

134 FERC ¶ 61,027
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Terra-Gen Dixie Valley, LLC

Docket No. ER11-2127-000

ORDER REJECTING TARIFF FILING AND GRANTING WAIVER

(Issued January 14, 2011)

1. In this order, the Commission, acting pursuant to section 205 of the Federal Power Act (FPA),¹ considers an open access transmission tariff (Terra-Gen OATT) filed by Terra-Gen Dixie Valley, LLC (Terra-Gen) on November 15, 2010. As discussed below, the Commission will reject the Terra-Gen OATT and direct a further compliance filing. In addition, we will grant Terra-Gen's request for waiver of the Open Access Same-Time Information System (OASIS)² and Standards of Conduct requirements.³

I. Background

2. Terra-Gen is the owner of a 60 MW geothermal plant, located in northern Nevada (Dixie Valley Plant), and an associated 214 mile, 230 kV radial transmission line (Dixie Valley Line) (collectively, Dixie Valley QF). The Dixie Valley Line is used for the delivery of energy from the Dixie Valley Plant to Southern California Edison (SoCal Edison) pursuant to two power purchase agreements and for emergency service from SoCal Edison to the Dixie Valley Plant. The Dixie Valley QF is certified as a single qualifying facility (QF) under the Commission's regulations.⁴

¹ 16 U.S.C. § 824d (2006).

² *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).

³ See Part 358 of the Commission's regulations, 18 C.F.R. Part 358 (2010).

⁴ *Oxbow Geothermal Corp.*, 43 FERC ¶ 61,286 (1988) (adding the Dixie Valley Line to the previously QF-certified plant and recertifying the plant).

3. On December 24, 2009, Terra-Gen, TGP Dixie Development Company, LLC, and New York Canyon, LLC (collectively, Petitioners) filed a petition for declaratory order seeking confirmation that they have priority firm transmission rights to 60 MW of existing transmission capacity and 300 MW of planned transmission capacity expansion on the Dixie Valley Line. On January 25, 2010, Green Borders Geothermal, LLC (Green Borders) filed a complaint requesting that the Commission direct Terra-Gen to file an OATT and order Terra-Gen to give Green Borders transmission queue priority over the Dixie Valley Line. In response to Petitioners' declaratory order request and Green Borders' complaint, on September 16, 2010, the Commission issued an order that, among other things,⁵ required Terra-Gen to file an OATT within thirty days of the date of that order.⁶

4. Terra-Gen asserts that its proposed OATT deviates from the *pro forma* OATT due to the design of the Dixie Valley Line. Thus, Terra-Gen explains that its OATT has non-conforming provisions that include limiting the applicability of the OATT with regard to the transmission capacity granted to Terra-Gen and its affiliates, providing alternative creditworthiness requirements for transmission customers, clarifying how Terra-Gen will cluster transmission system impact studies, and modifying the large generator interconnection procedures. In addition, Terra-Gen requests waiver of the *pro forma* OATT provisions related to the provision of network transmission service, ancillary services, OASIS and Standards of Conduct, and various other *pro forma* provisions that Terra-Gen asserts are not necessary given the nature and use of the Dixie Valley Line. Finally, Terra-Gen proposes to modify or eliminate certain schedules and attachments of the *pro forma* OATT, consistent with the changes in the body of the Terra-Gen OATT.

II. Notice and Responsive Pleadings

5. Notice of Terra-Gen's filing was published in the *Federal Register*, 75 Fed. Reg. 74,033 (2010), and subsequently modified on November 22, 2010, with interventions and protests due on or before December 13, 2010. On November 17, 2010, Green Borders moved to intervene. On December 13, 2010, Green Borders filed a protest requesting the Commission to reject the proposed deviations from the *pro forma*

⁵ The Commission also allowed Terra-Gen to submit additional evidence of pre-existing development plans for planned transmission capacity to support its request for priority. On November 15, 2010, Terra-Gen submitted that evidence, in Docket Nos. EL10-29-002 and EL10-36-002. We will address the issue of priority in a later order in those dockets.

⁶ See *Terra-Gen Dixie Valley, LLC*, 132 FERC ¶ 61,215 (2010) (September 16 Order), *order on reh'g*, 134 FERC ¶ 61,021 (2011). The Commission subsequently extended the deadline to file an OATT to November 15, 2010.

tariff, or in the alternative, order a hearing.⁷ Green Borders also moved to consolidate this proceeding with the compliance filing in the September 16 Order. On December 28, 2010, Terra-Gen filed an answer to the protest and motion for consolidation.⁸ On January 7, 2011, Green Borders filed a motion for leave to answer and an answer.⁹ On January 11, 2011, Terra-Gen filed a motion for leave to answer and answer.¹⁰

III. Discussion

A. Procedural Matters

6. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the timely, unopposed motion to intervene serves to make the entity that filed it party to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers because they have provided information that assisted us in our decision-making process.

7. We will deny Green Borders' motion to consolidate this proceeding with the compliance filing ordered in the September 16 Order. Such consolidation would result in an unnecessarily complicated proceeding.¹¹

B. Substantive Matters

8. In Order No. 890, the Commission allowed transmission providers to propose non-rate terms and conditions that differ from those in Order No. 890 if those provisions

⁷ Green Borders December 13, 2010 Protest (Protest).

⁸ Terra-Gen December 28, 2010 Answer (Answer).

⁹ Green Borders asserts that Terra-Gen has inconsistently represented the thermal rating of the Dixie Valley Line, affecting Terra-Gen's arguments under the exemption and clustering provisions. Given our disposition of the Terra-Gen OATT in this order, we need not address these concerns here. Green Borders January 7, 2011 Answer at 3-5 (January 7 Answer).

¹⁰ Terra-Gen January 11, 2011 Answer (January 11 Answer).

¹¹ See, e.g., *San Diego Gas and Electric Co. v. Sellers of Energy and Ancillary Services*, 131 FERC ¶ 61,144, at P 22 (2010) (observing that "[i]t 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.").

are consistent with or superior to the *pro forma* OATT.¹² 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,¹³ and we will evaluate proposed OATT deviations on a case-by-case basis.¹⁴ 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.¹⁵

9. Multiple provisions of the Terra-Gen OATT deviate from the *pro forma* OATT. Based on our review, Terra-Gen has not demonstrated that the Terra-Gen OATT is consistent with or superior to the *pro forma* OATT.¹⁶ As a result, the Commission will reject the Terra-Gen OATT as not complying with our directive in the September 16 Order. In doing so, we will provide guidance on certain aspects of Terra-Gen's proposals and require Terra-Gen to file a complying OATT consistent with this order within 60 days of the date of the issuance of this order.

1. Network Service

a. Terra-Gen Tariff Provisions

10. Terra-Gen states that it cannot provide network service on the Dixie Valley Line because the line is radial and interconnects with only one other transmission system, and Terra-Gen therefore requests waiver of the *pro forma* provisions of the OATT that provide for network service.¹⁷ Terra-Gen also explains that it is not a balancing authority

¹² *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 135, *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 clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

¹³ *Chinook Power Transmission, LLC*, 126 FERC ¶ 61,134, at P 47, *order on reh'g*, 128 FERC ¶ 61,074 (2009).

¹⁴ *Montana Alberta Tie Ltd.*, 116 FERC ¶ 61,071, at P 55-60 (2006) (*MATL*).

¹⁵ *Id.* P 60.

¹⁶ Terra-Gen has proposed certain changes to the *pro forma* OATT with neither an explanation for the change nor any mention of the change in the instant filing.

¹⁷ See OATT Sections 1.3, 1.17, 1.18, 1.21, 1.22, 1.23, 1.24, 1.25, 1.26, 1.29, 1.33, 1.44, 1.47, 1.49, 1.51, 1.53, 13.5, 13.6, 14.7, 15.4, Part III and Attachments F, G, H, I, and M, including the large generator interconnection procedures (LGIP) definitions

(continued...)

and therefore has not included Transmission Loading Relief procedures in the Terra-Gen OATT.¹⁸ Terra-Gen also proposes to exclude provisions governing parallel flows (Attachment J) from the Terra-Gen OATT, contending the provisions are inapplicable.

11. Terra-Gen also proposes to remove references to native load customers and wholesale requirements customers from the Terra-Gen OATT.¹⁹ Terra-Gen contends that these provisions are unnecessary because it sells all of its generation output to SoCal Edison and, as a consequence, will not have native load and wholesale requirements customers. Terra-Gen also states that the Dixie Valley Line does not serve any native load. Terra-Gen asserts that the Commission has granted waiver of these OATT provisions to other transmission providers that do not have such customers.²⁰ Similarly, Terra-Gen proposes to exclude references to local furnishing bonds, redispatch, and stranded cost recovery claiming that these provisions also do not apply to the Dixie Valley Line.²¹

b. Commission Determination

12. The Commission finds that Terra-Gen may remove provisions for providing network service. We agree that Terra-Gen, as the owner of the Dixie Valley Line, is not a balancing authority, and that Terra-Gen does not own the generation or transmission resources necessary to provide network service under an OATT. Accordingly, Terra-Gen may seek waiver of these provisions.²² We also find that Terra-Gen may exclude references to local furnishing bonds, redispatch, and stranded cost recovery, because these provisions do not apply to service that Terra-Gen will provide on the Dixie Valley Line.

referring to Network Resources and Network Resource Interconnection Service, sections 3.2, 3.2.2, 4.2 and Appendix I and the large generator interconnection agreement (LGIA) definitions referring to Network Resource and Network Resource Interconnection Service and section 4.1.

¹⁸ See, e.g., *pro forma* OATT sections 13.6 and 14.7.

¹⁹ Terra-Gen November 15, 2010 Transmittal Letter at 7 (Transmittal Letter).

²⁰ *Id.* (citing *Sagebrush, a California Partnership*, 130 FERC ¶ 61,093 (*Sagebrush I*), order on reh'g, 132 FERC ¶ 61,234 (2010) (*Sagebrush II*) (collectively, *Sagebrush*) and *Wyoming Colorado Intertie, LLC*, 127 FERC ¶ 61,125 (2009) (*Wyoming Colorado*)).

²¹ *Id.*

²² See, e.g., *Wyoming Colorado*, 127 FERC ¶ 61,125.

2. Clustering**a. Terra-Gen Tariff Provisions**

13. Terra-Gen proposes provisions to address clustering of transmission system impact studies. Specifically, Terra-Gen proposes to include a new section 19.10 that provides procedures on how Terra-Gen may cluster studies.²³

b. Protest

14. Green Borders requests that Terra-Gen process Green Borders' request for transmission service before holding a new open season, allowing Green Borders the option to proceed serially or opt in to the queue cluster, consistent with the approach to clustering used in the California Independent System Operator (CAISO) tariff.²⁴ Green Borders states that it does not object to Terra-Gen processing future requests for transmission service via clustering, as long as mechanisms are in place to protect against Terra-Gen discriminating in favor of its affiliate generators. Green Borders is especially concerned that, where Terra-Gen owns generation and is not subject to the Standards of Conduct, the clustering process may provide an incentive to discriminate.²⁵

15. Specifically, Green Borders notes that it has requested 210 MW of capacity, which Green Borders asserts could be accommodated on the existing Dixie Valley Line with no additional upgrades. If handled serially, Green Borders maintains it would not have to pay for upgrades, but Terra-Gen's affiliates, which may request an additional 300 MW of service, may have to pay for upgrades. If Terra-Gen's projects are clustered with Terra-Gen's existing service, then Green Borders would be subject to upgrade costs.²⁶

c. Answer

16. Terra-Gen answers that the Commission encourages clustering and grants transmission providers significant discretion in clustering. Terra-Gen contends that its proposed provisions are patterned after those previously accepted by the Commission,²⁷

²³ Transmittal Letter at 10 (citing *Progress Energy, Inc.*, 125 FERC ¶ 61,006 (2008)).

²⁴ Protest at 19 (citing *Cal. Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,292 (2008), *reh'g denied*, 127 FERC ¶ 61,177 (2009)).

²⁵ *Id.* at 20 (citing Order No. 890 FERC Stats. & Regs. ¶ 31,241 at P 1371).

²⁶ *Id.* at 20-21.

²⁷ Answer at 15 (citing *Progress Energy, Inc.*, 125 FERC ¶ 61,006 at P 5).

and reflect the size of the Dixie Valley Line. Terra-Gen contends that Green Borders' concern that Terra-Gen would manipulate the clustering provisions in an unduly discriminatory manner is unfounded.²⁸ Additionally, Terra-Gen asserts that there is not currently 210 MW of unsubscribed capacity on the Dixie Valley Line and that it anticipates that upgrades would be required to accommodate a new request by Green Borders for 210 MW of service.²⁹

d. Commission Determination

17. In Order No. 890, the Commission encouraged transmission providers to cluster studies.³⁰ Terra-Gen's proposal to include clustering provisions in the Terra-Gen OATT is consistent with our previously-stated policy. While we provide guidance to Terra-Gen on its clustering provisions, we will deny Green Borders' request for a priority position in the transmission service queue. In accordance with section 2.1 of the *pro forma* tariff, all transmission service requests made within the first 60 days of the effective date of the Terra-Gen OATT will be treated as being submitted simultaneously and subject to a lottery system, if necessary, for assigning available transfer capability (ATC).

3. Service Exempted from the OATT

a. Terra-Gen Tariff Provisions

18. Terra-Gen proposes to add a section to the Terra-Gen OATT exempting the transmission service for which the Commission has granted it priority rights from all of the rates, terms, and conditions of the Terra-Gen OATT.³¹ Terra-Gen states that it has pre-existing rights to 60 MW on the Dixie Valley Line and has asked the Commission to confirm that it and its affiliates have pre-existing rights to an additional 300 MW of capacity, and requests that those rights not be subject to the Terra-Gen OATT. Terra-Gen adds that any other additional requests for capacity, including requests by itself or its affiliates, will be governed by the Terra-Gen OATT.³²

²⁸ *Id.* at 15-16.

²⁹ *Id.* at 15.

³⁰ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1370-71.

³¹ Transmittal Letter at 9-10. *See also* section 2.1a, Grandfathering of Existing Users, of the proposed Terra-Gen OATT.

³² *Id.* at 10.

b. Protest

19. Green Borders argues that any transmission service, except for the existing 60 MW associated with the Dixie Valley Plant, should be subject to the Terra-Gen OATT.³³ Green Borders argues that Terra-Gen has not established its entitlement to priority for the use of an additional 300 MW of generation, and that it should be subject to the terms and conditions of the Terra-Gen OATT. Green Borders distinguishes Terra-Gen's situation from *Sagebrush*, in which Sagebrush was already providing service to its affiliates pursuant to an existing agreement. Green Borders states that Terra-Gen has no such existing transmission service agreements and does not provide service to any entity other than the Dixie Valley Plant.

c. Answer

20. Terra-Gen contends that the Commission has yet to rule on priority rights of the additional 300 MW. To the extent priority is established, Terra-Gen states that Commission policy provides for exemption of the 300 MW from the Terra-Gen OATT.³⁴

d. Commission Determination

21. The Commission finds that Terra-Gen has not justified its proposed exemption from the Terra-Gen OATT, because Terra-Gen has not explained how it would implement transmission service for either the 60 MW of existing capacity, or for the 300 MW of future expansion capacity on the Dixie Valley Line.³⁵ In *Sagebrush*, there were existing contracts between the Sagebrush partners and an interconnection agreement with Aero Energy, LLC, which explained how transmission service was to be provided, even though those services were exempted from the Sagebrush OATT.³⁶ Here, Terra-Gen does not explain by what rules or agreements its existing or future priority transmission service will be governed, including how the service will be accounted for in the ATC calculations for both firm and non-firm point-to-point service, so we cannot evaluate its

³³ Protest at 14-17.

³⁴ Answer at 13-14.

³⁵ As noted above, the Commission has not yet acted on Terra-Gen's compliance filing in which Terra-Gen was allowed to submit additional support for its requested priority for capacity above its current use of 60 MW.

³⁶ *Sagebrush I*, 130 FERC ¶ 61,093 at P 27.

proposed exclusion. Thus, we cannot find section 2.1a of the Terra-Gen OATT consistent with or superior to the *pro forma* tariff.³⁷

4. Sections 17.7, 4.4.1, and 4.4.2

a. Terra-Gen Tariff Provisions

22. Terra-Gen proposes to eliminate section 17.7 (Extensions for Commencement of Service) from the Terra-Gen OATT. Section 17.7 allows transmission customers to delay commencement of their transmission service by paying an annual reservation fee. Terra-Gen argues that this provision would allow generation developers to tie-up capacity on the Dixie Valley Line.³⁸

23. For similar reasons, Terra-Gen proposes to modify sections of the *pro forma* LGIP (Attachment M) in order to reduce the amount by which a transmission customer can reduce its requested electrical output before completion of an interconnection system impact study (section 4.4.1), and to increase the amount by which a transmission customer can reduce its proposed generation output before execution of an interconnection facility study agreement (section 4.4.2).

b. Protest

24. Green Borders argues that eliminating section 17.7 of the *pro forma* OATT from the Terra-Gen OATT will reduce the usefulness of the Dixie Valley Line to developers other than Terra-Gen, and thus is unjust, unreasonable, and unduly discriminatory.³⁹

³⁷ In Order No. 888, the Commission concluded that public utilities must take service under the same tariff used by others. Therefore, Terra-Gen must demonstrate why it should not be held to this provision. *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,700 (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).

³⁸ Transmittal Letter at 11 (citing *Sagebrush I*, 130 FERC ¶ 61,093).

³⁹ Protest at 28.

c. Answer

25. Terra-Gen argues that, because the Dixie Valley Line has a limited base of potential customers, any decisions to delay commencement of service will have a disproportionate impact on Terra-Gen's ability to address requests for transmission service, as well as on those who require the transmission service to operate their businesses. Terra-Gen argues that retention of section 17.7 will permit customers to hold capacity to the detriment of others who would use it.⁴⁰

d. Commission Determination

26. Terra-Gen has not justified its request to eliminate section 17.7 from the Terra-Gen OATT. Terra-Gen does not explain how eliminating section 17.7 is consistent with or superior to including it in the Terra-Gen OATT. Terra-Gen also does not explain why section 17.7 does not fit its business model.

27. Similarly, we are not persuaded that the modifications proposed for sections 4.4.1 and 4.4.2 of the LGIP are reasonable. In Order No. 2003,⁴¹ the Commission noted that transmission providers may seek a deviation in the *pro forma* LGIP due to regional reliability requirements or because the deviation is consistent with, or superior to, the *pro forma* LGIP.⁴² Terra-Gen neither asserts any regional reliability requirements nor shows that its proposed modifications are consistent with or superior to the *pro forma* LGIP provisions.

5. Sections 13.8 and 14.6 (Scheduling of Transmission Service)

a. Terra-Gen Tariff Provisions

28. Terra-Gen proposes to modify the *pro forma* scheduling provisions set forth in sections 13.8 (Scheduling of Firm Point-To-Point Transmission Service) and 14.6

⁴⁰ Answer at 20.

⁴¹ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003) (Order No. 2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 (2004) (Order No. 2003-A), *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004) (Order No. 2003-B), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277, 374 U.S. App. D.C. 406 (D.C. Cir. 2007)).

⁴² Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 826.

(Scheduling of Non-Firm Point-To-Point Transmission Service).⁴³ Terra-Gen states that, because the Dixie Valley Line has a limited number of customers and is used as a generator tie-line, the *pro forma* scheduling provisions would impose unnecessary and excessive costs.

b. Protest

29. Green Borders opposes Terra-Gen's revisions to sections 13.8 and 14.6 to require transmission customers to provide a rolling 30-calendar day in advance hourly schedule, as opposed to day-ahead scheduling provided for in the *pro forma* OATT. Green Borders contends that a 30-day requirement is unfair because the output of its generating facilities is significantly affected by weather conditions, which are difficult to predict 30 days in advance. Moreover, Green Borders maintains that the 30-day requirement is even less necessary if SoCal Edison will perform scheduling services for Terra-Gen.⁴⁴

c. Answer

30. Terra-Gen responds that sections 13.8 and 14.6 of the *pro forma* tariff would impose significant costs on customers on the Dixie Valley Line without commensurate benefits. Terra-Gen argues that those provisions are better suited for scheduling on a large transmission system with many diverse customers, rather than on a single transmission line delivering the output of QFs to a single interconnection.⁴⁵

d. Commission Determination

31. Terra-Gen has not justified its proposed revisions to the scheduling provisions in sections 13.8 and 14.6. As discussed below, with regard to the provision of ancillary services, Terra-Gen proposes not to provide scheduling, system control, and load dispatch service.⁴⁶ However, Terra-Gen's proposed modifications to sections 13.8 and 14.6 appear to require the transmission customer to schedule through Terra-Gen. Until Terra-Gen fully explains how scheduling services are to be provided, we are unable to consider whether the proposed modifications are consistent with or superior to the *pro forma* OATT.

⁴³ Transmittal Letter at 12.

⁴⁴ Protest at 30.

⁴⁵ Answer at 21.

⁴⁶ Scheduling, system control, and load dispatch service are included in the *pro forma* tariff as Service Schedule 1.

6. Use of “Transmitting Utility”

a. Terra-Gen Tariff Provisions

32. Terra-Gen also proposes to replace the *pro forma* term “Transmission Provider” with the term “Transmitting Utility.” Terra-Gen explains that, as a qualifying facility, it is “exempt from regulation as the owner and operator of the transmission line and related facilities under most of the sections of the FPA,”⁴⁷ and that the Commission accepted the term “Transmitting Utility” for similar entities in *Sagebrush*.⁴⁸

b. Protest

33. Green Borders does not see any benefit in changing “Transmission Provider” to “Transmitting Utility.” Green Borders notes that *Sagebrush* sought to be considered a “Transmitting Utility” so as to be subject to sections 210 and 211 of the FPA instead of sections 205 and 206.⁴⁹ However, Green Borders contends that Terra-Gen, even as a QF providing transmission service, is a public utility subject to regulation as a transmission provider under sections 205 and 206.⁵⁰

c. Answer

34. Terra-Gen responds that Green Borders fails to show that Terra-Gen would be better referred to as a “Transmission Provider,” and that, as a QF, Terra-Gen is exempt from most regulations under the FPA.⁵¹

d. Commission Determination

35. Terra-Gen has not shown any benefit to deviating from the *pro forma* terminology of “Transmission Provider.” “Transmitting Utility” is a term defined in section 3(23) of the FPA,⁵² and is not an OATT term. Green Borders is correct that *Sagebrush* changed the term “Transmission Provider” to “Transmitting Utility,” arguing that it was only subject to Commission regulation under sections 210 and 211 of the FPA, and not

⁴⁷ Transmittal Letter at 10 (citing *Oxbow Geothermal Corp.*, 67 FERC ¶ 61,193, at 61,605 (1994)).

⁴⁸ *Id.* (citing *Sagebrush I*, 130 FERC ¶ 61,093).

⁴⁹ Protest at 18 (citing *Sagebrush I*, 130 FERC ¶ 61,093 at P 25).

⁵⁰ *Id.* at 17-19.

⁵¹ Answer at 14.

⁵² 16 U.S.C. § 796(23) (2006).

sections 205 and 206 of the FPA. However, the Commission rejected those arguments.⁵³ We again make clear that Terra-Gen's administration of the Dixie Valley Line is subject to Commission jurisdiction under sections 205 and 206. In Order No. 671,⁵⁴ the Commission amended its regulations to specifically include QFs within the broad category of public utilities subject to regulation under sections 205 and 206 of the FPA, with limited exceptions. As we explained in the September 16 Order, a transmission line owned by a QF/exempt wholesale generator partnership is subject to section 205 of the FPA.⁵⁵ Accordingly, Terra-Gen has not demonstrated that its proposed modifications are consistent with or superior to the *pro forma* OATT.

7. Creditworthiness

a. Terra-Gen Tariff Provisions

36. Terra-Gen also proposes to modify the *pro forma* creditworthiness procedures in Attachment L. Specifically, Terra-Gen proposes several alternative ways that a transmission customer can show that it is creditworthy. First, Terra-Gen would allow a customer to establish creditworthiness by demonstrating that it has a credit rating of BBB+/Baa1 and posting a letter of credit equal to three months of its reservation charges at the time it executes its service agreement.⁵⁶ Alternatively, a customer can establish creditworthiness by posting a \$2.5 million letter of credit at the time it executes its service agreement and by showing that it has the necessary drilling or wind permits along with a power purchase agreement. Finally, if a customer does not meet either of the first two requirements, it can establish creditworthiness by posting a letter of credit equal to \$5 million at the time it executes its service agreement.⁵⁷ Terra-Gen further provides that, upon the commercial operation date of the customer's facility, a customer that is unable to meet the credit requirements can replace its letter of credit with a letter of credit that is equal to only six months of its reservation charges.

⁵³ *Sagebrush I*, 130 FERC ¶ 61,093 at P 25.

⁵⁴ *See Revised Regulations Governing Small Power Production and Cogeneration Facilities*, Order No. 671, FERC Stats. & Regs. ¶ 31,203 (2006), *clarified*, 114 FERC ¶ 61,128 (2006), *order on reh'g*, Order No. 671-A, FERC Stats. & Regs. ¶ 31,219 (2006). Order No. 671 became effective March 17, 2006.

⁵⁵ September 16 Order, 132 FERC ¶ 61,215 at P 46. Terra-Gen did not seek rehearing of the September 16 Order.

⁵⁶ Transmittal Letter at 11.

⁵⁷ *Id.*

b. Protest

37. Green Borders argues that Terra-Gen's proposed creditworthiness procedures are not reasonable, as required in Order No. 888,⁵⁸ and are inconsistent with industry commercial practices. Green Borders asserts that, in support of its credit provisions, Terra-Gen relies on a *Southern Company Services* order that was issued prior to the Commission's *Policy Statement on Electric Creditworthiness* and includes terms that Southern Company Services no longer applies.⁵⁹ Green Borders argues that industry practice ties credit requirements to a multiplier of anticipated obligations related to the tariff or participation in the market, rather than a flat dollar amount with no correlation to expected charges, and furthermore, does not require a power purchase agreement.⁶⁰

c. Answer

38. Terra-Gen argues that it is a small company that cannot assume significant credit risk. For instance, Terra-Gen states, if a generator submits a service request that triggers an expansion of the Dixie Valley Line, but then defaults, Terra-Gen may not be able to sell the expanded capacity for several years. Terra-Gen contends that its menu of options—either meeting the BBB+/Baa1 credit requirement, posting a \$2.5 million letter of credit plus demonstrating that it has regulatory authorizations and a power purchase agreement, or posting a \$5 million letter of credit without the additional demonstrations—provides a potential customer viable choices in showing its creditworthiness in connecting to the Dixie Valley Line.⁶¹

d. Commission Determination

39. In Order No. 890, the Commission explained that an Attachment L filing must specify both the qualitative and quantitative criteria that the transmission provider will use to determine the level of secured and unsecured credit required of customers. In addition, the Commission required transmission providers to address six specific elements regarding the transmission provider's credit requirements.⁶² Although Terra-

⁵⁸ Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,937.

⁵⁹ Protest at 24 (citing *Southern Company Services*, 94 FERC ¶ 61,131, *reh'g denied*, 95 FERC ¶ 61,078 (2001); *Policy Statement on Electric Creditworthiness*, 109 FERC ¶ 61,186 (2004)).

⁶⁰ *Id.* at 23-27. See also January 7 Answer at 5-7.

⁶¹ Answer at 16-19.

⁶² Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1656-61. See also *NorthWestern Corp.*, 128 FERC ¶ 61,202, at P 8-9 (2009).

Gen's proposed Attachment L provisions do include quantitative creditworthiness criteria, Terra-Gen has not made clear how either the \$2.5 million or the \$5 million collateral requirements relate to the amount of service requested. Finally, Terra-Gen has not shown that its proposed creditworthiness provision is consistent with or superior to that contained in the *pro forma* OATT. Accordingly, we do not find the proffered provisions are justified.

8. Ancillary Services

a. Terra-Gen Tariff Provisions

40. Terra-Gen also requests waiver of the requirement to provide ancillary services to customers of the Dixie Valley Line. Terra-Gen contends that it is a private transmission line without a balancing authority area or the generation resources necessary to provide ancillary services, and that the Commission has granted waiver of such provisions to similarly-situated transmission providers.⁶³ Specifically, the proposed Schedule 12 states that Terra-Gen will not provide ancillary services or contract to supply ancillary services and thus requires that generation resources self-supply regulation and frequency response service and generation imbalance service for scheduled deliveries, whether through purchase from the CAISO, a third-party, or by dynamic schedule.

41. Terra-Gen also proposes to modify section 15.7, so that transmission customers will be responsible for replacing losses caused by their transmission service.⁶⁴ Terra-Gen asserts that this modification protects existing customers and complies with Commission policy that customers should bear the costs they cause.⁶⁵

b. Protest

42. Green Borders states that Terra-Gen is required to provide Schedule 1 (Scheduling, System Control and Dispatch Service) and Schedule 2 (Reactive Supply and Voltage Control from Generation Sources Service). Green Borders argues that Terra-Gen's reliance on *Sagebrush* is misplaced, because Sagebrush relied on SoCal Edison to

⁶³ Transmittal Letter at 7 (citing *Sagebrush I*, 130 FERC ¶ 61,093 at P 30; *Wyoming Colorado*, 127 FERC ¶ 61,125 at P 19; and *MATL*, 116 FERC ¶ 61,071 at P 58). 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.

⁶⁴ *Id.* at 8 (citing *Commonwealth Edison*, 123 FERC ¶ 61,122 (2008)).

⁶⁵ *Id.* (citing *Quachita Power LLC v. Entergy Louisiana, Inc.*, 120 FERC ¶ 61,059, at P 10 (2007)).

provide ancillary services to both Sagebrush partners and new entities on the line. In contrast, Green Borders notes that the Terra-Gen OATT does not provide that Terra-Gen will act as an agent to procure these services for Green Borders or other interconnecting generators.⁶⁶ Green Borders also distinguishes *Wyoming Colorado*, where the transmission provider did not provide ancillary services because it did not own any generation,⁶⁷ and *MATL*, where the transmission developer conducted open season bidding and provided for transmission customers to procure ancillary services from other interconnected systems.⁶⁸

43. Green Borders similarly opposes Terra-Gen's proposed Schedule 12 because Terra-Gen has not shown why it cannot provide ancillary services, or in the alternative, act as an agent to procure ancillary services for interconnecting generators.⁶⁹

44. Green Borders also opposes Terra-Gen's change to the losses provisions, stating that Terra-Gen did not provide a losses study or any indication of the losses factor on its system and only provided a blank percentage amount. Green Borders states that this makes it difficult for transmission customers to replace losses when Terra-Gen does not provide the appropriate loss factor, and the changes to the *pro forma* OATT in this regard should be rejected.⁷⁰

c. Answer

45. Terra-Gen responds that Green Borders does not explain why Terra-Gen is in a better position than Green Borders to arrange for Green Borders' ancillary service needs, and that inserting itself as the middle-man will increase costs.⁷¹ Moreover, Terra-Gen argues that the Commission has waived *pro forma* OATT ancillary service provisions for merchant transmission providers.⁷²

46. Terra-Gen further argues that Green Borders misunderstands its proposal regarding losses. Terra-Gen states that, if existing customers were required to shoulder

⁶⁶ Protest at 8-10.

⁶⁷ *Id.* at 10 (citing *Wyoming Colorado*, 127 FERC ¶ 61,125).

⁶⁸ *Id.* at 11 (citing *MATL*, 116 FERC ¶ 61,071).

⁶⁹ *Id.* at 33.

⁷⁰ *Id.* at 31.

⁷¹ Answer at 9-10, 23.

⁷² *Id.* at 9-10 (citing *Sagebrush I*, 130 FERC ¶ 61,093 at P 29; *Wyoming Colorado*, 127 FERC ¶ 61,125 at P 19; *MATL*, 116 FERC ¶ 61,071 at P 58).

the losses caused by new customers taking service on the Dixie Valley Line, it could trigger provisions that impose default or termination of the contracts of existing customers. Terra-Gen contends that, given how additional load increases losses on the Dixie Valley Line, the modifications to the losses provisions are reasonable and consistent with Commission policy.⁷³

d. Commission Determination

47. In Order No. 888, the Commission specified the ancillary services that were necessary to facilitate transmission service.⁷⁴ The Commission further stated that a transmission provider that is also a control area operator must provide the first two ancillary services—scheduling, system control and load dispatch, and reactive supply and voltage control. The Commission also required that the transmission customer must purchase these services from the transmission provider that is also a control area operator.⁷⁵ As to the remaining ancillary services, the transmission provider need only *offer* to provide these ancillary services to transmission customers. A transmission customer is required to acquire these services, but it may do so from the transmission provider, a third party, or through self-supply.⁷⁶

48. Terra-Gen has demonstrated that a request for deletion of the provisions for ancillary services may be justified. Transmission customers on the Dixie Valley Line may obtain the services provided for in Schedules 3 through 6 and Schedule 9,⁷⁷ in particular because they may either: (1) obtain these ancillary services from a third-party participating in the CAISO market; or (2) enter into appropriate agreements for similar services as Terra-Gen currently does.⁷⁸ However, Terra-Gen has failed to demonstrate

⁷³ *Id.* at 21-22.

⁷⁴ Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,715. These services are (1) Scheduling, System Control and Dispatch, (2) Reactive Supply and Voltage Control from Generation Services, (3) Regulation and Frequency Response, (4) Energy Imbalance, (5) Operating Reserve-Spinning, and (6) Operating Reserve-Supplemental.

⁷⁵ *Id.*, FERC Stats. & Regs. ¶ 31,036.

⁷⁶ *Id.*, FERC Stats. & Regs. ¶ 31,036 at 31,716.

⁷⁷ These schedules are Regulation and Frequency Response (Schedule 3), Energy Imbalance Service (Schedule 4), Operating Reserve-Spinning Reserve Service (Schedule 5), Operating Reserve-Supplemental Reserve Service (Schedule 6), and Generator Imbalance Service (Schedule 9).

⁷⁸ We note that, in Order No. 888, the Commission stated that “[i]f the transmission provider is a public utility providing basic transmission service but is not a control area operator, it may be unable to provide some or all of the ancillary services we

(continued...)

that its request for waiver of providing scheduling, system control and load dispatch, and reactive supply and voltage control ancillary services is justified. Terra-Gen has not explained how the scheduling and reactive services may be obtained. Moreover, Terra-Gen does not specify who the balancing authority area operator will be, although Schedule 12 suggests that CAISO is the balancing authority area for the Dixie Valley Line.⁷⁹ Additionally, Terra-Gen proposes to retain, as modified, the scheduling provisions of sections 13.8 (Scheduling of Firm Point-to-Point Transmission service and 14.6 (Scheduling of Non-Firm Point-to-Point Transmission Service).

49. Terra-Gen also fails to justify the amount of losses transmission customers must provide. Accordingly, we find that Terra-Gen has not demonstrated that its proposed modifications are consistent with or superior to the *pro forma* OATT.

9. Sections 19.4, 19.8, 19.9

a. Terra-Gen Tariff Provisions

50. Terra Gen requests waivers from the following provisions because, according to Terra-Gen, they would impose an unreasonable burden, given Terra-Gen's limited resources: (1) section 19.8 – expedited procedures for new facilities and (2) section 19.9 – penalties for failure to meet study deadlines. Terra-Gen states that these OATT provisions contemplate transmission systems with more resources to conduct studies, and that, given the small size and limited number of requests for transmission service that are expected for the Dixie Valley Line, it would be unnecessarily costly to impose such requirements.⁸⁰ Additionally, the Terra-Gen OATT deletes *pro forma* language from the last sentence of section 19.4 which would allow a transmission customer to request that an unexecuted transmission service agreement be filed and provides no discussion of or support for that deviation.

require without substantial investment. In this case . . . [w]e will require the transmission provider to offer to act as the agent for the transmission customer to secure these services from the control area operator.” Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,716. Because Terra-Gen's transmission facilities are directly connected to the CAISO's organized market, through SoCal Edison, Green Borders or another transmission customer may freely obtain the necessary ancillary services from CAISO and Terra-Gen need not act as an agent in this instance. The Commission took similar action in *Sagebrush*, 130 FERC ¶ 61,093 at P 29.

⁷⁹ It is also unclear from the record that the point at which the Dixie Valley Line interconnects with SoCal Edison is under the operational authority of CAISO.

⁸⁰ Transmittal Letter at 11-12.

b. Protest

51. Green Borders opposes Terra-Gen's proposed deletion of the requirement in section 19.4 to file an unexecuted service agreement at the request of the transmission customer. Green Borders contends that not allowing transmission customers to request the filing of an unexecuted service agreement could allow Terra-Gen to use the service agreement as a means to discriminate. Green Borders also opposes Terra-Gen's proposed deletion of sections 19.8 and 19.9, noting that the Commission expressly rejected waiver of those provisions in *Sagebrush*.⁸¹

c. Answer

52. Terra-Gen responds that sections 19.8 and 19.9 are not appropriate for a generator tie-line with a limited number of potential customers. Terra-Gen states that it will process requests in a timely and efficient manner and will not be unduly discriminatory, but that it should not be required to bear the costs associated with sections 19.8 and 19.9.⁸²

d. Commission Determination

53. We find that Terra-Gen has failed to justify its claim that compliance with these *pro forma* requirements would impose an unreasonable burden. Absent such evidence, the Commission cannot determine the appropriateness of granting such a waiver of these provisions.⁸³ Accordingly, we find that Terra-Gen has not demonstrated that its proposed modifications are consistent with or superior to the *pro forma* OATT.

10. Attachment C – Methodology for Calculating ATC**a. Terra-Gen Tariff Provisions**

54. Terra-Gen's proposed Attachment C includes a description of the ATC methodology it proposes to implement, as well as the mathematical algorithm for calculating firm and non-firm ATC.

b. Protest

55. Green Borders states that Terra-Gen's proposed Attachment C neither satisfies the standards set forth in Order No. 890, nor states how its methodology complies with the

⁸¹ Protest at 28-29.

⁸² Answer at 20-21.

⁸³ See *Sagebrush II*, 132 FERC ¶ 61,234 at P 45.

North American Electric Reliability Council standards approved by the Commission in Order No. 729.⁸⁴ Specifically, Green Borders states that Terra-Gen did not include a process flow diagram that illustrates the steps through which ATC is calculated. Further, Green Borders argues that Terra-Gen should not be allowed to include any proposed future capacity that may be given priority rights to access the Dixie Valley Line in the firm ATC and non-firm ATC numbers. Green Borders requests that the Commission reject the proposed Attachment C and require Terra-Gen to demonstrate that its proposal meets the Commission's requirements in the *pro forma* OATT.⁸⁵

c. Answer

56. Terra-Gen states that its proposed Attachment C reflects the small size and limited customer base of the Dixie Valley Line, and so represents the appropriate way to calculate ATC. Terra-Gen contends that Green Borders only takes issue with provisions related to grandfathered capacity. Terra-Gen argues that, since the Commission has provided for the grandfathering of Terra-Gen's capacity, it is reasonable and consistent with Commission precedent to modify the *pro forma* OATT to accommodate such capacity.⁸⁶

d. Commission Determination

57. In Order No. 890, the Commission required a transmission provider to clearly identify which methodology it employs for calculating available capacity (e.g., contract path, network ATC, or network Available Flowgate Capacity (AFC)). The transmission provider must also describe in detail the specific mathematical algorithms used to calculate firm and non-firm ATC (and AFC, if applicable) for scheduling, operating, and planning horizons.⁸⁷ The mathematical algorithms must be posted on the transmission

⁸⁴ *Mandatory Reliability Standards for the Calculation of Available Transfer Capability, Capacity Benefit Margins, Transmission Reliability Margins, Total Transfer Capability, and Existing Transmission Commitments and Mandatory Reliability Standards for the Bulk-Power System*, Order No. 729, 129 FERC ¶ 61,155 (2009), *order on clarification*, Order No. 729-A, 131 FERC ¶ 61,109, *order on reh'g and reconsideration*, Order No. 729-B, 132 FERC ¶ 61,027 (2010).

⁸⁵ Protest at 33-35.

⁸⁶ Answer at 23 (citing *NewCorp Resources Electric Coop., Inc.*, 122 FERC ¶ 61,201, at P 19 (2008), and *Sagebrush I*, 130 FERC ¶ 61,093).

⁸⁷ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 323 and *pro forma* OATT, Attachment C.

provider's website, with the link noted in the transmission provider's Attachment C.⁸⁸ Further, the transmission provider must include a process flow diagram that illustrates the various steps through the ATC/AFC is calculated and a detailed explanation of how each of the ATC components is calculated for both the operating and planning horizons.

58. We find that Terra-Gen's Attachment C fails to comply with the requirements set out in Order No. 890 for calculating ATC. Initially, Terra-Gen's Attachment C does not provide the mathematical algorithms for calculating ATC for the scheduling, operating, and planning horizons. Terra-Gen has included algorithms only for firm and non-firm ATC, without explaining to which horizon the algorithms apply. Additionally, Terra-Gen has not provided a process flow diagram illustrating the steps of its ATC calculation process. Terra-Gen's Attachment C also fails to include a link to Terra-Gen's website where the data and the mathematical algorithms can be found. We also find that the proposed definitions of the ATC components (Total Transfer Capability, Existing Transfer Capability, and Capacity Benefit Margin) in Terra-Gen's Attachment C do not satisfactorily comply with the requirements of Order No. 890.⁸⁹ Terra-Gen should address these deficiencies in its Attachment C, as described above, including how the ATC calculation is impacted by its proposed section 2.1a.

11. Transmission Planning Process – Attachment K

a. Terra-Gen Tariff Provisions

59. Terra-Gen has proposed an Attachment K that describes its planning process, including its planning methodology and criteria for how it will develop a transmission plan. Terra-Gen claims that its Attachment K is similar to the Attachment Ks accepted by the Commission in *MATL* and *Sagebrush*.

b. Protest

60. Green Borders asserts that Terra-Gen's proposed Attachment K is overly vague. Specifically, Green Borders states that the Planning Advisory Board should meet more frequently than every five years; interim modifications should be made with input from customers and opportunity to comment; the form of the Confidentiality Agreement should be a part of the Attachment K; and planning costs should not be assigned to a single stakeholder. Green Borders also argues that the proposed Attachment K fails to discuss study procedures for economic upgrades to address congestion or the integration

⁸⁸ *Id.* P 325, 328.

⁸⁹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 233-77. For example, Terra-Gen has defined TTC as "the Total Transfer Capability of the ATC path for that period," which is not sufficiently defined. Terra-Gen OATT at Attachment C.

of new resources and cost allocation. Green Borders requests that the Commission reject the proposed Attachment K.⁹⁰

c. Answer

61. Terra-Gen responds that it will only expand its transmission system if it receives a request to do so, and that it is therefore appropriate to allow the Planning Advisory Board to meet infrequently. Terra-Gen also argues that posting its Confidentiality Agreement on-line allows parties to discern any discriminatory practices and that Terra-Gen is required to administer its OATT in a not unduly discriminatory way.⁹¹

d. Commission Determination

62. 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.

63. 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;⁹² (6) dispute resolution; (7) regional participation; (8) economic planning studies; and (9) cost allocation for new projects. The Commission also directed transmission providers to address the recovery of planning-related costs. The Commission explained 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

⁹⁰ Protest at 36-37.

⁹¹ Answer at 24-25.

⁹² 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.

rules, as supplemented with web-posted business practices when appropriate,⁹³ must be specific and clear to facilitate compliance by transmission providers and place customers on notice of their rights and obligations.

64. Moreover, in reviewing Terra-Gen's Attachment K, we note the differences between Terra-Gen's Attachment K and the Attachment Ks accepted by the Commission in *MATL* and *Sagebrush II*. As a result, we will evaluate Terra-Gen's Attachment K against the nine principles enacted in Order No. 890. As discussed below, we provide guidance regarding Terra-Gen's Attachment K planning process.

i. Coordination

65. In order to satisfy the coordination principle, transmission providers must provide customers and other stakeholders the opportunity to participate fully in the planning process. The purpose of the coordination requirement, as stated in Order No. 890, is to eliminate the potential for undue discrimination in planning by opening appropriate lines of communication between transmission providers, their transmission-providing neighbors, affected state authorities, customers, and other stakeholders.⁹⁴ The planning process must provide for the timely and meaningful input and participation of customers and other stakeholders regarding the development of transmission plans, allowing customers and other stakeholders to participate in the early stages of development. In its Attachment K planning process, each transmission provider must clearly identify the details of how its planning process will be coordinated with interested parties.⁹⁵

66. Terra-Gen's proposed Attachment K provides for the development of a transmission plan for the Dixie Valley Line no less than every five years. Terra-Gen states that, using a five-year horizon, its transmission plan will address transmission enhancements, modifications, and expansions resulting from valid transmission and generator interconnection service requests known at the time of the commencement of the planning process. Terra-Gen states that it will establish a Planning Advisory Group that is open to transmission customers, Connected Systems,⁹⁶ and state and federal regulatory agencies, in order to provide input and feedback during the planning process. Terra-Gen states that the Planning Advisory Group will meet at least every five years and that meetings should be held: (1) as specified in the plan; (2) when Terra-Gen deems necessary; or (3) at the request of a majority of the Planning Advisory Group. Notice of

⁹³ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1649-55.

⁹⁴ *Id.* P 452.

⁹⁵ *Id.* P 451-54.

⁹⁶ Terra-Gen defines Connected Systems as SoCal Edison and CAISO.

meetings will be made by email and through postings on Terra-Gen's website, at least two weeks prior to the meeting.

67. Terra-Gen states that it will develop an initial plan no later than five years from the effective date of its OATT. At that time, Terra-Gen proposes to solicit input on the regional needs for the plan from the Planning Advisory Group members. Upon completing studies and analysis, Terra-Gen will submit a draft plan to the Planning Advisory Group for review and comment. A final draft plan will be submitted to the Terra-Gen board of directors for approval as a final plan.

68. We find that Terra-Gen's proposed Attachment K complies with the coordination principle stated in Order No. 890.⁹⁷ Terra-Gen will coordinate the development of studies and plans with the Planning Advisory Group, which will have the opportunity to comment on drafts and proposed solutions to identified needs.

ii. Openness

69. The openness principle requires that transmission planning meetings be open to all affected parties, including but not limited to all transmission and interconnection customers, state authorities, and other stakeholders. Although the Commission recognized in Order No. 890 that it may be appropriate in certain circumstances to limit participation in a meeting to a subset of parties, such as a particular meeting of a sub-regional group, the Commission emphasized that the overall development of the transmission plan and the planning process must remain open.⁹⁸ Transmission providers, in consultation with affected parties, must also develop mechanisms to manage confidentiality and Critical Energy Infrastructure Information concerns, such as confidentiality agreements and password protected access to information.⁹⁹

70. As noted above, Terra-Gen's proposed Attachment K provides that the Planning Advisory Group will be open to transmission customers, Connected Systems, and state

⁹⁷ We address our finding that section 2.1 of its Attachment K appears to limit the types of entities that may participate fully in the planning process in our discussion of Terra-Gen's compliance with the openness requirement.

⁹⁸ The Commission made clear in Order No. 890-A that any circumstances under which participation in a planning meeting is limited should be clearly described in the transmission provider's Attachment K planning process, as all affected parties must be able to understand how, and when, they are able to participate in planning activities. *See* Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 194.

⁹⁹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 460.

and federal regulatory agencies.¹⁰⁰ Terra-Gen states that each entity that participates in the Planning Advisory Group will have one member of the group, with Terra-Gen acting as the group facilitator. Terra-Gen additionally states that it may select representative members of the Planning Advisory Group if the group's size exceeds a level that, in Terra-Gen's opinion, impedes the efficient functioning of the group.¹⁰¹ The Planning Advisory Group's role is to provide input and feedback to Terra-Gen during the development of the Plan, and Terra-Gen pledges to document and track all input and respond to all suggestions, queries, or comments by circulating consolidated responses to the members of the Planning Advisory Group.

71. Terra-Gen states that it has an obligation to protect confidential information and proprietary information and that access to confidential information may be requested in writing by Planning Advisory Group members that both demonstrate a right or need to access the information and execute a non-disclosure agreement.¹⁰² Terra-Gen states that it will post forms of its non-disclosure agreement on its website and that it will seek agreement from entities that provided the confidential information before releasing such information.

72. We find that Terra-Gen partially complies with the openness principle stated in Order No. 890. In its proposed Attachment K, Terra-Gen limits the Planning Advisory Group to particular classes of entities. We remind Terra-Gen that its list of participants should not be interpreted as exclusive. Interested stakeholders should include, but not be limited to, non-transmission customers such as demand response providers, as well as generation providers that are not transmission customers.

iii. Transparency

73. The transparency principle requires transmission providers to reduce to writing and make available the basic methodology, criteria, and processes used to develop transmission plans, including how they treat retail native loads, in order to ensure that standards are consistently applied. To that end, each transmission provider must describe in Attachment K the method(s) it will use to disclose the criteria, assumptions, and data

¹⁰⁰ Terra-Gen Attachment K, section 2.1.

¹⁰¹ *Id.*

¹⁰² Terra-Gen Attachment K, section 9.1. Terra-Gen defines confidential information to include Critical Energy Infrastructure Information, as defined by the Commission's regulations. 18 C.F.R. § 388.113 (2010).

that underlie its transmission system plans.¹⁰³ Transmission providers were also directed to provide information regarding the status of upgrades identified in the transmission plan.

74. The Commission also explained that sufficient information should be made available to enable customers, other stakeholders, and independent third parties to replicate the results of planning studies and thereby reduce the incidence of after-the-fact disputes regarding whether planning has been conducted in an unduly discriminatory fashion and alleviate standards of conduct concerns regarding disclosure of information. The Commission also specifically addressed consideration of demand response resources in transmission planning.¹⁰⁴

75. Section 4 of Terra-Gen's proposed Attachment K describes the methodology, criteria, and processes for developing a final plan. It provides that Terra-Gen will apply industry standard methodologies, criteria, and processes as applicable. Terra-Gen states that it will make all planning criteria, assumptions, and data underlying the plan available to the Planning Advisory Group upon request, and will provide a draft plan to the Planning Advisory Group for review and comment. Terra-Gen also states that it may modify the plan on an interim basis, as necessary, to reflect additions or removals of transmission upgrades.¹⁰⁵ Any interim modifications will be posted on Terra-Gen's website.

76. We find that Terra-Gen's Attachment K complies with the transparency requirements of Order No. 890. Terra-Gen commits to provide only to the Planning Advisory Group the necessary methodology, criteria, and data to replicate the studies used to develop Terra-Gen's transmission plans. However, as discussed above, the Planning Advisory Group should not be considered exclusive. Any interested party should be afforded the opportunity to request the information.

iv. Information Exchange

77. The information exchange principle requires network customers to submit information on their projected loads and resources on a comparable basis (e.g., planning horizon and format) as used by transmission providers in planning for their native loads.

¹⁰³ In Order No. 890-A, the Commission made clear that this includes disclosure of transmission base case and change case data used by the transmission provider, as these are basic assumptions necessary to adequately understand the results reached in a transmission plan. *See* Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 199.

¹⁰⁴ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 471-79.

¹⁰⁵ Terra-Gen Attachment K, section 4.5.

Point-to-point customers are required to submit any projections they have of a need for service over the planning horizon and at what receipt and delivery points. As the Commission made clear in Order No. 890-A, these projections are intended only to give the transmission provider additional data to consider in its planning activities, and should not be treated as a proxy for actual reservations.¹⁰⁶ Transmission providers, in consultation with their customers and other stakeholders, are to develop guidelines and a schedule for the submittal of such customer information.

78. The Commission also provided that, to the extent applicable, transmission customers should provide information on existing and planned demand resources and their impacts on demand and peak demand. Stakeholders, in turn, should provide proposed demand response resources if they wish to have them considered in the development of the transmission plan. Transmission providers must also clearly define in their Attachment K the information-sharing obligations placed on customers in the context of economic planning.¹⁰⁷ Finally, the Commission clarified that information exchange relates to planning, not to other studies performed in response to interconnection or transmission service requests.¹⁰⁸

79. Section 6 of Terra-Gen's proposed Attachment K explains the data that will be exchanged in Terra-Gen's planning process. Terra-Gen details the specific data requirements for transmission owners and generation owners to provide to during the planning process. Terra-Gen proposes to require that transmission customers submit, at least once a year by January 31 for the immediately preceding calendar year, projections of their needs for service over the planning horizon, including transmission capacity, duration, and receipt and delivery points. Terra-Gen states that it may request additional information during the planning process.

80. We find that Terra-Gen's proposed Attachment K partially complies with the information exchange requirement. Terra-Gen provides transmission customers the process by which information for developing the plan will be requested and provided. However, Terra-Gen does not include provisions as to how any additional stakeholder may provide data for use in the plan.¹⁰⁹ Additionally, the proposed provisions do not provide for the milestones in the planning process that provide clarity as to when data

¹⁰⁶ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 207.

¹⁰⁷ *Id.* P 206.

¹⁰⁸ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 486-88.

¹⁰⁹ For example, while Terra-Gen specifies that transmission customers must provide data to Terra-Gen by January 31 of each year, there are no provisions outlined for when other interested parties may provide information.

may be provided by any party and in which planning cycle new data will be incorporated. Terra-Gen's Attachment K further fails to delineate the time frames for when a draft plan will be submitted for review by stakeholders and does not provide a duration stakeholders have to review the draft plan. Terra-Gen should provide greater detail on its planning process, as discussed above.

v. Comparability

81. The comparability principle requires transmission providers, after considering the data and comments supplied by customers and other stakeholders, to develop a transmission system plan that meets the specific service requests of their transmission customers and otherwise treats similarly-situated customers (e.g., network and retail native load) comparably in transmission system planning. Through the comparability principle, the Commission required that the interests of transmission providers and their similarly-situated customers be treated on a comparable basis during the planning process. The Commission also explained that demand resources should be considered on a comparable basis to the service provided by comparable generation resources where appropriate. Lastly, in Order No. 890-A, the Commission clarified that, as part of its Attachment K planning process, each transmission provider is required to identify how it will treat resources on a comparable basis and, therefore, should identify how it will determine comparability for purposes of transmission planning.¹¹⁰

82. Section 1.4 of Terra-Gen's Attachment K states that it will treat "similarly situated customers comparably by considering all valid and relevant data when developing the Plan." Section 1.1 further explains that one goal of Terra-Gen's transmission planning process is to develop a plan "to meet the specific service requests of Transmission Customers so as to treat similarly situated customers comparably."

83. We find that Terra-Gen's Attachment K partially complies with the requirements of the comparability principle. Terra-Gen states that the transmission plan developed through its planning process is intended to identify and meet the needs of all of its customers. However, we note that, in Order No. 890-A, the Commission stated that the transmission provider needed to identify as part of its Attachment K planning process "how it will treat resources on a comparable basis and, therefore, should identify how it

¹¹⁰ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 494-95.

will determine comparability for purposes of transmission planning.”¹¹¹ Terra-Gen has not demonstrated that it complies with this requirement of Order No. 890-A.¹¹²

vi. Dispute Resolution

84. The dispute resolution principle requires transmission providers to identify a process to manage disputes that arise from the planning process. The Commission explained that an existing dispute resolution process may be used, but that transmission providers seeking to rely on an existing dispute resolution process must specifically address how its procedures will address matters related to transmission planning. The Commission encouraged transmission providers, customers, and other stakeholders to use the Commission’s dispute resolution services to help develop a three-step dispute resolution process, consisting of negotiation, mediation, and arbitration. In order to facilitate resolution of all disputes related to planning activities, a transmission provider’s dispute resolution process must be available to address both procedural and substantive planning issues. The Commission stated, however, that all affected parties retain any rights they may have under the FPA section 206 to file complaints with the Commission.¹¹³

85. In section 7 of Attachment K, Terra-Gen refers to the dispute resolution procedures in section 12 of the Terra-Gen OATT to address disputes. Section 12 provides for informal negotiation, and, if no agreement is reached, for arbitration. The Terra-Gen OATT clarifies that all affected parties retain their rights to file complaints with the Commission.

86. We find that Terra-Gen’s proposed Attachment K partially complies with the dispute resolution principle stated in Order No. 890. Terra-Gen relies on the existing dispute resolution provisions of its OATT to manage both procedural and substantive disputes that arise from the planning process. However, those provisions apply only to disputes between Terra-Gen and its transmission customers. Terra-Gen therefore has not identified a process for resolving disputes that may arise with stakeholders with which Terra-Gen interacts in the transmission planning process.¹¹⁴

¹¹¹ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 216; *see also* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 479, 487, 494, and 549.

¹¹² For example, tariff language should provide for participation throughout the transmission planning process by sponsors of transmission solutions, generation solutions, and solutions utilizing demand resources.

¹¹³ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 501-03.

¹¹⁴ We note that Terra-Gen’s dispute resolution provisions do not include

vii. Regional Participation

87. The regional participation principle provides that, in addition to preparing a system plan for its own balancing authority area on an open and nondiscriminatory basis, each transmission provider is required to coordinate with interconnected systems to share system plans to ensure that they are simultaneously feasible and otherwise use consistent assumptions and data and identify system enhancements that could relieve congestion or integrate new resources. In Order No. 890, the Commission stated that the specific features of the regional planning effort should take account of and accommodate, where appropriate, existing institutions, physical characteristics of the region, and historical practices. In Order No. 890-A, the Commission also emphasized that effective regional planning should include coordination among regions and sub-regions as necessary, in order to share data, information, and assumptions to maintain reliability and allow customers to consider resource options that span the regions.¹¹⁵

88. Terra-Gen's Attachment K states that, as a radial transmission facility interconnected to SoCal Edison, its transmission plan will be coordinated and involve interconnection and transmission customers, as well as other interested parties within the region, including CAISO.

89. We find that Terra-Gen complies with the regional participation principle stated in Order No. 890. Terra-Gen's sole facility is a radial transmission line providing only point-to-point transmission service. Terra-Gen currently interconnects to only one market, CAISO. Within this context, we find that Terra-Gen's commitment to participate in regional and sub-regional planning activities in the California region satisfies the regional participation requirements of Order No. 890. We further note that, since Terra-Gen would have an obligation to expand its system pursuant to the *pro format* OATT, we expect that Terra-Gen will fulfill this obligation by coordinating any future expansions of its system with interconnected systems.

viii. Economic Planning

90. The economic planning studies principle requires transmission providers to account for economic and reliability considerations in the transmission planning process. The economic planning principle is designed to ensure that economic considerations are adequately addressed when planning for OATT customers. The Commission also emphasized that the scope of economic studies should not be limited to just individual

mediation. While we will not require Terra-Gen to include mediation, we strongly encourage it.

¹¹⁵ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 226.

requests for transmission service. Customers must be given the opportunity to obtain studies that evaluate potential upgrades or other investments that could reduce congestion or integrate new resources and loads on an aggregated or regional basis.

91. All transmission providers, including regional transmission organizations and independent system operators, were directed to develop procedures to allow stakeholders to identify a certain number of high priority studies annually and a means to cluster or batch requests to streamline processing. The Commission determined that the cost of the high priority studies would be recovered as part of the transmission provider's overall OATT cost of service, while the cost of additional studies would be borne by the stakeholder(s) requesting the study.¹¹⁶

92. In Order No. 890-A, the Commission explained that the transmission provider's Attachment K must clearly describe the process by which economic planning studies can be requested and how they will be prioritized.¹¹⁷ In Order No. 890-A, the Commission also made clear that a transmission provider's affiliates should be treated like any other stakeholder and, therefore, that their requests for studies should be considered comparably, pursuant to the process outlined in the transmission provider's Attachment K.

93. We find that Terra-Gen does not satisfy the economic planning requirement. Terra-Gen's Attachment K contains no provisions for the study of economic considerations in the transmission planning process, as required by Order No. 890.

ix. Cost Allocation

94. The cost allocation principle requires that transmission providers address in their Attachment K the allocation of costs of new facilities that do not fit under existing rate structures. In Order No. 890, the Commission suggested that such new facilities might include regional projects involving several transmission owners or economic projects that are identified through the study process, rather than individual requests for service. Transmission providers therefore were directed to identify the types of new projects that are not covered under existing cost allocation rules and, as a result, would be affected by the cost allocation proposal.

95. The Commission stressed that each region should address cost allocation issues up front, at least in principle, rather than have them re-litigated each time a project is proposed.¹¹⁸ In Order No. 890-A, the Commission also made clear that the details of

¹¹⁶ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 542-51.

¹¹⁷ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 236.

¹¹⁸ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 557-61.

proposed cost allocation methodologies must be clearly defined, as participants seeking to support new transmission investment need some degree of certainty regarding cost allocation to pursue that investment.¹¹⁹

96. We find that Terra-Gen does not comply with the cost allocation principle. Terra-Gen's Attachment K contains no provisions that address how Terra-Gen proposes to allocate the costs of new facilities that do not fit under existing rate structures. Accordingly, Terra-Gen must address this in its Attachment K.

x. Recovery of Planning Costs

97. In Order No. 890, the Commission recognized the importance of cost recovery for planning activities, specifically addressing that issue after discussing the nine principles that govern the planning process. The Commission directed transmission providers to work with other participants in the planning process to develop cost recovery proposals in order to determine whether all relevant parties, including state agencies, have the ability to recover the costs of participating in the planning process.

98. Terra-Gen proposes that, unless planning-related costs are allocated to an individual stakeholder, or as part of a generation interconnection or transmission service request, all planning-related costs will be included in Terra-Gen's rate base.¹²⁰ Accordingly, we find that Terra-Gen has satisfactorily demonstrated how it will recover the costs of planning activities.

12. Section 17.1.3 of the LGIA

a. Terra-Gen Tariff Provisions

99. Terra-Gen proposes modifications to section 17.1.3 of its LGIA that would allow Terra-Gen to declare a default of an interconnection customer if the interconnection customer has failed to construct its required interconnection facilities within three years of entering into an LGIA.

b. Protest

100. Green Borders opposes Terra-Gen's proposed section 17.1.3, stating that Terra-Gen has not explained or justified this provision.¹²¹

¹¹⁹ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 251.

¹²⁰ Terra-Gen Attachment K, section 8.

¹²¹ Protest at 37-38.

c. Answer

101. Terra-Gen responds that Green Borders has not identified any reasons why it objects to section 17.1.3, and that the proposed provision is appropriate for the size of the Dixie Valley Line. Terra-Gen states that the failure of a customer to complete construction would have a disproportionate impact on Terra-Gen's ability to fill other transmission service requests and injures customers who use service on the Dixie Valley Line to develop their projects. Terra-Gen states that it developed this provision to ensure that customers would not tie up capacity without bona fide plans to use that capacity.¹²²

d. Commission Determination

102. We will reject Terra-Gen's proposal to add new section 17.1.3 to its LGIA. While we understand the concern about the potential consequences if transmission and interconnection customers do not perform appropriately under the terms and conditions of the OATT and LGIP/LGIA, we disagree that the *pro forma* provisions of the LGIP and LGIA do not address this concern. The LGIA contains breach and default provisions regarding the performance of interconnection customers, and Terra-Gen has not explained why these provisions are not satisfactory.¹²³ Terra-Gen has not demonstrated that its proposed modification is consistent with or superior to the *pro forma* OATT.

13. Rates and Schedule 11

103. Terra-Gen proposes rates in the Terra-Gen OATT, but contends that its rates should not be set for hearing, because no customers are taking service under the proposed rate.¹²⁴ Terra-Gen also states that it proposed its Schedule 11, FERC Annual Charges Recovery, to recover from transmission customers the FERC Annual Assessment incurred by Terra-Gen.¹²⁵ Green Borders raises several issues with Terra-Gen's proposed rates, and contends that the Terra-Gen OATT does not state that alternative rates will be calculated for new transmission customers.¹²⁶ Green Borders also argues that Terra-

¹²² Answer at 25-26.

¹²³ See Order No. 2003, FERC Stats. & Regs. ¶ 31,146, at Appendix C (*pro forma* LGIA).

¹²⁴ Transmittal Letter at 12 and Answer at 27-31.

¹²⁵ Answer at 22.

¹²⁶ Protest 38-42 and January 7 Answer at 9-11.

Gen's proposed Schedule 11 improperly exempts the Dixie Valley Plant from paying its share of the FERC annual charges associated with its use of the Dixie Valley Line.¹²⁷

104. Given our rejection of the Terra-Gen OATT, we will not take action on the proposed rates provisions and Schedule 11 at this time. However, we note that the Commission has the authority to set initial rates for hearing under section 206 of the FPA,¹²⁸ absent sufficient evidentiary support that proposed rates are just and reasonable. Because we anticipate that Terra-Gen will submit a revised OATT with significant modifications, we will reserve judgment on its proposed rates and Schedule 11. We remind Terra-Gen that, pursuant to section 35.12 of the Commission's regulations, Terra-Gen must submit all cost computations involved in deriving the rate in sufficient detail to justify the filing, including, but not limited to, detailed work papers.¹²⁹

C. OASIS and Standards of Conduct Waiver Request

105. In the September 16 Order, the Commission noted that the Dixie Valley Line, which is currently only providing transmission service from the Dixie Valley Plant, qualifies as a limited and discrete transmission facility. On that basis, the Commission granted Terra-Gen's requested waiver of the requirements of OASIS and the applicable requirements of the Standards of Conduct until such time as another interconnection on the Dixie Valley Line becomes operational or the Commission finds revocation appropriate, in response to a complaint.¹³⁰

106. Terra-Gen now requests that the Commission waive the OASIS and Standards of Conduct requirements on the basis that it qualifies as a small public utility. In support, Terra-Gen states that the Dixie Valley Line has only a capacity of 60 MW (net). Additionally, Terra-Gen states that, when expanded as contemplated, the line will have only a 400 MW rating, and that, even after the contemplated expansion, the Dixie Valley Line will have the ability to dispose of no more than 3,504,000 MWh annually (based on 400 MWh multiplied by 8,760 hours), which is less than the four million MWh threshold. Terra-Gen points out that the Commission granted a similar waiver in *Sagebrush*.¹³¹

¹²⁷ Protest at 32-33.

¹²⁸ 16 U.S.C. § 824e (2006).

¹²⁹ 18 C.F.R. § 35.12(b)(2)(ii) (2010). For example, we have insufficient data to review plant and expense balances.

¹³⁰ September 16 Order, 132 FERC ¶ 61,215 at P 55.

¹³¹ Transmittal Letter at 8-9 (citing *Sagebrush II*, 132 FERC ¶ 61,234 at P 39).

Additionally, Terra-Gen states that it “has committed in its proposed OATT to make all necessary information available on its internet website.”¹³²

a. Protest

107. Green Borders argues that the Commission should revoke the partial OASIS waiver granted in the September 16 Order and certainly not completely waive the OASIS requirements as applied to Terra-Gen. Green Borders maintains that, in light of past practices, a determination by the Commission to grant Terra-Gen an OASIS waiver and allow it to police itself violates fundamental principles of fairness. Thus, Green Borders argues that, now that Terra-Gen has received a valid third-party request for transmission service, it is imperative that information regarding ATC and interconnection queue status become available on a transparent basis.¹³³

b. Answer

108. Terra-Gen contends that the argument by Green Borders to revoke the existing waiver is a collateral attack on the September 16 Order and was raised on rehearing of the September 16 Order; thus it need not be addressed here.¹³⁴ In addition, Terra-Gen argues that the cost of implementing an OASIS would be disproportionate to the benefits it would provide, and that Green Borders has not provided any convincing evidence that it could not get the necessary information that would otherwise have been available on an OASIS.¹³⁵ Finally, Terra-Gen reiterates that it has “committed to make all necessary information available on its internet website.”¹³⁶

c. Commission Determination

109. We will grant the requested waiver of the requirements to maintain an OASIS and of the Standards of Conduct on the basis that Terra-Gen meets the definition of a small public utility, i.e., Terra-Gen disposes of no more than four million MWh of energy

¹³² *Id.* at 9.

¹³³ Protest at 13-14. January 7 Answer at 7-9. While Green Borders continues to argue that Terra-Gen should be more transparent in providing information regarding transmission service and scheduling, Green Borders does not contest that Terra-Gen is a small public utility.

¹³⁴ Answer at 10.

¹³⁵ *Id.* at 10-12.

¹³⁶ *Id.* at 11.

annually.¹³⁷ While we recognize that Green Borders claims that it has been unable to obtain necessary information in the past, we note that Terra-Gen repeatedly states that it has committed to make all necessary information available on its internet website.¹³⁸

110. This waiver will remain in effect unless and until the Commission takes action in response to a complaint to the Commission that an entity evaluating its transmission needs could not get the information necessary to complete its evaluation (for an OASIS waiver) or an entity complains that the public utility has unfairly used its access to information about transmission to benefit the utility or its affiliate (for a Standards of Conduct waiver).¹³⁹ If there is a material change in facts that affects this waiver, Terra-Gen must notify the Commission within 30 days of such change.¹⁴⁰

The Commission orders:

(A) The Terra-Gen OATT is hereby rejected. Terra-Gen 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) Terra-Gen's requested waiver of an OASIS and the Standards of Conduct is hereby granted, as discussed in the body of this order.

By the Commission. Chairman Wellinghoff is not participating.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹³⁷ To qualify as a small public utility, an 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).

¹³⁸ Transmittal Letter at 8, 9; Answer at 11.

¹³⁹ *See Entergy Mississippi, Inc.*, 112 FERC ¶ 61,228, at P 23 (2005) (citing *Central Minnesota Municipal Power Agency*, 79 FERC ¶ 61,260, at 62,127 (1997) and *Easton Utilities Commission*, 83 FERC ¶ 61,334, at 62,343 (1998)). Therefore, because Terra-Gen has demonstrated that it is a small public utility, the waiver we granted in the September 16 Order will not be revoked when an interconnection becomes operable.

¹⁴⁰ *See Material Changes in Facts Underlying Waiver of Order No. 889 and Part 358 of the Commission's Regulations*, 127 FERC ¶ 61,141, at P 5 (2009).