

expansion on the Dixie Valley Line. Terra-Gen also sought waiver of certain requirements of Order Nos. 888,² 889,³ and 890.⁴

3. On January 25, 2010, Green Borders filed a complaint requesting that the Commission direct Terra-Gen to file an open access transmission tariff (OATT) and order Terra-Gen to give Green Borders transmission queue priority over the Dixie Valley Line.

4. In the September 16 Order, the Commission denied Terra-Gen's request for waiver of Order Nos. 888 and 890, and ordered Terra-Gen to file an OATT within 30 days of the date of such order.⁵ However, since the Commission found that the Dixie Valley Line is currently limited and discrete, because it now only provides transmission service from the Dixie Valley Plant, the Commission granted Terra-Gen's request for temporary waiver of the requirements of Order No. 889 "until such time as another interconnection on the Dixie Valley Line becomes operational or the Commission finds revocation appropriate in response to a complaint made to the Commission."⁶ The Commission granted Green Borders' complaint to the extent that we ordered Terra-Gen to file an OATT and LGIA. The Commission denied the complaint to the extent that Green Borders sought

² *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 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

³ *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).

⁴ *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), *order on reh'g*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

⁵ September 16 Order, 132 FERC ¶ 61,215 at P 48. The Commission subsequently extended the deadline to file an OATT to November 15, 2010.

⁶ *Id.* P 55.

priority use of the Dixie Valley Line and ordered Terra-Gen to follow its OATT in a non-discriminatory manner, when such OATT was filed.⁷

5. Additionally, the Commission found that Terra-Gen had established priority for its current use of 60 MW of existing transmission capacity but had not presented sufficient evidence of specific pre-existing plans to establish priority for any planned transmission capacity use beyond its current use of 60 MW on the Dixie Valley Line. In making this finding, the Commission also stated that:

Terra-Gen may have invested in the Dixie Valley Line with the expectation that it would have priority rights to the line's existing and planned capacity for itself and its affiliates, and . . . Terra-Gen believed that it was taking steps to establish those priority rights. Given that this issue appears to have caused some confusion and Terra-Gen may not have been clear as to the showing it was required to make, when it files its OATT, as required by this order, we will allow Terra-Gen the opportunity to submit further evidence of pre-existing development plans that satisfy the criteria established in *Aero Energy and Milford*.⁸

II. Request for Rehearing

6. Green Borders asserts that the Commission made two errors in the September 16 Order. Specifically, Green Borders contends that the Commission erred in granting Terra-Gen waiver of the Open Access Same-Time Information System (OASIS) requirements of Order No. 889 and also erred by granting Terra-Gen a further opportunity to make a demonstration for priority use of planned capacity on the Dixie Valley Line.

7. On October 21, 2010, Petitioners moved for leave to respond and responded to the request for rehearing. On October 26, 2010, Green Borders moved to correct misstatements and reject Petitioners' response to the request for rehearing.

⁷ *Id.* P 4.

⁸ *Id.* P 53 (citing *Aero Energy, LLC*, 115 FERC ¶ 61,128 (2006), *order granting modification*, 116 FERC ¶ 61,149 (2006), *final order directing interconnection and transmission service*, 118 FERC ¶ 61,204 (2007), *order denying reh'g*, 120 FERC ¶ 61,188 (2007) and *Milford Wind Corridor, LLC*, 129 FERC ¶ 61,149 (2009)).

III. Discussion

A. Procedural Matters

8. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2010), prohibits answers to requests for rehearing. We will, therefore, reject Petitioners' and Green Borders' answers.

B. OASIS Waiver

9. Green Borders argues that the Commission acted arbitrarily and capriciously in waiving the OASIS requirements of Order No. 889 because the Commission's requirements for termination of such waiver have been met. Green Borders maintains that its complaint against Terra-Gen in this case, which included an allegation that Green Borders could not get the information necessary to complete its evaluation of its transmission request, is sufficient for the waiver to be terminated. Green Borders asserts that, absent an OASIS, it had no way of knowing the composition of the Terra-Gen queue or where Green Borders stood in relation to any other projects, nor could Green Borders have any idea of the available capacity on the Dixie Valley Line. Green Borders contends that, if Terra-Gen maintained an OASIS, it would have access to the information it needs.⁹ Green Borders argues that the Commission should reverse its decision to waive the OASIS requirement, or provide a thorough explanation for its departure from established policy.¹⁰

10. Green Borders also argues that the OASIS waiver should be terminated because either Terra-Gen's generation facility or the generation facilities of Terra-Gen's affiliates will imminently interconnect with the Dixie Valley Line, thereby triggering a termination of the OASIS waiver. Green Borders states that, if the OASIS waiver is not terminated upon interconnection, it likewise will have no way of knowing if or when other parties interconnect with the Dixie Valley Line. Green Borders asserts that, in light of Terra-Gen's historic actions, as set forth in the complaint in this proceeding, "a determination . . . to grant Terra-Gen an OASIS waiver and allow Terra-Gen to police itself violates principles of fundamental fairness."¹¹

Commission Determination

11. Commission precedent is clear regarding the scope of issues that may be presented on rehearing of a Commission order: the issues must be raised, and

⁹ Request for Rehearing at 12.

¹⁰ *Id.* at 11.

¹¹ *Id.* at 14.

raised in more than a general way, in the initial Commission proceeding.¹² There are two well-known reasons for this rule. First, there must be finality to the Commission's decisions, and repeated delay of proceedings to hear issues that should and could have been raised earlier does not contribute to the orderly processing of the Commission's cases.¹³ Second, Commission rules prohibit the filing of answers to requests for rehearing, and, when an issue or objection is raised for the first time on rehearing, a litigant may be deprived of an opportunity to respond to it.¹⁴

12. Green Borders did not dispute Terra-Gen's request for waiver of the OASIS requirements in either the petition for declaratory order or complaint proceedings.¹⁵ Thus, before the September 16 Order, neither the Commission nor Terra-Gen was on notice that Green Borders had concerns with Terra-Gen's OASIS waiver request. Thus, Green Borders' challenge here regarding the OASIS requirement of Order No. 889 amounts to impermissibly raising a new issue for the first time on rehearing. We will therefore reject its claims regarding waiver of the OASIS requirements and deny rehearing.¹⁶

13. Even if it were proper for us to consider Green Borders' arguments here, we would deny rehearing. The Commission has held that any waivers of Order No. 889, which have already been granted, will remain effective until the

¹² *330 Fund I, L.P.*, 126 FERC ¶ 61,151, at P 56 (2009).

¹³ *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services*, 115 FERC ¶ 61,032, at P 6 (2006).

¹⁴ *Id.* and 18 C.F.R. § 385.713(d) (2010).

¹⁵ Without substantive argument, Green Borders mentions Order No. 889 only in the title to Section D of its answer to the petition in Docket No. EL10-29-000, i.e., "Petitioners Do Not Qualify for a Grant of Waivers of Order Nos. 888, 889, 890 and Applicable Standards of Conduct Requirements," followed by the statement, "Petitioners also request that the Commission grant them 'waiver of Order Nos. 888, 889, and 890, and the Standards of Conduct requirements of Part 358 of the Commission's regulations, unless and until a third party submits a valid request for service on the Transmission Line.'" Green Borders Answer to Petition for Declaratory Order at 19. Green Borders then discussed extensively why it believed Terra-Gen failed to qualify for waiver of the obligation to file an OATT, but did not further mention Order No. 889 or OASIS. Similarly, the complaint Green Borders filed in Docket No. EL10-36-000 sought the Commission's order to direct Terra-Gen *to file an OATT*, not to establish an OASIS.

¹⁶ *Calpine Oneta Power, L.P. v. American Electric Power Serv. Corp.*, 114 FERC ¶ 61,030, at P 7 (2006) and *Baltimore Gas & Electric Co.*, 92 FERC ¶ 61,043, at 61,114 (2000).

Commission takes action in response to a complaint.¹⁷ However, as noted above, Green Borders did not argue that it needed Terra-Gen to establish an OASIS. Finally, we note that the requested waiver of the requirements of Order No. 889 was only granted “until such time as another interconnection on the Dixie Valley Line becomes operational or the Commission finds revocation appropriate in response to a complaint.”¹⁸ Thus, we do not find any basis for Green Borders’ professed concern that “[e]ither Green Borders itself will interconnect with the Dixie Valley Line, or, as Terra-Gen alleges, one of Terra-Gen’s affiliates may eventually interconnect. If the latter occurs, *absent an OASIS*, Green Borders will have no way of knowing that such an interconnection has occurred and that the OASIS waiver should be terminated.”¹⁹

C. November 15, 2010 Limited Showing

14. Green Borders argues that permitting Terra-Gen to submit further evidence of pre-existing development plans is clear error.²⁰ Green Borders maintains that the Commission’s action amounts to ignoring “longstanding practice not to allow litigants never-ending opportunities to prove their case.”²¹ Green Borders argues that there is no evidence that Terra-Gen was confused by the Commission’s orders, and that Terra-Gen should therefore not be allowed the opportunity to present such additional evidence because Terra-Gen has had ample opportunity to do so.²²

Commission Determination

15. Administrative agencies, such as the Commission, have broad discretion to structure their proceedings so as to resolve controversies in the way they consider most appropriate.²³ Allowing Terra-Gen until November 15, 2010 to provide

¹⁷ See *Easton Utilities Comm'n, et al.*, 83 FERC ¶ 61,334, at 62,343 (1998) and *Central Minnesota Municipal Power Agency*, 79 FERC ¶ 61,260, at 62,127 (1997).

¹⁸ September 16 Order, 132 FERC ¶ 61,125 at P 55.

¹⁹ See Request for Rehearing at 13 (emphasis added).

²⁰ Request for Rehearing at 16.

²¹ *Id.*

²² *Id.*

²³ “It is well established that the Commission has broad discretion to structure its proceedings so as to resolve a controversy in the way it considers most appropriate.” *San Diego Gas and Electric Co.*, 131 FERC ¶ 61,144, at P 22 (2010). *Accord, Cal. Indep. Sys. Operator Corp.*, 126 FERC ¶ 61,233, n.39 (2009) and *Ameren Energy Generating Co.*, 108 FERC ¶ 61,081, at P 23 (2004).

additional information demonstrating preexisting development plans for the Dixie Valley Line is an example of such structuring. In addition, as the Commission noted in the September 16 Order, there may have been some confusion with respect to the required showing.²⁴ It was reasonable for the Commission to structure the proceeding as it did because allowing a further opportunity to provide information provided an opportunity to cure any such confusion.²⁵ Green Borders has not shown that it has suffered damages because of the limited time extended to ensure that the Commission has all the information it needs to confirm that Terra-Gen is not entitled to transmission rights beyond those granted in the September 16 Order.

16. Accordingly, we will deny Green Borders' request for rehearing on the basis of our decision to allow a limited showing on or before November 15, 2010.

The Commission orders:

Green Borders' request for rehearing is hereby denied, as set forth in the body of the order.

By the Commission. Chairman Wellinghoff is not participating

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²⁴ September 16 Order, 132 FERC ¶ 61,215 at P 53.

²⁵ In compliance with the September 16 Order, Terra-Gen filed its pre-existing generation development plans, which are currently under review.