provisions describing how it will process economic planning studies or a justification for its failure to include the economic planning studies in the Attachment K.

⁶⁹ 126 FERC ¶ 61,192 (2009) (*MATL*). See also, *Montana Alberta Tie Line LLP*, Docket Nos. OA07-74-005 and ER07-1174-005 (July 29, 2010) (unpublished letter order)

⁷⁰ We note that Sagebrush appears to reference the *pro forma* term “Transmission Provider” in sections 1.1, 3.5, 3.7, 4.4, 6.1, 6.2, 6.3, and 11 of its proposed Attachment K. As this term is not defined in its OATT, we will require Sagebrush to file revised tariff sheets to correct for this within 60 days of the issuance of this order. Further, it appears that Sagebrush has included references that are not applicable to its transmission system. For example, in sections 2.1 and 6.2 of its proposed Attachment K, Sagebrush appears to incorrectly refer to the “State of Montana.” Sagebrush is directed to remove these errant references to reduce confusion regarding its OATT.

⁷¹ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 (2007), *order on reh’g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh’g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh’g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on reh’g*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

⁷² Order No. 890 FERC Stats. & Regs. ¶ 31,241 at P 235.

48. Similarly, Sagebrush has omitted provisions regarding how it will allocate costs for economic and reliability projects that result from economic planning studies. As discussed above, Order No. 890 requires the transmission provider or Transmitting Utility to undertake a certain number of high priority economic planning studies at the request of stakeholders. Along with this requirement, the Commission also directed transmission providers and transmitting utilities “to address in their Attachment K processes how costs will be allocated for reliability and economic projects”⁷³ so that stakeholders would have up-front knowledge of how costs would be allocated, which would allow transmission providers and transmitting utilities, customers, and potential investors to make the decision regarding whether or not to build on an informed basis.⁷⁴ Again, Sagebrush has failed to explain or justify this omission. Therefore, we will direct Sagebrush to file, within 60 days of the date of issuance of this order, either a revised Attachment K that addresses the issue of cost allocation for economic and reliability projects as a result of economic planning studies or a justification for omitting this information.

The Commission orders:

(A) The request for clarification and rehearing is hereby granted in part and denied in part, as discussed in the body of this order.

(B) Sagebrush is hereby directed to file revisions to its OATT within 60 days of the date of issuance of this order, as discussed in the body of this order.

(C) Sagebrush’s compliance filing, as modified in accordance with Ordering Paragraph (B) above, is hereby accepted for filing.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁷³ *Id.* P 250.

⁷⁴ *Id.* P 251.