

135 FERC ¶ 61,134
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 Nos. ER11-2127-001
ER11-2127-002
EL11-37-000

ORDER ON REHEARING AND ACCEPTING TARIFF FILING, SUBJECT TO
MODIFICATION, ESTABLISHING HEARING PROCEDURES AND DIRECTING
FURTHER COMPLIANCE FILING

(Issued May 13, 2011)

1. In this order, the Commission addresses an open access transmission tariff (OATT) submitted by Terra-Gen Dixie Valley, LLC (Terra-Gen), in response to a Commission order issued in this proceeding on January 14, 2011.¹ The Commission will accept Terra-Gen's OATT, to be effective May 14, 2011, and order modifications to Terra-Gen's OATT and require a further compliance filing. We will also establish hearing and settlement procedures. Finally, as discussed below, we will grant in part and deny in part Terra-Gen's request for rehearing of the January 14 Order.

I. Background

2. Terra-Gen is the owner of a 60 MW geothermal plant (Plant), located in northern Nevada, and an associated 214-mile, 230 kV radial generator tie-line (Dixie Valley Line) (collectively, Dixie Valley QF). Both the Plant and the Dixie Valley Line were certified as a single QF under the Commission's regulations. Terra-Gen currently utilizes the Dixie Valley Line by selling the 60 MW output of the Plant to Southern California Edison (SoCal Edison) under a pre-existing power purchase agreement.

3. On September 16, 2010, the Commission acted on a petition by Terra-Gen, whereby Terra-Gen and two of its affiliates, TGP Dixie Development Company, LLC,

¹ See *Terra-Gen Dixie Valley, LLC*, 134 FERC ¶ 61,027 (2011) (January 14 Order).

and New York Canyon, LLC, sought a determination awarding priority to existing and future planned expansion transmission capacity on the Dixie Valley Line. In that Order, the Commission also addressed a complaint filed against Terra-Gen by Green Borders Geothermal, LLC (Green Borders). In relevant part, the Commission found that:

(1) Terra-Gen must file an OATT as a result of Green Borders' valid transmission service request made on May 8, 2007; (2) Terra-Gen is entitled to continue its present use of its 60 MW of capacity; (3) Terra-Gen had not supported its request for 100 MW of priority transmission capacity for expansion of its generation resource; and (4) Terra-Gen had not supported the claim for priority of 200 MW of expansion capacity for the two Terra-Gen affiliates.² However, the Commission allowed Terra-Gen "to submit further evidence of pre-existing development plans that satisfy the criteria in *Aero Energy* and *Milford*." The Commission explained that Terra-Gen "must demonstrate the existence of specific pre-existing generation development plans, consistent material progress towards achieving such plans, and that such plans and initial progress pre-date Green Border's valid request for service."³

4. In compliance with the September 16 Order, Terra-Gen submitted its OATT to the Commission on November 15, 2010, in Docket No. ER11-2127-000. Terra-Gen also submitted additional materials to support its request for 300 MW of priority transmission capacity.⁴ On January 14, 2010, the Commission rejected Terra-Gen's OATT because Terra-Gen had not demonstrated that its OATT was consistent with or superior to the *pro forma* OATT. The Commission directed Terra Gen to resubmit an OATT that is consistent with the direction of the January 14 Order. On March 16, 2011, Terra-Gen submitted the instant filing in compliance with the January 14 Order. Subsequently, Terra-Gen requested rehearing of the January 14 Order.

A. Request for Rehearing of January 14 Order

5. On February 14, 2011, Terra-Gen filed a Request for Rehearing of the January 14 Order (Request for Rehearing). Terra-Gen alleges that the Commission departed from precedent, failed to engage in reasoned decision-making, and acted arbitrarily and capriciously "by finding that [Terra-Gen] had not justified an OATT exemption for its existing or future priority transmission services when the Commission had grandfathered [Terra-Gen's] priority transmission services in the September 16 Order."⁵ Specifically,

² *Terra-Gen Dixie Valley, LLC*, 132 FERC ¶ 61,215 (2010) (September 16 Order).

³ *Id.* P 53.

⁴ The additional materials were submitted in Docket No. EL10-29-002.

⁵ Request for Rehearing at 5.

Terra-Gen argues that the Commission improperly departed from precedent established in *Sagebrush* by rejecting Terra-Gen's proposed OATT provisions that would provide "an OATT exemption for its existing and any future service rights confirmed by the Commission."⁶ According to Terra-Gen, its proposed treatment of the 60 MW of existing capacity on the Dixie Valley Line is no different than Sagebrush's "treatment of capacity to which it had pre-OATT grandfathered rights."⁷

B. Terra-Gen OATT

6. Terra-Gen asserts that its OATT complies with the directives in the January 14 Order. Specifically, Terra-Gen explains that its compliance OATT contains several deviations from the *pro forma* OATT due to the design of the Dixie Valley Line as a generator tie-line. Terra-Gen explains that its OATT has non-conforming provisions that include limiting the applicability of the OATT with regard to any priority 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.

7. In addition, as it did in its initial filing, Terra-Gen reaffirms its requests for waiver of the *pro forma* OATT provisions related to the provision of network transmission service, ancillary services, Open Access Same-Time Information System (OASIS), and Standards of Conduct. Terra-Gen also requests waiver of 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

8. Notice of Terra-Gen's OATT filing was published in the *Federal Register*, 76 Fed. Reg. 16,621 (2011), with interventions and protests due on or before April 6, 2011. On March 25, 2011, Green Borders filed a motion for an extension of time to file comments. Subsequently, the Commission issued a notice on March 30, 2011, extending the comment date to April 11, 2011. On April 11, 2011, Green Borders filed a protest requesting that the Commission reject Terra-Gen's OATT for failure to comply with the directives of the January 14 Order or, in the alternative, reject certain elements of the

⁶ Request for Rehearing at 6 (citing *Sagebrush, a California Partnership*, 130 FERC ¶ 61,093 (2010) (*Sagebrush*)).

⁷ *Id.* at 7.

proposed OATT that are outside the scope of the January 14 Order and set certain issues for hearing.⁸ On April 26, 2011, Terra-Gen filed an answer to Green Borders' protest.

III. Discussion

A. Procedural Matters

9. 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. Accordingly, we will reject Terra-Gen's answer.

B. Substantive Matters

1. Terra-Gen Rehearing

10. The Commission will grant in part and deny in part the Request for Rehearing. As discussed in greater detail below, the Commission clarifies that it is appropriate for Terra-Gen to utilize transmission service outside the terms of the OATT for the 60 MW of pre-existing service it has been providing for itself. Terra-Gen was utilizing the capacity prior to Green Borders' May 8, 2007 request for transmission service; that is, prior to the time when Terra-Gen was first required to submit an OATT with the Commission. Therefore, the Commission will grant Terra-Gen's Request for Rehearing with respect to the 60 MW of existing transmission capacity.

11. The Commission will deny the Request for Rehearing with respect to Terra-Gen's future use of the Dixie Valley Line. Contrary to the situation presented by Terra-Gen's existing use of the Dixie Valley Line, Terra-Gen is not currently providing any transmission service beyond the existing 60 MW. Therefore, there is no "existing use" of transmission capacity beyond the existing 60 MW of service that could be considered for "grandfathering" outside of the OATT.

2. Terra-Gen OATT

12. In Order No. 890,⁹ the Commission allowed transmission providers to propose non-rate terms and conditions that differ from those in Order No. 890 if those provisions

⁸ Green Borders April 11, 2011 Protest (Protest).

⁹ *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).

are consistent with or superior to the *pro forma* OATT.¹⁰ 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,¹¹ and we will evaluate proposed OATT deviations on a case-by-case basis.¹² 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.¹³ In this order, we summarily affirm the waivers granted in the January 14 Order. In addition, we will reject in part and accept in part Terra-Gen's OATT, effective May 14, 2011, as requested, and require Terra-Gen to submit a compliance filing. In the January 14 Order, we granted waiver of the provisions to provide network transmission service under Terra-Gen's OATT. Additionally, we found that Terra-Gen may remove references to local furnishing bonds, redispatch, and stranded cost recovery, as those provisions do not apply to service that Terra-Gen will provide on the Dixie Valley Line.¹⁴ We find that Terra-Gen's deletion of the provisions for network service is consistent with the January 14 Order and will therefore grant waiver in the instant submittal. Similarly, we find that removal of the provisions for local furnishing bonds, redispatch, and stranded cost recovery is consistent with the January 14 Order.¹⁵ We note, however, that, while Terra-Gen has proposed to remove the references to stranded cost recovery,¹⁶ Terra-Gen has retained the stranded cost recovery provision in its proposed OATT. Accordingly, Terra-Gen will be required to submit a compliance filing that removes the stranded cost provisions from its OATT.¹⁷

¹⁰ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 135.

¹¹ *Chinook Power Transmission, LLC*, 126 FERC ¶ 61,134, at P 47 (2009).

¹² *Montana Alberta Tie Ltd.*, 116 FERC ¶ 61,071, at P 55-60 (2006) (*MATL*).

¹³ *Id.* at 60.

¹⁴ *See* January 14 Order, 134 FERC ¶ 61,027 at P 12.

¹⁵ *Id.*

¹⁶ *See* Appendix C to Terra-Gen March 16, 2011 Filing at 7.

¹⁷ *See* Section 26 of Terra-Gen OATT. We note that removal of this provision is not imperative. To the extent that Terra-Gen seeks recovery of stranded costs, it must submit a future section 205 filing with the Commission. 16 U.S.C. § 824d (2006). Retaining this provision does not obligate Terra-Gen to seek recovery of stranded costs.

13. In addition to granting waiver of the network transmission service and related provisions, we also find that Terra-Gen's removal of references to OASIS and Standards of Conduct is appropriate because we have already granted waiver to Terra-Gen of these requirements.¹⁸ 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).¹⁹ If there is a material change in facts that affects this waiver, Terra-Gen must notify the Commission within 30 days of such change.²⁰

14. In addition to the waivers granted above, Terra-Gen proposes several additional deviations from the *pro forma* OATT. Many of these proposed deviations are a direct result of the determinations in the January 14 Order. Other proposed deviations are new requests for waivers. We address these matters in the following sections.

a. Clustering and Effective Date

i. Terra-Gen Tariff Provisions

15. Terra-Gen proposes provisions to address clustering of transmission system impact studies, consistent with the guidance provided in the January 14 Order.²¹ In its submittal, Terra-Gen proposes to include a new section 19.10 that provides procedures on how Terra-Gen may cluster studies.²² Terra-Gen's proposed clustering provisions provide, among other things, that "[T]he costs of the Cluster Study will be shared pro rata among the Eligible Customers whose request for service are included in the Cluster Study

¹⁸ See September 16 Order, 132 FERC ¶ 61,215 at P 55; January 14 Order, 134 FERC ¶ 61,027 at P 109.

¹⁹ 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.

²⁰ 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).

²¹ Transmittal Letter at 11 (citing January 14 Order, 134 FERC ¶ 61,027 at P 17).

²² *Id.*

based on the amount of MW of service that the Transmission Customer has requested compared to the total MW of service required in the cluster.”²³

ii. Protest

16. Green Borders asserts that Terra-Gen has modified provisions of the OATT that the Commission found to be consistent with Commission precedent in the January 14 Order. Green Borders states that Terra-Gen proposes to change the cost sharing for cluster studies from being equal among all customers to a method whereby costs will be allocated based on the amount of MW of service requested by a transmission customer as compared to the total MW of transmission service requests included in the cluster study.²⁴ Green Borders argues that the change was not directed by the Commission and therefore should be rejected.

17. Green Borders also argues that the effective date of Terra-Gen’s tariff, including the clustering provisions, should have been made effective retroactive to 60 days after Green Borders’ valid transmission request made in May 2007.²⁵ Green Borders, citing the Commission’s guidance that the Terra-Gen OATT will dictate how the assignment of available transmission capacity will be initially allocated, asserts that it is unfair and discriminatory to now allow Terra-Gen to extend the “window” for initial capacity until Terra-Gen’s affiliated projects are completed, thereby allowing Terra-Gen to “dump Green Borders’ request from 2007 into the same lottery.”²⁶

iii. Commission Determination

18. We will accept Terra-Gen’s proposed clustering provisions as consistent with Commission precedent.²⁷ Like the proposal accepted in *Midwest ISO*, Terra-Gen’s clustering proposal would allocate the cluster study costs to customers participating in the cluster based on the MW of capacity they are requesting. Furthermore, we find this *pro rata* allocation of the cost of the cluster study among eligible customers is consistent with

²³ Terra-Gen OATT at Section 19.10.

²⁴ Protest at 30.

²⁵ *Id.*

²⁶ *Id.*

²⁷ See, e.g., *Midwest Independent Transmission System Operator, Inc.*, 126 FERC ¶ 61,108, at P 23-25 (2009); accepting compliance filing detailing that costs of cluster studies are shared “pro rata among customers ... based on MWs of service requested.”

cost causation principles as customer requests that require more study expenditures should pay the commensurate costs related to their request. Nothing in the January 14 Order precludes Terra-Gen from proposing additional deviations from the *pro forma* tariff, so long as these proposals are consistent with or superior to the *pro forma* tariff, and we find the clustering provisions to be consistent with or superior to the *pro forma* tariff.

19. We also find that Green Borders' argument regarding the effective date of the OATT is an impermissible collateral attack on the January 14 Order. In the January 14 Order, we denied Green Borders' request for a priority position in the transmission service queue. In addition, we directed that all transmission service requests made within the first 60 days of the effective date of the Terra-Gen OATT be treated as being submitted simultaneously and subject to a lottery system, if necessary, for assigning available transfer capability (ATC), consistent with section 2.1 of the *pro forma* tariff.²⁸ Green Borders now seeks to inject a request for an effective date back to 2007 on the presumption that it may obtain a more favorable position in the transmission queue for service on the Dixie Valley Line. We find this is a collateral attack on the January 14 Order and will therefore reject it. No party has provided cause for the Commission to consider a retroactive effective date for Terra-Gen's proposed OATT. As discussed above, Terra-Gen's OATT shall become effective, as modified as discussed in this order, on May 14, 2011.

b. Service Exempted from the OATT

i. Terra-Gen Tariff Provisions

20. Terra-Gen's proposed OATT modifies section 2.1 of the *pro forma* OATT to grandfather Terra-Gen's existing use of 60 MW of capacity on the Dixie Valley Line outside of the rates, terms, and conditions of the OATT, based on the Commission's prior confirmation of priority. The provisions in section 2.1 also propose that, if the Commission awards any additional priority rights to Terra-Gen or its affiliates to the planned expansion capacity on the Dixie Valley Line, such service would also be taken outside of the rates, terms, and conditions of the OATT.

21. In support of its proposal, Terra-Gen argues that the grandfathering provision mirrors what was previously approved by the Commission in *Sagebrush*. Specifically, Terra-Gen points out that, in *Sagebrush*, the Commission excluded from the OATT existing transmission service as well as planned expansion for which the Sagebrush

²⁸ January 14 Order, 134 FERC ¶ 61,027 at P 17.

partners had been granted priority in *Aero Energy*.²⁹ Terra-Gen also argues that all provisions proposing modifications to accommodate grandfathered service³⁰ are consistent with or superior to the *pro forma* OATT because they implement the September 16 Order and preserve Terra-Gen's expectations with respect to its historic use of the Dixie Valley Line. Additionally, in order to comply with the January 14 Order, which found that Terra-Gen had failed to explain the rules or agreements it would use to implement the proposed grandfathered service, Terra-Gen asserts that the proposed grandfathering provision includes language that Terra-Gen and any affiliates' use of the Dixie Valley Line capacity shall be subject to a future assignment, co-tenancy, and shared facilities agreement governing their rights with respect to each other. Finally, Terra-Gen explains that the proposed provisions provide that any future requests for additional firm transmission capacity, whether made by Terra-Gen, a Terra-Gen affiliate, or an unaffiliated third party, will be governed by the terms of the OATT.

ii. Protest

22. Green Borders asserts that, in contrast to the circumstances present in *Sagebrush*, where the Commission had the opportunity to review agreements related to prioritized service for an affiliate and did so prior to the triggering of the OATT filing obligation in that proceeding, Terra-Gen has failed to provide any such agreements despite a Commission directive to do so. Green Borders also argues that Terra-Gen has failed to comply with the requirement in Order No. 888, which requires that public utilities must take service under the same tariff used by others or demonstrate why they should be allowed to do otherwise. Accordingly, Green Borders urges the Commission to reject Terra-Gen's proposed grandfathering provision (Section 2.1a).

iii. Commission Determination

23. We will allow Terra-Gen to utilize transmission service outside of the OATT for the 60 MW of existing service. However, the Commission will require that all other service must be taken under the rates, terms, and conditions of the OATT. In Order No. 888,³¹ the Commission determined that functional unbundling of wholesale services is

²⁹ See Terra-Gen March 15 Filing at 10 (citing *Sagebrush*, 130 FERC ¶ 61,093 at P 27).

³⁰ In addition to the proposed section 2.1a, Terra-Gen indicates that it made additional modifications to the proposed OATT to reflect that it does not apply to service grandfathered by the Commission.

³¹ See *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs*

necessary to implement non-discriminatory open access transmission service. As a result, the Commission required that a public utility take transmission services (including ancillary services) for all of its new wholesale sales and purchases of energy, with the exception of transmission service used by native load, under the same tariff of general applicability as do others, and a public utility must state separate rates for wholesale generation, transmission, and ancillary services.³² The principles underlying that policy also require a transmission provider such as Terra-Gen to provide all new service pursuant to the provisions of an OATT, while existing service may continue under prior arrangements.

24. Contrary to Terra-Gen's assertions, its OATT proposal with respect to priority and grandfathering of future planned service is inconsistent with Commission policy, as well as Order No. 888, which requires that all new transmission be provided pursuant to an OATT.³³ Terra-Gen is correct that, in *Sagebrush*, we excluded from the OATT planned expansion for which the Sagebrush partners had previously been granted priority.³⁴ However, our determination in *Sagebrush* to exempt the 33 MW which had been granted priority was made almost three years after priority had been granted in *Aero Energy, LLC*,³⁵ and the parties had expected, during that intervening time, that the 33 MW would be exempt from the OATT, as we did not impose an obligation to file an OATT. In contrast, here, the obligation to file an OATT was triggered by Green Border's valid transmission service request made on May 8, 2007, prior to Terra-Gen's attempt to establish priority for future service let alone a Commission order granting such priority. In addition, here there was never any question that there would be an obligation to file an OATT, as was the case in *Aero Energy*; there was thus no assumption that service could be taken pursuant to an existing agreement as in *Sagebrush*. Thus, in considering any

by Public Utilities and Transmitting Utilities, Order No. 888, 61 Fed. Reg. 21,540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036, at 31,654 (1996).

³² *Id.* The Commission has consistently indicated that native (retail) load customers of the transmission provider do not take transmission service under the OATT, but are required to designate network load and network resources in a manner consistent with the OATT. In this instance, the only service under the Terra-Gen OATT is point-to-point transmission service, and Terra-Gen does not have any retail load, as it has proposed to remove network service and native load service requirement from the proposed OATT.

³³ *Id.* at 31,654.

³⁴ *Sagebrush*, 130 FERC ¶ 61,093 at P 27 & n.49.

³⁵ 118 FERC ¶ 61,204, at P 19 (2007) (*Aero Energy*).

future use of the Dixie Valley Line, whether it be priority service to Terra-Gen itself, or to a third-party such as Green Borders, the Commission will apply its usual open access principals, which require that future service be taken subject to the OATT.

25. In the instant case, Terra-Gen proposes tariff language that would allow Terra-Gen to continue its existing service and initiate new transmission service to itself, for any Commission approved priority rights associated with its generation, outside of the rates, terms, and conditions of the OATT. Such a provision is not consistent with or superior to the *pro forma* OATT. Accordingly, Terra-Gen must revise its proposed grandfathering provision (Section 2.1a) in order to reflect that all future users of planned transmission capacity, for which priority may be granted, must take service subject to the terms of the OATT.

c. Ancillary Services

i. Terra-Gen Tariff Provisions

26. Terra-Gen requests waiver of the requirement to provide any ancillary services to customers of the Dixie Valley Line. Terra-Gen states that it does not operate a balancing area or have the generation resources necessary to provide ancillary services to third-parties seeking to take transmission service on the Dixie Valley Line. Terra-Gen notes that in the January 14 Order, the Commission granted waiver to Terra-Gen for the requirement to provide the ancillary services stated in Schedules 3 through 6 and Schedule 9 of the *pro forma* OATT.³⁶ In addition to the waivers granted in the January 14 Order, Terra-Gen now also requests waiver of the requirement to provide Scheduling, System Control and Load Dispatch Services (Service Schedule 1) and Reactive Power and Voltage Support Service (Service Schedule 2).³⁷ Finally, Terra-Gen seeks waiver of the requirement to act as an agent to assist third parties in obtaining ancillary services.

27. Terra-Gen explains that that scheduling of transmission service on the Dixie Valley Line is dependent of the ability to schedule on the SoCal Edison downstream transmission system. It continues that SoCal Edison currently provides the scheduling service for Terra-Gen's existing service and that any transmission customer may make similar arrangements with SoCal Edison. Terra-Gen also states that transmission

³⁶ Transmittal Letter at 6, citing January 14 Order, 134 FERC ¶ 61,027 at P 48. 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), and Section 1.2 and Section 3 of the *pro forma* OATT.

³⁷ *Id.* at 7.

customers may alternatively contract with a scheduling coordinator operating in the California Independent System Operator Corporation (CAISO) market in order to obtain all necessary ancillary services, including Scheduling and Reactive Power services.

28. As a result of its request for waiver, Terra-Gen proposes to include a new Schedule 12 provision stating that Terra-Gen will not provide ancillary services or contract to supply ancillary services and thus requires that transmission customers either self-supply ancillary services or contract with a CAISO certified Scheduling Coordinator in order to obtain any necessary ancillary services, including scheduling service and reactive power. Terra-Gen also proposes to modify section 13.8 (Scheduling of Firm Point-To-Point Transmission Service) and section 14.6 (Scheduling of Non-Firm Point-to-Point Transmission Service)³⁸ of its proposed tariff in order to state that transmission service must be scheduled by a CAISO certified Scheduling Coordinator.³⁹

ii. Protest

29. Green Borders asserts that Terra-Gen's request for waiver of all ancillary service obligations does not meet the Commission's "consistent with or superior to" test.⁴⁰ Green Borders argues that Terra-Gen has not provided sufficient information to justify a deviation from the *pro forma* OATT. Green Borders, citing the January 14 Order, asserts that Terra-Gen was required to explain how scheduling and reactive services may be obtained and who the balancing area authority is for the Dixie Valley Line, which are required for the Commission to evaluate Terra-Gen's requested waiver. Green Borders also argues that Terra-Gen's reliance on *Sagebrush* is misplaced.⁴¹ Green Borders states that, unlike the situation presented in *Sagebrush*, Terra-Gen demonstrates in its OATT that it will make no effort to either provide the services or to act as an agent to procure the services.

30. Green Borders argues that Terra-Gen has failed to comply with the January 14 Order by failing to fully explain how scheduling services are to be provided. Green

³⁸ Transmittal Letter at 13-14. Terra-Gen's transmittal stated that sections 13.6 and 14.8 were modified, but apparently this is a typographical error as sections 13.8 and 14.6 are instead modified in the clean tariff included in the submittal.

³⁹ Terra-Gen has included as section 1.42a, a new definition to the *pro forma* OATT denoting that Scheduling Coordinator means "an entity that the California Independent System Operator has certified as a Scheduling Coordinator."

⁴⁰ Protest at 16.

⁴¹ *Id.*

Borders asserts that the Commission should reject the proposed scheduling provisions provided in sections 13.8 and 14.6, as these provisions provide no specificity regarding the scheduling requirements that will be imposed by the Scheduling Coordinator. Green Borders states, for example, that the proposed revisions do not provide any indication of what time of day schedules will be required for service over the Dixie Valley Line, how many times a day scheduling changes will be permitted, and under what circumstances or what the charge for such service will be, if any.

iii. Commission Determination

31. In the January 14 Order, the Commission found that Terra-Gen had demonstrated that a deletion of the provisions for ancillary services may be justified.⁴² The Commission stated that waiver of these services was appropriate because transmission customers may either obtain these ancillary services from a third-party participating in the CAISO market or enter into appropriate agreements for similar service, as Terra-Gen currently does.⁴³ We continue to find that waiver of ancillary service schedules 3 through 6 and 9 is justified based on the fact that the Dixie Valley Line is a limited and discrete transmission line. Therefore, consistent with the January 14 Order, we will grant waiver of these provisions.⁴⁴

32. We also will grant Terra-Gen's request for waiver of the obligation to provide scheduling services. Terra-Gen currently does not provide scheduling for its own use. Terra-Gen's line interconnects only to the CAISO controlled grid, and the CAISO is the balancing area authority in which the Dixie Valley Line is located.⁴⁵ Because any output from a third-party generator using the Terra-Gen facilities will sink to the CAISO controlled grid, we agree that scheduling service may be obtained from any scheduling coordinator operating in the CAISO market. Alternatively, any transmission customer can seek certification as a scheduling coordinator and schedule for itself. Terra-Gen does not need to supply scheduling service since certified scheduling coordinators will provide

⁴² January 14 Order, 134 FERC ¶ 61,027 at P 48.

⁴³ *Id.*

⁴⁴ *Id.* See also *Sagebrush*, 130 FERC ¶ 61,093 at P 29; *MATL*, 116 FERC ¶ 61,071 at P 58.

⁴⁵ Pursuant to the North American Electric Reliability Corporation (NERC) Registry, Terra-Gen Dixie Valley is listed as only a Generator Owner and Generator Operator. Because the Dixie Valley Line is only connected to SoCal Edison, the CAISO must be the Balancing Area Authority.

the necessary schedules for users of the Dixie Valley Line to the CAISO to perform scheduling and dispatch functions.

33. Consistent with Commission precedent, the Commission also will grant Terra-Gen's request for waiver of the obligation to provide reactive service.⁴⁶ The Dixie Valley Line is not a network grid supported by multiple resources from which ancillary services can be provided. We also agree with Terra-Gen that requiring it to provide reactive services from its existing Dixie Valley plant would impair a pre-existing contractual obligation that it has with SoCal Edison. Furthermore, reactive services are generally necessary as close to the load as practicable. There is no load served on the Dixie Valley Line; rather, all energy transmitted will sink to the CAISO system, thereby allowing reactive services to be obtained from the CAISO-controlled grid through the CAISO market. Accordingly, based on the design of the facilities, Terra-Gen need not be the provider of reactive services.

34. Finally, we will grant Terra-Gen's request for waiver of the obligation to act as agent to assist third-parties in obtaining any ancillary services, including scheduling and reactive power services. In this instance, because the Dixie Valley Line interconnects only to the CAISO market, third-party users may freely obtain the requisite services by entering into bilateral agreements or otherwise obtaining them from the competitive market. Based upon the current design and use of the Dixie Valley Line, for example only delivering energy to a Commission-approved organized market, with no load being served off of the line prior to delivery to the CAISO-controlled system, we find that the agent provisions are not necessary at this time. Accordingly, we find that the revised sections 13.8 and 14.6 are just and reasonable.

d. Transmission Losses

i. Terra-Gen Tariff Provisions

35. In response to concerns raised by the Commission in the January 14 Order,⁴⁷ Terra-Gen proposes a formula in Schedule 10 of its proposed OATT to address the allocation of line losses to transmission customers on the Dixie Valley Line. Specifically, Terra-Gen proposes a formula to calculate the incremental line losses that are directly attributable to a specific customer at the time the customer interconnects with the Dixie Valley Line. According to Terra-Gen, the proposed formula makes the determination of the line losses associated with each new customer transparent and

⁴⁶ *Sagebrush*, 130 FERC ¶ 61,093 at P 29 and n.52.

⁴⁷ See January 14 Order, 134 FERC ¶ 61,027 at P 49.

ensures that line losses are being determined in a uniform and fair manner.⁴⁸ Terra-Gen states that application of the proposed formula will guarantee that each transmission customer is responsible for the line losses attributable to the customer's specific transmission request.⁴⁹ Terra-Gen further states that the proposed OATT provision is consistent with Commission policy that customers should bear the costs they cause.⁵⁰

ii. Protest

36. Green Borders opposes Terra-Gen's proposed assignment of line losses. First, Green Borders argues that Terra-Gen's shift from average line losses in the November 15 OATT filing to incremental line losses in the March 15 compliance filing goes beyond what the Commission directed Terra-Gen to do in the compliance filing.⁵¹ Second, Green Borders states that Terra-Gen has failed to provide support for the proposed treatment of losses.⁵² Third, Green Borders argues that Terra-Gen's proposed treatment of line losses is contrary to Commission precedent. Specifically, Green Borders argues that Terra-Gen's proposal is inconsistent with the policy that a transmission provider cannot use incremental losses while charging average rates.⁵³

iii. Commission Determination

37. We find that Terra-Gen's proposed treatment of line losses is not consistent with Commission policy.⁵⁴ Specifically, under current Commission policy, it is unreasonable

⁴⁸ Transmittal Letter at 8.

⁴⁹ *Id.*

⁵⁰ *Id.* (citing *Quachita Power, LLC v. Entergy La., Inc.*, 120 FERC ¶ 61,059, at P 10 (2007); *Commonwealth Edison & Commonwealth Edison of Ind., Inc.*, 123 FERC ¶ 61,122, at P 22 (2008)).

⁵¹ Protest at 27.

⁵² *Id.* at 27-28.

⁵³ *Id.* at 28-29 (citing *Mw. Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,172, at P 22 (2009)).

⁵⁴ See *Sithe/Independence Power Partners LP v. FERC*, 165 F.3d 944, 334 U.S. App. D.C. 157 (D.C. Cir. 1999); *Northern States Power Co.*, 59 FERC ¶ 61,100, at 61,369, *reh'g denied*, 60 FERC ¶ 61,076, at 61,252-53 & n.25 (1992), *clarification denied*, 64 FERC ¶ 61,111, at 61,920 (1993), *aff'd sub nom. Northern States Power Co. v. FERC*, 30 F.3d 177, 308 U.S. App. D.C. 115 (D.C. Cir. 1994).

for Terra-Gen to assign incremental line losses while charging an average embedded cost rate for existing transmission service on the Dixie Valley Line.⁵⁵ We note that the two cases cited by Terra-Gen in support of the proposed assignment of line losses are not on point. Specifically, *Quachita Power, LLC v. Entergy La., Inc.*,⁵⁶ addresses the treatment of transmission credits resulting from a customer-financed system upgrade, and *Commonwealth Edison & Commonwealth Edison of Ind., Inc.*,⁵⁷ addresses the treatment of losses associated with service over non-jurisdictional distribution facilities. The facts at issue in both cases cited by Terra-Gen are not analogous to the situation here, where the Commission's policy clearly requires like treatment for both the development of transmission rates and the assignment of line losses.⁵⁸ To the extent that Terra-Gen charges an average embedded cost rate to existing transmission service customers, it must assign losses on an average basis. Should Terra-Gen prefer to assign losses on an incremental basis, it is free to propose a rate methodology that is consistent with Commission policy. Accordingly, we do not find Terra-Gen's incremental loss proposal just and reasonable and we will require a further compliance filing proposing a loss compensation methodology that is consistent with Commission policy and precedent.

e. Creditworthiness

i. Terra-Gen Tariff Provisions

38. Terra-Gen proposes to modify the *pro forma* creditworthiness procedures in Attachment L. Specifically, Terra-Gen proposes several alternatives for transmission customers to demonstrate creditworthiness. First, Terra-Gen would allow a customer to establish creditworthiness by demonstrating that it has a credit rating of BBB+/Baa1 or better, and posting a letter of credit equal to three months of its reservation charges at the

⁵⁵ We note that Terra-Gen's proposed form of service agreement notes that it may seek to charge a new transmission customer either the average embedded cost rate stated in the OATT, or propose an incremental transmission charge based on the cost of expansion of the Dixie Valley Line caused by the transmission request.

⁵⁶ 120 FERC ¶ 61,059 (2007).

⁵⁷ 123 FERC ¶ 61,122 (2008).

⁵⁸ See *Midwest ISO, Inc.*, 129 FERC ¶ 61,172, at P 34 (2009); *Sithe/Independence Power Partners LP v. FERC*, 165 F.3d 944, 334 U.S. App. D.C. 157 (D.C. Cir. 1999); *Northern States Power Co.*, 59 FERC ¶ 61,100, at 61,369, *reh'g denied*, 60 FERC ¶ 61,076, at 61,252-53 & n.25 (1992), *clarification denied*, 64 FERC ¶ 61,111, at 61,920 (1993), *aff'd sub nom. Northern States Power Co. v. FERC*, 30 F.3d 177, 308 U.S. App. D.C. 115 (D.C. Cir. 1994).

time it executes its service agreement.⁵⁹ Alternatively, if a customer does not have a credit rating of BBB+/Baa1, a transmission customer must post a letter of credit equivalent to twelve months of reservation charges.⁶⁰ For customers seeking transmission service for less than one year, the customer must be investment grade or provide a letter of credit equal to two times the estimated monthly charges for service. Terra-Gen's Attachment L also provides that the transmission customer and Terra-Gen may agree on an alternative credit support arrangement.

ii. Protest

39. Green Borders argues that Terra-Gen's proposed creditworthiness procedures are not reasonable and are inconsistent with industry commercial practices. Green Borders states that, while the proposed creditworthiness provisions are a step forward from those the Commission rejected in the January 14 Order, the provisions raise questions about discrimination against unaffiliated generators.⁶¹ Green Borders argues that the precedent to which Terra-Gen refers in support of its rating level to determine creditworthy parties is inconsistent with other parties in the market and is not commercially reasonable.⁶²

iii. Commission Determination

40. 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.⁶³ We find that Terra-Gen's proposed Attachment L provisions include both quantitative and qualitative creditworthiness criteria, consistent with Commission policy.⁶⁴ We agree with Terra-Gen that the nature of its business as only a generator developer and operator that is not a

⁵⁹ Terra-Gen OATT at Attachment L, Section 1.2(i).

⁶⁰ Both the three months of reservations or twelve months of reservations apply to customers seeking long-term point-to-point transmission service.

⁶¹ Green Borders Protest at 21.

⁶² *Id.*

⁶³ 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).

⁶⁴ *Id.* *See also Policy on Electric Creditworthiness*, 109 FERC ¶ 61,186 (2004).

publicly held entity from which it can obtain additional financial resources, supports higher creditworthiness standards in order to ensure that it is not financially harmed.

41. We also find that the provisions for non-creditworthy parties, whereby those customers must provide a letter of credit of up to twelve months of reservation charges, to be just and reasonable. Terra-Gen is not a transmission owner and operator in the traditional sense. For example, it does not plan for native load growth and other uses for which transmission expansion is required. Accordingly, there are limitations on its ability to expand the Dixie Valley Line without these additional credit supports.

42. Additionally, we find acceptable the proposed credit requirements of a letter of credit equal to two times the expected monthly charge for service requests of less than one year. We disagree with Green Borders at this time that the threshold credit rating of BBB+/Baa1 is unreasonable. We also note that section 1.9 of Attachment L provides that other forms of security may be agreed to between Terra-Gen and its customers. In that regard, we remind Terra-Gen that any additional creditworthiness provision that is agreed to that deviates from the terms and conditions of Attachment L must be filed with the Commission.

43. However, we still have some concerns regarding the proposal. Terra-Gen has not explained why it is necessary to require a letter of credit, or to otherwise require a cash deposit, for creditworthy parties. Consistent with the provisions of section 17.2 of the OATT, among other things, customers must submit a deposit when requesting transmission service.⁶⁵ If these parties are creditworthy, we agree with Green Borders that the additional deposit requirements proposed by Terra-Gen might be unnecessary. Accordingly, Terra-Gen is required to explain why additional deposits for creditworthy customers are necessary, or delete the letter of credit provision for creditworthy parties.

44. While we accept the creditworthiness provisions, subject to further explanation or revision from Terra-Gen, to the extent a transmission customer believes that the transmission provider has discriminated in the application of its creditworthiness standards, that customer may contact the Commission's enforcement hotline or file a complaint pursuant to section 206 of the Federal Power Act (FPA).⁶⁶

⁶⁵ Deposits for system impact studies and interconnection studies and the requirement to fund system expansions required by the transmission service request are required elsewhere in the OATT.

⁶⁶ 16 U.S.C. § 824e (2006).

f. Attachment C – Methodology for Calculating ATC

i. Terra-Gen Tariff Provisions

45. Terra-Gen requests waivers of certain Attachment C (calculation of available transfer capability) requirements, to the extent necessary to accept its proposed Attachment C provisions. Terra-Gen asserts that its Attachment C methodology is consistent with or superior to the *pro forma* OATT because it provides necessary information for assessing the transfer capability of the Dixie Valley Line while avoiding the imposition of unnecessary costs, such as those associated with various modeling requirements. In addition, Terra-Gen commits to reassess its proposed Available Transfer Capability (ATC) methodology in the event there is a modification to or addition of a transmission component on the Dixie Valley Line. Finally, until such time as Terra-Gen has an available website, Terra-Gen requests a limited waiver from the requirement to include a link to its ATC methodology.⁶⁷

46. Pursuant to the Commission's January 14 Order, Terra-Gen identifies the Rated System Path Methodology, described in North American Electric Reliability Corporation (NERC) Reliability Standard MOD-29-1a, as the methodology it employs to calculate ATC. Terra-Gen further states that it has included a process flow diagram illustrating the steps taken in calculating ATC, as well as definitions of the ATC components. Terra-Gen also includes an algorithm that it states would apply to its scheduling, operating and planning horizons, but suggests that ATC calculations for SoCal Edison would provide more useful information because application of Terra-Gen's methodology results in an ATC of zero.

47. In support of its ATC calculation, Terra-Gen states that service on the Dixie Valley Line is contingent on the line being in service and on SoCal Edison having sufficient ATC to schedule deliveries from the line onto its system. Terra-Gen asserts that the methodologies approved by NERC for the calculation of ATC demonstrate that ATC is meaningless when applied to a single radial transmission line with one point of interconnection. Specifically, Terra-Gen asserts that Total Transfer Capability (TTC) is zero because a single radial transmission line with one point of interconnection cannot sustain an N-1 contingency and, thus, ATC is also zero.

⁶⁷ Terra-Gen suggests that it anticipates having an operational website within ninety days from the date upon which its filing was made and commits to amending its ATC provision to include a link to its ATC methodology once the website becomes available.

ii. Protest

48. Green Borders states that Terra-Gen's calculations of TTC and ATC as zero are in error, and that these calculations are an attempt to reserve capacity on the Dixie Valley Line for Terra-Gen's affiliates while denying service to others.⁶⁸ Green Borders argues that Terra-Gen has incorrectly applied NERC standards to arrive at a value of zero for TTC. Green Borders asserts that the NERC Reliability Standard MOD-29-1a is intended to ensure that contingencies will not result in reliability problems elsewhere on the system when the contingency occurs.⁶⁹

49. Green Borders argues that if TTC and ATC are always zero for a radial line, then there is no need for an OATT because no capacity would ever be available until a second circuit is built.⁷⁰ Green Borders states that Terra-Gen is inconsistent in arguing that TTC is zero and also arguing that existing users should have priority service on the line, as a TTC value of zero should preclude any transfers on the line.⁷¹ Finally, Green Borders argues Terra-Gen is wrong that ETC (capacity held by existing users) reduces both TTC and ATC, as the equations proposed by Terra-Gen show that ETC reduces only ATC.⁷²

iii. Commission Determination

50. In the January 14 Order, we directed Terra-Gen to address certain deficiencies with its proposed Attachment C. Specifically, we directed Terra-Gen to include certain algorithms for calculating ATC for the scheduling, operating, and planning horizons, explain the application of all algorithms it includes, provide an ATC process flow diagram and an internet link to its ATC data and algorithms, and revise its proposed definitions of ATC components to comply with the requirements of Order No. 890.⁷³

51. With respect to the aforementioned directives, we find that Terra-Gen has substantially complied inasmuch as it has attempted to provide the Commission with the missing information that was identified in the January 14 Order. However, we find that

⁶⁸ Protest at 25.

⁶⁹ Protest, Exhibit GBG-4; Testimony of David Becher at 5:8-11.

⁷⁰ Testimony of David Becher at 5:15-16.

⁷¹ Protest at 24, Testimony of David Becher at 6:16-17.

⁷² Testimony of David Becher at 7:4-13.

⁷³ January 14 Order, 134 FERC ¶ 61,027 at P 58.

Terra-Gen's treatment of ATC in Attachment C is contradictory, when considering a TTC value of zero, and we will therefore reject Terra-Gen's proposed Attachment C. Moreover, it is illogical for Terra-Gen to state that TTC on the Dixie Valley Line is zero, while simultaneously arguing that there is capacity available to accommodate any grandfathered service but not service for other potential users. Insofar as Terra-Gen's Attachment C will always yield a TTC value of zero regardless of the line's actual capacity, we find that such methodology is not consistent with or superior to the *pro forma* tariff, and is thus not just and reasonable.

52. In prior orders, we have found that different transmission provider business models and unique layouts and the resulting different services offered may justify differences in the OATT applicable to such facilities as compared to an OATT governing more traditional integrated network transmission facilities.⁷⁴ For example, as discussed previously in this order, we will not require Terra-Gen to provide network service on the Dixie Valley Line as it makes little sense to provide such service.⁷⁵ Similarly, we find here that Terra-Gen's assertion that application of the N-1 analysis in computing transfer capability makes little sense because the Dixie Valley Line is a radial tie line, and do not find it to be reasonable. This standard, as applied to the Dixie Valley Line, will always result in zero for ATC and TTC, regardless of whether there may actually be capacity available. Accordingly, we will direct Terra-Gen to re-file Attachment C establishing the TTC value for the line based on the most limiting component of the line, electrical characteristics, or other factors (such as ground clearance) that impact reliable operation, and which is consistent with the fact that that an allocation of capacity to existing users implies that TTC on the Dixie Valley Line must exceed zero.⁷⁶

⁷⁴ See, e.g., *MATL*, 116 FERC ¶ 61,071, at P 57-58.

⁷⁵ *Id.* See also *Sagebrush*, 130 FERC ¶ 61,093 at P 29.

⁷⁶ While we recognize that the downstream ATC at the SoCal Edison system interface may limit the realizable ATC on the Dixie Valley Line, service from the point where Terra-Gen's line interconnect with SoCal Edison's line is a separate matter not covered under Terra-Gen's OATT and, as such, is beyond the scope of this proceeding. Additionally, because we reject the proposed Attachment C, we find it unnecessary to address the limited request for waiver of the requirement to provide an internet link to the ATC calculation data and methodology.

g. Transmission Planning Process – Attachment K

i. Terra-Gen Tariff Provisions

53. In the January 14 Order, the Commission addressed Terra-Gen’s proposed planning process. The Commission found that Terra-Gen’s planning process satisfied the coordination, transparency, and regional participation principles. The Commission also found that Terra-Gen’s proposed planning process satisfactorily addressed how it would recover the cost of planning activities. However, the Commission found that Terra-Gen partially complied with the openness, information exchange, comparability, and dispute resolution principles. In addition, the Commission found that Terra-Gen did not satisfy the economic planning or cost allocation principles.

54. As a result of the January 14 Order, Terra-Gen proposes an Attachment K that is directed at addressing the guidance provided in the January 14 Order. Specifically, Terra-Gen addresses further the openness, information exchange, comparability, dispute resolution, economic planning, and cost allocation principles.

ii. Protest

55. Green Borders comments that, while Terra-Gen’s proposed planning process addresses the guidance in the January 14 Order, the Commission should require Terra-Gen to make further revisions to the comparability, economic planning, and cost allocation principles.

56. With regard to comparability, Green Borders points out that Terra-Gen’s proposal provides Terra-Gen with sole discretion for selecting which projects to undertake, based on factors over which Terra-Gen has sole discretion to consider. Green Borders asserts that, under such a process, stakeholders would not be able to ensure that Terra-Gen is not discriminating against unaffiliated generators and using the transmission planning process to allocate the cost of self-serving projects to multiple parties.⁷⁷

57. Green Borders also asserts that Terra-Gen’s economic planning proposal could lead to discriminatory planning and ignores the interests of stakeholders in the planning process.⁷⁸ For example, Green Borders points out that, while a transmission customer must assist in gathering the information for conducting the economic study, the provisions do not provide an opportunity for the requesting customer to participate in, oversee, or observe the study. Additionally, Green Borders asserts that Terra-Gen’s

⁷⁷ Protest at 18.

⁷⁸ *Id.*

proposal to reserve sole discretion of which economic studies are highest priority is unreasonable.

58. Finally, Green Borders asserts that Terra-Gen's cost allocation proposal doesn't satisfy the guidance provided in the January 14 Order. Green Borders states that, while the Commission required that Terra-Gen include a method by which Terra-Gen would allocate the costs of new transmission facilities that do not fit under existing rate structures, Terra-Gen's OATT only provides that the cost allocation of facilities will be pursuant to the tariff.⁷⁹ Green Borders asks that the Commission require Terra-Gen to provide greater specificity regarding the allocation of costs that are not already contemplated by the existing rate schedules.⁸⁰

iii. Commission Determination

59. Consistent with our findings in the January 14 Order, we continue to find that Terra-Gen complies with the coordination, transparency, and regional participation principles.⁸¹ For the same reasons, Terra-Gen also satisfactorily addresses the recovery of planning costs.⁸² In addition, Terra-Gen has addressed the openness, information exchange, and dispute resolution principles, based upon the guidance in the January 14 Order. For example, Terra-Gen has addressed the openness principle by modifying its provisions to allow any stakeholder to participate in the planning process. Terra-Gen also addressed the information exchange by explaining how interested parties may submit data to the planning process and provided the milestones and timeframes for data submission and stakeholder review of the plan. Terra-Gen has also specified the process by which disputes arising during the planning process will be handled. Accordingly, in addition to meeting the coordination principle, transparency principle, regional participation principle, and the recovery of planning costs, we find that Terra-Gen satisfactorily complies with the openness, information exchange and dispute resolution principles.

60. While we find that Terra-Gen complies with the principles addressed above, we address below the comparability, economic planning, and cost allocation principles, as addressed by Terra-Gen in the instant filing.

⁷⁹ *Id.* at 19.

⁸⁰ *Id.*

⁸¹ *See* January 14 Order, 134 FERC ¶ 61,027 at P 68, P 76, and P 89, respectively.

⁸² *Id.* P 98.

Comparability

61. In the January 14 Order, the Commission found that Terra-Gen's Attachment K partially complied with the comparability principle. However, the Commission noted that Terra-Gen had not addressed how its proposed planning provisions comply with Order No. 890-A.⁸³

62. Terra-Gen addresses the requirement of the January 14 Order by modifying its Attachment K to clarify that all interested stakeholders in the transmission planning process may participate in the Planning Advisory Group, including providers of transmission and non-transmission alternatives. Additionally, Terra-Gen has clarified how and when stakeholders in the transmission planning process may provide data to the plan and offer alternatives to the transmission plan.

63. Based upon our preliminary review of Terra-Gen's transmission planning process, we agree with Green Borders that Terra-Gen's proposal to retain sole discretion to select projects based on "cost, economic impact, reliability and other considerations" does not satisfactorily explain how Terra-Gen will select projects for inclusion in the transmission plan.⁸⁴ To select one of the bases for evaluation "at its sole discretion" without input from stakeholders fails to provide transparency in the selection process. Accordingly, we will require Terra-Gen to submit a further compliance filing that addresses the basis on which competing projects will be selected.

Economic Planning

64. In the January 14 Order, the Commission found that Terra-Gen did not satisfy the economic planning requirement.⁸⁵ Specifically, the Commission noted that Terra-Gen's proposed Attachment K did not include any provisions for the study of economic considerations in the transmission planning process.⁸⁶

65. Terra-Gen has now included provisions that establish procedures for conducting economic studies as part of the overall planning cycle. Terra-Gen proposes a new section 4.6 to its Attachment K that provides that, during its five year planning cycle, it will take into account economic and reliability considerations proposed by interested stakeholders.

⁸³ January 14 Order, 134 FERC ¶ 61,027 at P 83.

⁸⁴ *See* Terra-Gen OATT, Attachment K at Section 1.4.

⁸⁵ January 14 Order, 134 FERC ¶ 61,027 at P 93.

⁸⁶ *Id.*

Terra-Gen's proposed provisions detail the time frames in which interested stakeholders may submit information for conducting economic studies and the obligations of a stakeholder to participate in the economic study process. Terra-Gen proposes that it will conduct up to two high-priority economic planning studies during each planning cycle.

66. We find that Terra-Gen's Attachment K satisfies the economic planning requirement. Terra-Gen has adequately described when and how interested parties may request economic studies, and how Terra-Gen will address which high priority economic study request will be undertaken within the planning period. Additionally, we disagree with Green Borders that the economic planning process is not transparent and open. Terra-Gen explains that economic planning studies will be submitted to the Planning Advisory Group as part of the planning process and will consider the input of interested stakeholders.

Cost Allocation

67. In the January 14 Order, the Commission found that Terra-Gen did not satisfy the cost allocation principle.⁸⁷ Similar to the economic planning requirement, the Commission noted that Terra-Gen's proposed Attachment K did not include any provisions that address how Terra-Gen proposed to allocate the cost of new facilities that do not fit under existing rate structures.⁸⁸

68. To address the cost allocation principle, Terra-Gen now proposes a new section 10 to its Attachment K that states "the costs of new facilities required because of individual requests for transmission and interconnection service shall be allocated to customers pursuant to the Tariff."⁸⁹

69. The Commission finds that Terra-Gen's proposal does not satisfy the cost allocation principle. We agree with Green Borders that Terra-Gen's proposal is vague as to how the costs of new facilities that do not otherwise fit under the existing rate structures of Terra-Gen's OATT will be allocated. Accordingly, we will require Terra-Gen to submit a further compliance filing that explains how such costs would be allocated; whether, for example, allocated to the requesting customer or allocated to transmission or interconnection customers that benefit from the facilities.

⁸⁷ *Id.* P 96.

⁸⁸ *Id.*

⁸⁹ Terra-Gen OATT, Attachment K at Section 10.

h. Transmission Service Rates**i. Tariff Proposal**

70. Terra-Gen proposes a cost-based, monthly rate of \$3,600/MW for both firm and non-firm point-to-point transmission service on the Dixie Valley Line.⁹⁰ Terra-Gen's proposed transmission service rate is based upon an average annual revenue requirement of approximately \$2.8 million.⁹¹

71. Terra-Gen's proposed revenue requirement includes a proxy capital structure adopted from SoCal Edison, the transmission provider to which the Dixie Valley Line is interconnected.⁹² Terra-Gen states that it does not issue publicly traded stocks, thus requiring a proxy capital structure, and further asserts that Commission policy permits an independent power producer to adopt the capital structure of its interconnected transmission owner due to the fact that it has not been subject to either traditional rate regulation or the FERC Uniform System of Accounts.⁹³

72. In addition to the stated average embedded rates for transmission service, Terra-Gen has also included a provision, as part of the form of transmission service agreement, that it may charge a transmission customer the higher of the rate established for firm point-to-point transmission service or the rate developed from amortizing the costs of any new facilities required by the transmission customer's request for service, over the period of the transmission customer's service agreement.⁹⁴

73. Terra-Gen also seeks permission to establish a regulatory asset that will include expenses incurred in connection with the requirement that Terra-Gen convert the Dixie Valley Line into a Commission-regulated transmission line. Terra-Gen asserts that it has spent approximately \$1 million to address the regulatory ramifications of Green Borders' decision to explore siting a generator on the Dixie Valley Line.⁹⁵ Terra-Gen asserts that

⁹⁰ Transmittal Letter at 16.

⁹¹ Terra-Gen has only included monthly rates for Point-to-Point Transmission Service. Because it does not provide Network Transmission Service, the OATT does not include the \$2.8 million transmission revenue requirement in Attachment H.

⁹² *Id.* at 17-18.

⁹³ *Id.*

⁹⁴ Terra-Gen OATT, Attachment A, Section 5.1.

⁹⁵ Transmittal Letter at 19.

the costs to be included in the regulatory asset include, but are not limited to, consulting, accounting and legal expenses, engineering studies, personnel, and computer and communication expenses. Terra-Gen proposes to accrue carrying charges on the regulatory asset from the effective date of the Commission approval until such time as the regulatory asset is included in rate base. Terra-Gen proposes to record the regulatory asset and related carrying charges to FERC Account 182.3.

ii. Protest

74. Green Borders states that Terra-Gen has failed to comply with the January 14 Order in that it failed to submit all cost computations used to develop the proposed rate, including, but not limited to, detailed work papers.⁹⁶ Therefore, Green Borders requests that the Commission either reject the proposed rate or schedule a full evidentiary hearing to review Terra-Gen's proposed rate.⁹⁷ In particular, Green Borders argues that Terra-Gen should not be permitted to adopt SoCal Edison's capital structure because Terra-Gen is acting as a transmission provider in the instant situation as opposed to a merchant generator.⁹⁸

75. Green Borders also raises concerns with other aspects of the proposed rate. First, Green Borders states that the plant-in-service amount and depreciation methods used in the rate calculation appear to be selected to artificially maximize Terra-Gen's rate base.⁹⁹ Second, Green Borders states that Terra-Gen's calculation of net tax balance is unsupported by evidence. Green Borders also states that the amounts used to calculate costs for other taxes appear abnormally high and are not supported by evidence.¹⁰⁰ In addition, Green Borders questions the billing determinants used to calculate the proposed rate. Specifically, Green Borders argues that Terra-Gen erred in using only the 64 MW of current firm service rather than the actual current capacity of 400 MW. Green Borders argues that, at a minimum, Terra-Gen should include 60 MW of firm service for Green

⁹⁶ Protest at 9 (citing January 14 Order, 134 FERC ¶ 61,027 at P 104).

⁹⁷ *Id.* at 10.

⁹⁸ *Id.*

⁹⁹ *Id.* at 11.

¹⁰⁰ *Id.*

Borders in the calculation.¹⁰¹ Finally, Green Borders states that Terra-Gen should not use a non-levelized carrying charge in calculating the rate.¹⁰²

76. Green Borders also asserts that Terra-Gen has provided no explanation to justify the addition of the incremental cost provisions in the form of service agreement. Green Borders requests that the Commission reject this provision, recognizing that Terra-Gen must any proposed rate with the Commission for approval.¹⁰³

iii. Commission Determination

77. Our preliminary review of Terra-Gen's filing indicates that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Several aspects of Terra-Gen's proposed rates raise issues of material fact, including the reasonableness of Terra-Gen's proposed return on equity of 10.30 percent, the verification of Terra-Gen's plant-in-service, depreciation, operations and maintenance, and other cost-of-service related data.¹⁰⁴ We further note that Terra-Gen has not provided any rates other than for monthly service, either for firm point-to-point transmission service or non-firm point-to-point service. Therefore, we will accept Terra-Gen's proposed rates, to be effective May 14, 2011, as requested, and set the proposed rates for hearing pursuant to section 206 of the FPA¹⁰⁵ and settlement judge procedures.

78. In cases where, as here, the Commission institutes a section 206 investigation on its own motion, section 206(b) of the FPA requires that the Commission establish a refund effective date that is no earlier than publication of notice of the Commission's initiation of its investigation in the Federal Register, and no later than five months subsequent to that date. In order to give maximum protection to customers, and

¹⁰¹ *Id.* at 10-12.

¹⁰² *Id.* at 12.

¹⁰³ Protest at 20.

¹⁰⁴ Terra-Gen was formerly exempt from the Commission's reporting requirements as a Qualifying Facility. Accordingly, no publicly reported data, consistent with the Commission's Uniform System of Accounts, is available for examination in this proceeding without discovery and cross-examination.

¹⁰⁵ The section 206 proceeding has been designated Docket No. EL11-37-000.

consistent with our precedent,¹⁰⁶ we will establish a refund date at the earliest possible date. This date will be the date on which the notice of our investigation in this proceeding is published in the Federal Register. The Commission is also required by section 206 to indicate when it expects to issue a final order. In this case, the Commission expects that it will be able to issue a final order, should the case go to an initial decision, within one year of the date of an initial decision.

79. While we are setting these matters for trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure. If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise the Chief Judge will select a judge for this purpose. The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

80. We will not reject section 5.1 of Terra-Gen's form of service agreement allowing it to propose incremental transmission rates, capped at the cost of expansion, in lieu of the stated average cost transmission rates proposed in Services Schedules 7 and 8 of its OATT. Pursuant to Commission policy, a transmission provider may seek to charge a transmission customer the greater of the average embedded cost of service or the incremental cost of providing service (capped at the cost of expansion), but not both.¹⁰⁷ We remind Terra-Gen that any service agreement in which it seeks to charge an incremental rate to a transmission customer, in lieu of the stated average cost rates provided in its OATT, is a non-conforming service agreement that will be required to be filed with the Commission. The transmission customer must have opportunity to ensure that any proposed transmission rate based on the incremental cost of expansion on the Dixie Valley Line is just and reasonable.

¹⁰⁶ See, e.g., *PJM Interconnection, L.L.C.*, 90 FERC ¶ 61,137 (2000); *Cambridge Elec. Light Co.*, 75 FERC ¶ 61,177, *clarified*, 76 FERC ¶ 61,020 (1996); *Canal Elec. Co.*, 46 FERC ¶ 61,153, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

¹⁰⁷ See *Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act; Policy Statement*, FERC Stats. & Regs. ¶ 31,005 (1994).

81. Finally, we will allow Terra-Gen to establish a regulatory asset, as requested. Costs deferred as a regulatory asset must be recorded in Account 182.3, Other Regulatory Assets, and may only include amounts that would otherwise be chargeable to expense in the period incurred, are not recoverable in current rates, and are probable for recovery in rates in a different period.¹⁰⁸ Furthermore, the instructions to Account 182.3 require that amounts deferred in this account are to be charged to expense concurrent with the recovery of the amounts in rates. If rate recovery of all or part of the costs deferred in Account 182.3 is later disallowed, the disallowed amount shall be charged to Account 426.5, Other Deductions, in the year of disallowance.

82. While this order provides Terra-Gen with the ability to record certain costs as a regulatory asset, Terra-Gen must make a filing under section 205 of the FPA when it proposes to include such costs in transmission rates, in order to ensure that the incurred expenses are just and reasonable. Terra-Gen also will have to establish that the costs included in the regulatory asset are costs that would have otherwise been chargeable to expense in the period incurred. Parties will be able to challenge these costs at that time.

3. Waiver of Reporting Requirements

83. Terra-Gen requests that the Commission grant waiver to Terra-Gen so that it will have to comply with the FERC Uniform System of Accounts only with respect to the Dixie Valley Line.¹⁰⁹ Terra-Gen explains that, because the generator is a qualifying facility (QF), imposing the FERC reporting requirements on its merchant function will impose a burden of complying with new accounting rules. Terra-Gen further requests the Commission grant a deferral of the obligation to comply with the Uniform System of Accounts with respect to the Dixie Valley Line until such time as a third-party commences service under the OATT.

84. We will grant the waiver Terra-Gen requests with regard to requiring the Dixie Valley QF to be subject to FERC Uniform System of Accounts. As we explained in the September 16 Order, our determination does not affect the QF status of the Dixie Valley Generator.¹¹⁰ As a result, Terra-Gen must only be required to report under the uniform

¹⁰⁸ The term "probable" as used in the definition of regulatory assets, refers to that which can reasonably be expected or believed on the basis of available evidence or logic but is neither certain nor proved. *Revisions to Uniform Systems of Accounts to Account for Allowances under the Clean Air Act Amendments of 1990 and Regulatory-Created Assets and Liabilities and to Form Nos. 1, 1-F, 2, and 2-A*, FERC Statutes and Regulations, Regulations Preambles January 1991-June 1996 ¶ 30,967 (1993).

¹⁰⁹ Transmittal Letter at 18.

¹¹⁰ September 16 Order, 132 FERC ¶ 61,215 at n.80.

system of accounts, as a transmission service provider, for the Dixie Valley Line. However, we will not grant deferral of the reporting requirement. Terra-Gen will be required to submit the appropriate reporting information consistent with the Commission regulations.

4. Additional Matters

85. In review of Terra-Gen's proposed deviations from the *pro forma* OATT,¹¹¹ Terra-Gen lists the proposed changes it seeks approval of in its OATT. We agree with Green Borders that certain uses of the term "Transmitting Utility" may remain in the OATT, notably in the Large Generator Interconnection Procedures and Large Generator Interconnection Agreement, despite Terra-Gen's removal of the term from the master definitions. We will require Terra-Gen to correct these instances and utilize the *pro forma* term Transmission Provider, as it has committed to do.¹¹²

86. Additionally, Terra-Gen has revised the language it filed as Schedule 11, FERC Annual Charges, to clarify that all users of the Dixie Valley Line, including grandfathered users, will be responsible for FERC annual charges that are attributable to transmission service. Additionally, Terra-Gen has incorporated *pro forma* sections 17.7 (Extensions for Commencement of Service), 19.8 (Expedited Procedures for New Facilities), and 19.9 (Penalties for Failure to Meet Study Deadlines), as well as *pro forma* sections 4.1.1 and 4.1.2 of the LGIP into its proposed OATT. We find that Terra-Gen's proposals in this regard satisfactorily comply with the January 14 Order.

The Commission orders:

(A) Terra-Gen's February 14, 2011 Request for Rehearing is hereby granted in part and denied in part, as discussed in the body of this order.

(B) Terra-Gen is hereby directed to file, within 30 days of the date of this order, revisions to its proposed OATT, as discussed in the body of this order.

(C) Terra-Gen's proposed OATT is hereby accepted in part and rejected in part, effective May 14, 2011, as modified in accordance with Ordering Paragraph (B) above, as discussed in the body of this order.

(D) Terra-Gen's requested waivers are granted in part and denied in part, as discussed in the body of this order.

¹¹¹ See March 16 Filing, Attachment C.

¹¹² Transmittal Letter at 15.

(E) Terra-Gen's proposed transmission rates are hereby accepted, effective May 14, 2011, subject to refund.

(F) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning Terra-Gen's proposed revenue requirement. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (G) and (H) below.

(G) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2010), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(H) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(I) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(J) The Secretary shall promptly publish in the Federal Register a notice of the Commission's initiation of the investigation ordered in Ordering Paragraph (F) above, under section 206 of the Federal Power Act.

By the Commission. Chairman Wellinghoff is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.