

130 FERC ¶ 61,093
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Sagebrush, a California Partnership

Docket No. EL10-23-000

ORDER ACCEPTING IN PART AND REJECTING IN PART TARIFF FILING AND
DIRECTING COMPLIANCE FILING

(Issued February 4, 2010)

1. In this order, the Commission, acting pursuant to section 205 of the Federal Power Act (FPA),¹ addresses the open access transmission tariff (OATT) filed by Sagebrush, a California partnership (Sagebrush), for the Sagebrush Line. The Commission also grants certain requested waivers, denies other waivers, and directs a compliance filing.

I. Background

2. 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 (QFs) to hold their respective ownership interests in the Sagebrush transmission line, several of the Sagebrush members are no longer operating as QFs, but are now exempt wholesale generators (EWGs).²

3. In 1996, the Commission issued Order No. 888, which required all "public utilities" owning and/or controlling facilities used for transmitting electric energy in

¹ 16 U.S.C. § 824d (2006).

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

interstate commerce to file OATTs.³ This obligation to file an OATT does not apply to transmitting utilities,⁴ except in certain circumstances.

4. As relevant here, section 211 of the FPA⁵ grants the Commission authority to order a transmitting utility to provide transmission services. On February 17, 2006, Aero Energy, LLC (Aero) filed an application in Docket No. TX06-2-000 requesting that the Commission direct Sagebrush to provide transmission service under section 211.⁶ The Commission determined that the Sagebrush Line was a facility used for the interstate transmission of electric energy, and that therefore Sagebrush was a transmitting utility.⁷ The Commission found it to be in the public interest to order Sagebrush to provide transmission service on the Sagebrush Line for Aero,⁸ directed Sagebrush to interconnect with⁹ and provide firm transportation service to Aero, and directed Aero and Sagebrush to file an executed interconnection and transmission service agreement with the Commission.¹⁰

³ *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, *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, 343 U.S. App. D.C. 151 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1, 122 S. Ct. 1012, 152 L. Ed. 2d 47 (2002).

⁴ A transmitting utility is an entity that owns, operates or controls facilities used for the transmission of electricity in interstate commerce. 16 U.S.C. § 796 (2006), as amended by EAct 2005, Pub. L. No. 109-58, § 1291, 119 Stat. 594, 984 (2005).

⁵ 16 U.S.C. § 824j (2006).

⁶ *Aero Energy, LLC*, 115 FERC ¶ 61,128 (2006), *final order*, 118 FERC ¶ 61,204 (2007) (*Aero Energy*).

⁷ *Id.*

⁸ *Id.* P 35.

⁹ Along with its request for an order directing transmission under section 211, Aero sought an order directing Sagebrush to interconnect the Sagebrush Line under section 210 of the FPA. 16 U.S.C. § 824i (2006).

¹⁰ *Aero Energy*, 118 FERC ¶ 61,204.

5. 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.¹¹

6. On July 2, 2009, Sagebrush received a third party-request for transmission service.

II. Sagebrush's Filing

7. On December 7, 2009, Sagebrush submitted its proposed OATT to the Commission for acceptance, stating it was filing "solely pursuant to FPA sections 210, 211, and 212,¹² and does not thereby intend to submit to Commission jurisdiction under FPA sections 205 and 206."¹³

8. Sagebrush asserts that the proposed OATT deviates from the *pro forma* OATT due to the unique nature of the Sagebrush Line. Specifically, Sagebrush explains that the proposed OATT includes non-conforming provisions that: (1) limit the applicability of the OATT with respect to the Sagebrush partners' use of the Sagebrush Line; (2) establish an OATT administrator; (3) require customers of the Sagebrush Line to transmit QF power; and (4) refer scheduling services to the interconnected Transmission Operator, i.e. SoCal Edison.¹⁴ In addition, Sagebrush requests waiver of the *pro forma* OATT provisions related to network service, ancillary services, Open Access Same-Time Information System (OASIS), system planning, establishing a methodology for calculating available transfer capacity (ATC), and various other requirements which Sagebrush contends are not necessary given the radial nature and use of the Sagebrush Line. Finally, Sagebrush proposes to modify or eliminate certain schedules and attachments in the *pro forma* OATT, consistent with the changes made in the body of the proposed OATT.¹⁵

9. Sagebrush states that the functions or duties performed by the transmission provider or operator under the *pro forma* OATT will be referred to other entities that are

¹¹ *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).

¹² 16 U.S.C. § 824k (2006).

¹³ Transmittal Letter at 1.

¹⁴ *Id.* at 4.

¹⁵ *Id.*

better able than the Sagebrush partners to perform such duties.¹⁶ Sagebrush proposes to refer scheduling services to SoCal Edison. According to Sagebrush, all such services today are provided by SoCal Edison and Sagebrush claims it does not have the resources or expertise to provide scheduling services under the OATT.¹⁷ According to Sagebrush, since SoCal Edison performs scheduling services and provides other ancillary services to the Sagebrush partners, Sagebrush partners propose that new customers requesting service under the Sagebrush OATT should be expected to enter into appropriate agreements with SoCal Edison for similar services.

10. Sagebrush states that, under the proposed OATT, existing firm service customers of the Sagebrush Line have the right to take service under the Sagebrush Partnership Agreement rather than the OATT. Similarly, Sagebrush states that Aero will receive service under the interconnection and transmission service agreement previously approved by the Commission. Sagebrush asserts that any future request by a Sagebrush partner for additional firm transmission service for new or expanded generation service will be governed by the OATT.¹⁸

11. According to Sagebrush, because it is an entity comprised of multiple partners, an OATT administrator is necessary for coordination. Sagebrush states that the OATT administrator will be responsible for calculating ATC in the context of completing system impact studies for individual interconnection and transmission service requests, and will coordinate interconnection service, operations, maintenance, and expansion of the Sagebrush Line. However, Sagebrush asserts that Sagebrush itself will remain ultimately responsible for performance of all the transmitting utility's duties under the OATT.¹⁹

12. Sagebrush proposes to amend the definition of Eligible Customer to require that energy transmitted over the Sagebrush Line be produced by a QF,²⁰ such that, as a condition of service, a customer must demonstrate that it satisfies the QF status

¹⁶ *Id.* at 5. For example, Sagebrush notes that all scheduling functions for the Sagebrush partners are currently performed by SoCal Edison.

¹⁷ *Id.*

¹⁸ *Id.* According to Sagebrush, the one exception to this requirement that new requests for service be governed by the OATT is the 33 MW of firm service rights controlled by Terra-Gen Sagebrush 20, LLC which were recognized in *Aero Energy*.

¹⁹ *Id.* at 5-6.

²⁰ *Id.* at 6.

requirement.²¹ Sagebrush views these provisions as necessary to protect the QF status of the Sagebrush partners.²²

13. Sagebrush requests waiver of several of the *pro forma* OATT provisions. Specifically, Sagebrush requests waiver of the requirement to provide network service because, Sagebrush argues, the Sagebrush Line is a single transmission line that is unable to provide such service.²³ Sagebrush also requests waiver of the requirement to establish an OASIS. According to Sagebrush, the requirement to maintain an OASIS would be unduly burdensome in proportion to the limited purpose it would serve for a non-looped facility. However, if the Commission imposes posting requirements, Sagebrush asserts that it will establish a public website for such purposes.²⁴

14. Sagebrush also proposes to eliminate any references in the *pro forma* OATT to a transmission planning process. Sagebrush argues that, because it owns and operates only a single generation tie-in, not an integrated transmission system, an elaborate system planning process is unnecessary. Instead, Sagebrush proposes to consider system use and expansion requirements in response to individual interconnection and transmission service requests.²⁵ Sagebrush also proposes to eliminate the provisions designed to establish a global methodology to assess ATC on the Sagebrush Line. Alternatively, Sagebrush proposes to assess ATC in the system impact studies undertaken in response to individual requests.²⁶

15. Sagebrush has excluded from its proposed OATT all of the *pro forma* OATT references to native load customers, third-party sales, and wholesale requirements customers because Sagebrush claims that it does not make any wholesale or retail power sales. Sagebrush also excludes provisions regarding local furnishing bonds, reciprocity, Sagebrush's use of the Sagebrush Line, redispatch, and stranded cost recovery, as inapplicable.²⁷

²¹ See proposed OATT at sections 16.1, 17.2, and 18.2.

²² Transmittal Letter at 6.

²³ *Id.* at 6-7.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 8.

16. Sagebrush also requests waiver of the following requirements because, according to Sagebrush, they would impose an unreasonable burden on it, given the nature of the Sagebrush Line and its “limited” resources: (1) section 15.3 – initiation of service in the absence of an executed service agreement; (2) section 19.8 – expedited procedures for new facilities; and (3) section 19.9 – penalties for failure to meet study deadlines.²⁸ Sagebrush also proposes to include section 19.10 to allow for clustering of system impact studies in certain circumstances. Sagebrush contends that its clustering option is consistent with clustering proposals previously approved by the Commission.²⁹

17. Sagebrush has included in its OATT a proposed rate for firm and non-firm service.³⁰ Sagebrush claims that this rate is the same rate approved by the Commission in *Aero Energy*.³¹ Sagebrush has not included the *pro forma* discount conditions in Schedules 7 and 8 because Sagebrush will not offer discounts for transmission service.

18. Sagebrush also excludes FERC Annual Charges Recovery from its proposed OATT because, according to Sagebrush, it is not a “public utility” for purposes of Part 382 of the Commission’s regulations, by virtue of the QF status of the Sagebrush Line.

19. Sagebrush also requests waiver of the requirement to provide ancillary services to customers of the Sagebrush Line. Sagebrush contends that it is a private transmission line without a control area or the generation resources necessary to provide ancillary services.³² Thus, Sagebrush proposes to include Schedule 12, which requires customers to self-supply ancillary services required to protect the reliability of the Sagebrush Line. Sagebrush claims that it does not have the generation resources required to provide these services.³³

20. Sagebrush includes as Attachment M to the proposed OATT its Generation Interconnection procedures and a *pro forma* Generation Interconnection Agreement.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* at 8, citing *Aero Energy, LLC*, Docket No. TX06-2-006 (Feb. 12, 2009) (unpublished letter order).

³² *Id.* at 7. The Sagebrush OATT does not include section 3, Schedules 1 through 6 and 9, related definitions or the ancillary services provisions contained in the Attachments of the *pro forma* OATT.

³³ *Id.*

Sagebrush elected not to have separate procedures and agreements for large and small generators because, according to Sagebrush, it has limited transmission facilities and administering multiple sets of procedures and agreements would be burdensome. Instead, Sagebrush proposes a single set of procedures and a single generation interconnection agreement, modeled on the Commission's *pro forma* procedures and agreements for large generating facilities.³⁴

21. Finally, Sagebrush requests waiver of the Commission's notice requirements to permit an effective date of December 8, 2009, one day after the date it filed the proposed OATT with the Commission.³⁵

III. Notice and Interventions

22. Notice of Sagebrush's filing was published in the *Federal Register*, with interventions and protests due on or before January 15, 2010. On January 15, 2010, Oasis Power Partners, LLC, a Sagebrush partner, filed a motion to intervene and comments supporting the Sagebrush filing. Green Borders Geothermal, LLC filed a motion to intervene on the same date. No protests or comments in opposition to the filing were received.

IV. Discussion

A. Procedural Matters

23. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,³⁶ the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

24. As a preliminary matter, we consider the applicability of the FPA to Sagebrush. Sagebrush claims that, as a partnership comprised solely of QFs and EWGs, Sagebrush is not a public utility subject to additional regulation under Parts II and III of the FPA by virtue of ownership and operation of the Sagebrush Line.³⁷ Rather, Sagebrush argues that, because it is only a "transmitting utility" under the FPA, service under the

³⁴ *Id.* at 9. Sagebrush also claims that the interconnection agreement conforms to the agreement between Sagebrush and Aero that was accepted by the Commission in Docket No. TX06-2-000.

³⁵ *Id.*

³⁶ 18 C.F.R. § 385.214 (2009).

³⁷ Transmittal Letter at 4.

Sagebrush OATT should be subject to sections 210 and 211, instead of sections 205 and 206.³⁸

25. Sagebrush's interpretation of the FPA and our regulations is incorrect. The Commission has never determined that a partnership of QFs is itself a QF. Moreover, the Sagebrush partnership is comprised of both QFs and non-QFs and, as such is not itself a QF that could avail itself of the requested exemptions from section 205 of the FPA. Additionally, even if Sagebrush were a QF, although the Public Utility Regulatory Policies Act of 1978 (PURPA)³⁹ created a category of generating facilities known as QFs and authorized the Commission to exempt QFs from certain federal and state laws and regulations,⁴⁰ QFs are public utilities and are exempt from the FPA only to the extent the Commission has granted such exemptions. Prior to the issuance of Order No. 671,⁴¹ in 2006, QFs were exempt from section 205 of the FPA pursuant to regulation. However, in Order No. 671, the Commission amended its regulations so that QFs are no longer exempt from section 205 of the FPA, except in limited circumstances not applicable to the Sagebrush filing, which only pertains to transmission services.⁴² Therefore, Sagebrush is a public utility providing transmission service in interstate commerce, and the Sagebrush Line is a jurisdictional facility. Accordingly, we find that the Sagebrush filing is appropriately a filing under section 205 of the FPA and we will treat it as such. Any future changes to Sagebrush's OATT must be filed pursuant to section 205 of the FPA.

³⁸ *Id.*, citing *Aero Energy*, 115 FERC ¶ 61,128 at P 21 and P 22.

³⁹ 16 U.S.C. § 2601 *et seq.* (2006).

⁴⁰ The Commission regulations governing the exemptions enjoyed by QFs are codified at 18 C.F.R. Part 292, Subpart F (18 C.F.R. § 292.601-.602).

⁴¹ *Revised Regulations Governing Small Power Production and Cogeneration Facilities*, FERC Stats. & Regs. ¶ 31,203 (2006), *order on reh'g*, Order No. 671-A, FERC Stats. & Regs. ¶ 31,219 (2006).

⁴² 18 C.F.R. § 292.601(c)(1) (2009). We note that none of the exemptions, which apply to certain sales of energy or capacity, are applicable to the Sagebrush filing, which involves the provision of transmission service, not sales of energy or capacity.

B. The Sagebrush OATT

26. In Order No. 890,⁴³ the Commission allowed transmission providers to propose non-rate terms and conditions that differ from those in Order No. 890 if those provisions are consistent with or superior to the *pro forma* OATT.⁴⁴ To the extent deviations from the *pro forma* OATT are necessary, we have found that applicant transmission owners must explain and support the deviations sufficiently,⁴⁵ and we will evaluate proposed OATT deviations on a case-by-case basis.⁴⁶ The Commission will only find that deviations from the *pro forma* OATT are just and reasonable if the filing party explains how the deviations in the proposed OATT are consistent with or superior to the *pro forma* OATT, or fully explains how the *pro forma* provisions are not applicable given the filing party's business model.⁴⁷ As discussed below, we will accept in part and reject in part Sagebrush's filing, effective December 8, 2009, as requested, and require Sagebrush to make a compliance filing.

27. We find that the proposed amendments to allow for the grandfathering of transmission service to existing partners pursuant to the Sagebrush Partnership Agreement, as well as the existing transmission service currently provided under the separate interconnection agreement and transmission service agreement with Aero, are acceptable. However, consistent with Sagebrush's commitment,⁴⁸ we require that any

⁴³ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *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).

⁴⁴ Order No. 890 at P 135.

⁴⁵ *Chinook Power Transmission, LLC; Zephyr Power Transmission, LLC*, 126 FERC ¶ 61,134, at P 47 (2009).

⁴⁶ *Montana Alberta Tie Ltd.*, 116 FERC ¶ 61,071, at P 55-60 (2006) (*MATL*).

⁴⁷ *Id.* at 60.

⁴⁸ As noted previously, Sagebrush expressly states that any future request for additional firm transmission service by a Sagebrush partner will be governed by the OATT. See Transmittal Letter at 5.

requests by the Sagebrush partners or Aero for additional firm service must be governed by the OATT.⁴⁹

28. Similarly, we find Sagebrush's proposal to establish an OATT administrator to serve as its agent for purposes of implementing the provisions of the OATT to be acceptable in this situation. This provision will serve to help facilities coordination between Sagebrush's multiple partners, as well as in calculating ATC, completing system impact studies for transmission service requests, and coordinating interconnection service, operations, maintenance, and expansion of the Sagebrush Line.

29. Additionally, we find that the deletion of the provisions for network service and ancillary services is reasonable at this time. Sagebrush asserts that the Sagebrush Line is a single transmission line without a control area or the generation resources necessary to provide network service. Further, Sagebrush states that SoCal Edison has traditionally provided ancillary services to the Sagebrush partners, and new customers will be expected to either: (1) enter into appropriate agreements for similar services as Sagebrush currently does,⁵⁰ or (2) as a new transmission customer of a transmission line within the CAISO's balancing area, elect to become a scheduling coordinator and thereby obtain ancillary services from the CAISO market.⁵¹ Therefore, we agree with Sagebrush that these provisions are not applicable at this time to Sagebrush's OATT in the context of the Sagebrush Line.⁵² This conclusion is consistent with Commission rulings in cases with similarly situated entities.⁵³

30. Similarly, we find Sagebrush's exclusion of all *pro forma* references to Native Load Customers, Third-Party Sales, and wholesale requirements customers from its

⁴⁹ We note that the one exception to this requirement is the 33 MW of firm service rights controlled by Terra-Gen Sagebrush 20, LLC which were recognized in *Aero Energy*.

⁵⁰ Transmittal Letter at 5.

⁵¹ Section 2.1, CAISO Tariff (provision allowing for new transmission customers open and nondiscriminatory access to the CAISO Controlled Grid, including Ancillary Services).

⁵² Similarly, the Commission also accepts as reasonable Sagebrush's exclusion of *pro forma* OATT Schedules 1 through 6 and 9, and the inclusion of Schedule 12, which requires transmission customers to self-supply ancillary services.

⁵³ See *MATL*, 116 FERC ¶ 61,071; *Wyoming Colorado Intertie, LLC*, 127 FERC ¶ 61,125 (2009) (Wyoming Colorado).

proposed OATT to be reasonable because Sagebrush does not have Native Load Customers that would require these provisions, nor does Sagebrush make wholesale or retail power sales. For similar reasons, we also agree with Sagebrush that the exclusion of provisions regarding local furnishing bonds, reciprocity, Sagebrush's use of the Sagebrush Line, redispatch, and stranded cost recovery is acceptable. We agree with Sagebrush that these provisions are inapplicable due to Sagebrush's unique situation and business model. Further, we will accept Sagebrush's exclusion of provisions governing discounted transmission service from Schedules 7 and 8 of the *pro forma* OATT.⁵⁴ Finally, we note that, in Order No. 890, we encouraged transmission providers to cluster studies.⁵⁵ Thus, we will accept Sagebrush's inclusion of clustering provisions⁵⁶ as reasonable because such clustering is consistent with our previously stated policy.

31. Finally, we will grant waiver of the Commission's notice requirements to permit an effective date of December 8, 2009, as requested.

32. Thus, we find that the differences from the *pro forma* OATT discussed above should be allowed. We find that Sagebrush has adequately supported waiver of these provisions and has also demonstrated that the accepted proposed modifications are reasonable.⁵⁷ However, as discussed below, Sagebrush has not justified certain other deviations as consistent with or superior to the *pro forma* OATT, and Sagebrush has failed to justify the necessity for waiver of certain OATT responsibilities.

1. Scheduling Services Provided to Third Party Customers

33. Sagebrush has modified the *pro forma* OATT to include a new definition titled "Transmission Operator,"⁵⁸ which Sagebrush defines as SoCal Edison. Sagebrush states that SoCal Edison currently provides many of the functions or duties typically performed

⁵⁴ However, to the extent that Sagebrush offers discounted transmission service in the future, Sagebrush is directed to file an amended OATT reflecting such discounting provisions.

⁵⁵ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1370-1371.

⁵⁶ Sagebrush has included clustering provisions for System Impact Studies in section 19.10 of the proposed OATT.

⁵⁷ See, e.g., *Wyoming Colorado*, 127 FERC ¶ 61,125.

⁵⁸ See proposed OATT at section 1.50.

by a “Transmission Provider” or “Transmission Operator,” and thus Sagebrush will refer all third party customers to SoCal Edison for scheduling services.⁵⁹

Commission Determination

34. Sagebrush’s proposed OATT states that the “Transmission Operator” is responsible for the scheduling of firm and non-firm transmission service,⁶⁰ as well as determining any necessary transmission curtailment as a result of a system emergency.⁶¹ However, Sagebrush has failed to support its position that these responsibilities will be undertaken by SoCal Edison. While SoCal Edison may in fact perform all such duties for Sagebrush, Sagebrush has not provided evidence that such similar services will be performed by SoCal Edison for third party customers. Thus, based on this record the Commission is unable to determine the justness and reasonableness of Sagebrush defining “Transmission Operator” as SoCal Edison. Therefore, we direct Sagebrush to support its proposal or otherwise clarify how scheduling services for third party customers will be provided, and to revise its OATT accordingly.

2. QF Status of Users of the Sagebrush Line

35. Sagebrush proposes to modify the *pro forma* OATT definition of “Eligible Customer” to require that energy transmitted over the Sagebrush Line is produced by a QF.⁶² Additionally, Sagebrush proposes to modify sections 16.1 (Conditions Required of Transmission Customers), 17.2 (Completed Application for Firm Service), and 18.2 (Completed Application for Non-Firm Service) of the *pro forma* OATT to require that a customer demonstrate that it satisfies the QF status requirement. Sagebrush states that, in *Aero Energy*, the Commission accepted as reasonable a requirement that Aero obtain QF status to preserve the status of the Sagebrush Line.⁶³ Sagebrush requests that the Commission accept a similar requirement in the context of the OATT, so as to preserve the QF status of the Sagebrush Line and to further protect the Sagebrush projects from the possible loss of QF status.

⁵⁹ Transmittal Letter at 5.

⁶⁰ See proposed OATT at sections 13.8 and 14.6.

⁶¹ *Id.* at sections 13.6 and 14.7.

⁶² Specifically, Sagebrush proposes to define “Eligible Customer” as follows: “Electric energy sold or produced by such entity and transmitted over the Line must be electric energy produced by a ‘qualifying facility’ under the Public Utility Regulatory Policies Act of 1978, as amended, and the Commission’s regulations.”

⁶³ Transmittal Letter at 6, citing *Aero Energy*, 118 FERC ¶ 61,204 at P 29.

Commission Determination

36. We reject Sagebrush's proposal to limit transmission service on the Sagebrush Line solely to QFs. This proposal is discriminatory and would act counter to the Commission's goals of promoting open access transmission service. Also, Sagebrush mischaracterizes the Commission's position when it asserts that "the Commission accepted as reasonable a requirement that Aero obtain QF status to preserve the QF status" of the Sagebrush Line. In *Aero Energy*, the Commission agreed with Sagebrush that the transmission service agreement with Aero was reasonable because **Aero itself voluntarily agreed to obtain QF status**. Commission acceptance of the agreement between Sagebrush and Aero is not support for the position that all connecting entities must become QFs prior to interconnection with the Sagebrush Line.

37. Further, as discussed above, Sagebrush is incorrect in stating that its proposal to limit service under its OATT to QFs would protect the Sagebrush Line from forfeiting exemptions from regulation due to QF status.⁶⁴ Because the Commission's regulations do not currently grant exemptions from sections 205 and 206 of the FPA to QFs other than for certain exceptions,⁶⁵ neither Sagebrush nor the Sagebrush Line are exempt from the Commission's purview under section 205 of the FPA. Therefore, we will reject Sagebrush's proposal to limit access to the Sagebrush line solely to QFs, and will direct Sagebrush to submit conforming tariff revisions, within 60 days of the date of issuance of this order.

⁶⁴ 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) (2009). 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) (2009), 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.

⁶⁵ *See* 18 C.F.R. § 292.601(c)(1) (2009). As we noted previously, none of the exemptions are applicable to the Sagebrush filing, which involves the provision of transmission service, not sales of energy or capacity.

3. OASIS Waiver Request

38. Under Order No. 889, public utilities are required to establish an OASIS.⁶⁶ In a series of prior orders, the Commission has enunciated the standards for waiver of or exemption from some or all of the requirements of Order Nos. 888 and 889.⁶⁷ The Commission has determined that waiver of Order No. 889 would be appropriate for a public utility: (1) if the applicant owns, operates, or controls only limited and discrete transmission facilities (rather than an integrated transmission grid); or (2) if the applicant is a small public utility⁶⁸ that owns, operates, or controls an integrated transmission grid, unless it is a member of a tight power pool, or other circumstances are present that indicate that a waiver would not be justified.⁶⁹

39. Sagebrush requests waiver of the requirement to establish an OASIS, given that the Sagebrush Line is, according to Sagebrush, effectively a generator lead line. Sagebrush argues that the requirement to maintain an OASIS would be unduly burdensome in proportion to the limited purpose that it would serve for a non-looped facility.⁷⁰

Commission Determination

40. We will deny Sagebrush's request for waiver of the requirement to establish an OASIS. Sagebrush has neither demonstrated that the Sagebrush Line is limited and discrete nor that Sagebrush is a small public utility. Thus, Sagebrush has failed to address the Order No. 889 factors which we have previously stated we would apply to determine when a waiver is appropriate. Accordingly, we will deny Sagebrush's blanket

⁶⁶ *Open Access Same-Time Information System and Standards of Conduct*, Order No. 889, FERC Stats. & Regs. ¶ 31,035 (1996), *order on reh'g*, Order No. 889-A, FERC Stats. & Regs. ¶ 31,049, *reh'g denied*, Order No. 889-B, 81 FERC ¶ 61,253 (1997).

⁶⁷ *See Sun River Electric Cooperative, Inc.*, 91 FERC ¶ 61,156, at 61,593 n.6 (2000).

⁶⁸ To qualify as a small public utility, the applicant must meet the Small Business Administration definition of a small electric utility (i.e., disposes of no more than four million MWh annually).

⁶⁹ *See Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232, at 61,941 (1996) (*Black Creek*); *see also Midwest Energy, Inc.*, 77 FERC ¶ 61,208, at 61,854 (1996) (describing tight power pool exception); *Langdon Wind, LLC*, 127 FERC ¶ 61,212 (2009) (order granting waiver of OASIS requirements).

⁷⁰ *Id.* at 7.

waiver request and will direct Sagebrush to submit, within 60 days of the date of this order, a revised OATT that satisfies the Commission's OASIS requirements.

4. ATC Methodology Proposal

41. Sagebrush proposes to eliminate provisions to establish a global methodology to assess ATC over the Sagebrush Line. Instead, Sagebrush states that it will assess ATC through the system impact studies undertaken in response to individual interconnection and transmission service requests.⁷¹

Commission Determination

42. We will deny Sagebrush's request for waiver of a global methodology of calculating ATC over the Sagebrush Line. Sagebrush fails to explain how the proposed ATC deviation is consistent with or superior to the *pro forma* OATT. Nor does Sagebrush explain how the *pro forma* provisions pertaining to ATC are not applicable given Sagebrush's business model. Therefore, we will direct Sagebrush file an Attachment C, within 60 days of the date of this order.

5. Transmission Planning Process

43. As noted above, in Order No. 890, the Commission reformed the *pro forma* OATT to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a nondiscriminatory basis. One of the Commission's primary reforms was designed to address the lack of specificity regarding how customers and other stakeholders should be treated in the transmission planning process. To remedy the potential for undue discrimination in planning activities, the Commission directed all transmission providers to develop a transmission planning process that satisfies nine principles and to clearly describe that process in a new Attachment K to their OATT.

44. The nine planning principles each transmission provider was directed by the Commission in Order No. 890 to address in its Attachment K planning process are: (1) coordination; (2) openness; (3) transparency; (4) information exchange; (5) comparability;⁷² (6) dispute resolution; (7) regional participation; (8) economic planning studies; and (9) cost allocation for new projects. The Commission also directed

⁷¹ Transmittal Letter at 7.

⁷² In Order No. 890-A, the Commission clarified that the comparability principle requires each transmission provider to identify, as part of its Attachment K planning process, how it will treat resources on a comparable basis and therefore, how it will determine comparability for purposes of transmission planning. *See* Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 216.

transmission providers to address the recovery of planning-related costs. The Commission explained that it adopted a principles-based reform to allow for flexibility in implementation of and to build on transmission planning efforts and processes already underway in many regions of the country. The Commission also explained, however, that, although Order No. 890 allows for flexibility, each transmission provider has a clear obligation to address each of the nine principles in its transmission planning process, and that all of these principles must be fully addressed in the tariff language filed with the Commission. The Commission emphasized that tariff rules, as supplemented with web-posted business practices when appropriate,⁷³ must be specific and clear to facilitate compliance by transmission providers and place customers on notice of their rights and obligations.

45. In its filing, Sagebrush proposes to eliminate references to a transmission planning process. According to Sagebrush, because it only owns and operates a single generation tie-line as opposed to an integrated transmission system, it should only have to consider system use and expansion requirements in response to individual interconnection and transmission service requests.

Commission Determination

46. We will deny Sagebrush's proposal to plan transmission system requirements on a request-by-request basis. Sagebrush has failed to demonstrate how this proposed alternative is consistent with or superior to the methodology required in Order No. 890.⁷⁴ Further, while Sagebrush appropriately includes in its OATT an obligation to expand if there is insufficient capability on its system to accommodate a request for transmission service,⁷⁵ this obligation imparts on Sagebrush a responsibility to plan its system upgrades and expansions in a manner consistent with the principles enacted through Order No. 890. Also, while some criteria applicable to larger, interconnected transmission systems may not necessarily apply to Sagebrush, Sagebrush is nevertheless required to address how it will comply with the Commission's planning process requirements enacted through Order No. 890, as we have required of other single-line

⁷³ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1649-1655.

⁷⁴ *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).

⁷⁵ See proposed OATT at section 15.4.

entities.⁷⁶ Thus, we will direct Sagebrush to file, within 60 days of the date of this order, a revised OATT that details how Sagebrush will plan its transmission line in a manner that satisfies the Commission's transmission planning requirements.

6. Other Requested Waivers

47. Sagebrush requests waiver from the following requirements in the *pro forma* OATT because, according to Sagebrush, "they would impose an unreasonable burden" on Sagebrush: (1) section 15.3 – initiation of service in the absence of an executed service agreement; (2) section 19.8 – expedited procedures for new facilities; and (3) section 19.9 – penalties for failure to meet study deadlines.⁷⁷

48. In its filing, Sagebrush also excludes Schedule 11 of the *pro forma* OATT, FERC Annual Charges Recovery, because, according to Sagebrush, it is not a "public utility" for purposes of Part 382 of the Commission's regulations by virtue of the QF status of the Sagebrush Line.

Commission Determination

49. We find that Sagebrush has failed to justify its claim that compliance with these *pro forma* requirements (sections 15.3, 19.8, and 19.9) would impose an unreasonable burden on Sagebrush. Absent such evidence, the Commission cannot determine the appropriateness of granting such a waiver. Thus, we will deny Sagebrush's request for waiver of these *pro forma* OATT sections. Accordingly, we will direct Sagebrush to file, within 60 days of the date of this order, a more detailed explanation of why Sagebrush should be exempt from these *pro forma* sections, or a revised OATT that includes these provisions.

50. We will reject Sagebrush's omission of Schedule 11 of the *pro forma* OATT. The Sagebrush Line has not been found to be exempt from the annual charges as enacted by Part 382 of the Commission's regulations. As discussed above, whether the individual members of Sagebrush are QFs is irrelevant; the Sagebrush Line is a jurisdictional facility under the FPA. Therefore, Sagebrush is required to conduct business over the Sagebrush Line in accordance with the rules and regulations set forth by the Commission. Accordingly, we will direct Sagebrush to file, within 60 days of the date of this order, a

⁷⁶ See *MATL*, 126 FERC ¶ 61,192 (2009) (Order accepting MATL's transmission planning provisions). While not identical, Sagebrush is similar to MATL in that it is only capable of providing point-to-point transmission service, and it has no native load customers or captive customers from which it can assess planning related costs.

⁷⁷ Transmittal Letter at 8.

revised OATT that includes a FERC annual charges recovery methodology that is consistent with or superior to that as set forth in the *pro forma* OATT.

7. Sagebrush’s Generation Interconnection Procedures and Generation Interconnection Agreement

51. Sagebrush includes as Attachment M to its proposed OATT a Generation Interconnection Procedures and a *pro forma* Generation Interconnection Agreement. According to Sagebrush, given the limited nature of the transmission facilities involved and the burden of administering multiple sets of procedures and agreements, Sagebrush does not need to have separate agreements for large and small generators. Instead, Sagebrush proposes a single set of generation interconnection procedures and a single generation interconnection agreement.⁷⁸

Commission Determination

52. We will reject Sagebrush’s proposed Attachment M. Sagebrush has failed to provide evidence that maintaining “multiple sets of procedures and agreements” would be unduly burdensome. Because Sagebrush modeled its Attachment M only on the Commission’s *pro forma* Large Generator Interconnection Procedures (LGIP) and Large Generator Interconnection Agreement (LGIA), it discriminates against small generators that could otherwise take service under the Commission’s *pro forma* Small Generator Interconnection Procedures (SGIP) and Small Generator Interconnection Agreement (SGIA). There are numerous differences between the two sets of procedures and agreements, e.g., a small generator’s ability to interconnect via a “fast track” process under the SGIP. Further, there are considerable cost disparities between the SGIP and the LGIP that would render Sagebrush’s Attachment M financially disadvantageous to smaller generators. For these reasons, we will reject Sagebrush’s proposed Attachment M, and will direct Sagebrush to file, within 60 days of the date of this order, a revised OATT that contains both an SGIP and SGIA, as well as both an LGIP and LGIA, that are consistent with or superior to the *pro forma* SGIP, SGIA, LGIP, and LGIA.

C. Waiver of the 60-Day Filing Requirement

53. As we explained in *Black Creek*, the requirement to file an OATT within 60 days of the date the utility receives a request for service is triggered by any written request for a specific transmission service that includes the information required for a completed application under the *pro forma* OATT.⁷⁹ The information requirements for completed

⁷⁸ *Id.* at 9.

⁷⁹ *Black Creek*, 77 FERC ¶ 61,232 at 61,939, n.11.

applications in the *pro forma* OATT are based upon section 2.20 of the Commission's regulations,⁸⁰ which defines the components of a good faith request for transmission service under section 213 of the FPA.⁸¹

54. We have previously stated that we do not intend to mandate strict and complete adherence to each component specified in the regulations. Rather, we found that "an exchange of information with a reasonable degree of specificity and completeness" was sufficient to satisfy the good faith request requirement.⁸²

55. As noted above, we conditioned the market-based rate authority of several Sagebrush affiliates on the requirement that Sagebrush file a proposed OATT within 60 days of receiving a third party request for transmission service. Despite this explicit condition, Sagebrush filed its proposed OATT more than five months after the request was received.

56. Sagebrush requests that we waive the 60-day requirement. Sagebrush claims that, as a partnership comprised of multiple owners, Sagebrush was required to substantially customize the *pro forma* OATT to reflect its unique circumstances.⁸³ In addition, Sagebrush contends that the transmission request has not "been completed by tender of a deposit and the additional information required to process the request; therefore any delay in this filing in no way harmed this potential customer."⁸⁴ Thus, Sagebrush argues that good cause exists for the lateness of the filing.

Commission Determination

57. Because no one claimed to be harmed by the delay, we find that granting a waiver is appropriate. However, we note that providing a deposit is not a requirement for a "request for service" triggering an obligation to file an OATT. Sagebrush is reminded that it must submit required filings on a timely basis, or face possible sanctions by the Commission.

⁸⁰ 18 C.F.R. § 2.20 (2009).

⁸¹ 16 U.S.C. § 824l (2006).

⁸² *Aero Energy, LLC*, 115 FERC ¶ 61,128 at P 27.

⁸³ Transmittal Letter at 3.

⁸⁴ *Id.*

The Commission orders:

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

(B) Sagebrush's proposed OATT is hereby accepted in part and rejected in part, effective December 8, 2009, as discussed in the body of this order.

(C) Sagebrush's requested waivers are granted in part and denied in part, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.