

137 FERC ¶ 61,179  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Terra-Gen Dixie Valley, LLC, TGP Dixie      Docket No.    EL10-29-002  
Development Company, LLC, and New  
York Canyon, LLC

Green Borders Geothermal, LLC              Docket No.    EL10-36-002

v.

Terra-Gen Dixie Valley, LLC

ORDER ON REQUEST FOR PRIORITY RIGHTS

(Issued December 2, 2011)

1. On November 15, 2010, Terra-Gen Dixie Valley, LLC (Terra-Gen) and two of its affiliates, TGP Dixie Development Company, LLC (TGP Dixie) and New York Canyon, LLC (New York Canyon) (collectively, Petitioners) submitted evidence to support their request that the Commission grant priority transmission rights for planned transmission capacity on Terra-Gen's 214-mile, 230 kV radial transmission line in northern Nevada (Dixie Valley Line) for: (1) 100 MW of priority firm transmission rights for Terra-Gen's Coyote Canyon project; and (2) 100 MW of priority firm rights for the New York Canyon project owned by Terra-Gen's affiliate, New York Canyon.<sup>1</sup> For the reasons discussed below, we will grant Petitioners' request for priority rights for 100 MW of transmission capacity on the Dixie Valley Line for the Coyote Canyon project and for 100 MW of transmission capacity on the Dixie Valley Line for the New York Canyon project.

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<sup>1</sup> Although Petitioners also submitted evidence to support their request for 100 MW of priority firm transmission rights for the Dixie Meadows project, they subsequently withdrew that request. Terra-Gen January 20, 2011 Answer at 7-8. As a result, discussion in this order is limited to Petitioners' request for priority rights for the Coyote Canyon and New York Canyon projects.

## I. Background

2. On December 24, 2009, Petitioners filed a petition for declaratory order (December 24 Petition) seeking Commission confirmation that they have priority firm transmission rights to 360 MW of existing transmission capacity on the Dixie Valley Line. Petitioners sought priority rights to 60 MW of capacity for transmission service already being provided for Terra-Gen's 60 MW geothermal generation unit, and for an additional 300 MW of available capacity for 300 MW of new geothermal generation units planned by Terra-Gen and its affiliates. Petitioners also sought waiver of certain requirements in Order Nos. 888, 889, and 890 and the Standards of Conduct requirements in the Commission's regulations.<sup>2</sup> On January 25, 2010, Green Borders Geothermal, LLC (Green Borders) filed a complaint requesting that the Commission find that Terra-Gen violated the Commission's *Oxbow Orders*,<sup>3</sup> and the Commission's policy established in Order No. 888, which requires transmission providers to have an open access transmission tariff (OATT) on file with the Commission and to provide non-discriminatory transmission service to all eligible customers.

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<sup>2</sup> See *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002); *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); *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009); *Standards of Conduct for Transmission Providers*, Order No. 717, FERC Stats. & Regs. ¶ 31,280 (2008), *order on reh'g*, Order No. 717-A, FERC Stats. & Regs. ¶ 31,297 (2009); 18 C.F.R. § 35.28, 18 C.F.R. Part 37, and 18 C.F.R. Part 358 (2010).

<sup>3</sup> *Oxbow Power Marketing, Inc.*, 76 FERC ¶ 61,031 (1996); 79 FERC ¶ 61,193 (1997) (collectively *Oxbow Orders*). The Commission granted Oxbow Geothermal Corporation certification of the three facilities as a single qualifying facility (QF), *Oxbow Geothermal Corp.*, 36 FERC ¶ 62,152 (1986), and granted recertification of the Dixie Valley QF, confirming inclusion of the Dixie Valley Line as a component of the QF in 1988. *Oxbow Geothermal Corp.*, 43 FERC ¶ 61,286 (1988), *recertification*, 67 FERC ¶ 61,193 (1994).

3. The Commission addressed the petition and complaint in its September 16 Order,<sup>4</sup> in which it found that: (1) Green Borders' May 8, 2007 request for interconnection and transmission service satisfied the criteria of section 17.2 of the *pro forma* OATT; (2) Terra-Gen was required to file an OATT as a result of Green Borders' valid transmission service request; (3) Terra-Gen established priority for its current use of 60 MW of existing transmission capacity; and (4) Terra-Gen had not provided sufficient evidence of specific pre-existing generation development plans to justify priority rights to transmission capacity beyond its current use of 60 MW. The Commission therefore denied Terra-Gen's request that the Commission confirm priority rights for planned capacity expansions, without prejudice to Terra-Gen submitting additional evidence to establish such priority along with the submission of its OATT.<sup>5</sup> In this regard, the Commission recognized that Terra-Gen may have invested in the Dixie Valley Line with the expectation that it would have priority rights to existing and planned capacity for itself and its affiliates, and that Terra-Gen believed that it was taking steps to establish those priority rights. The Commission therefore allowed Terra-Gen the opportunity "to submit further evidence of pre-existing development plans that satisfy the criteria in *Aero Energy* and *Milford*."<sup>6</sup> 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 transmission service."<sup>7</sup> The Commission also granted Terra-Gen waiver of the Open Access Same-Time Information System (OASIS) requirements of Order No. 889 and 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 made to the Commission.<sup>8</sup>

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<sup>4</sup> *Terra-Gen Dixie Valley, LLC*, 132 FERC ¶ 61,215 (2010) (September 16 Order), *reh'g denied*, 134 FERC ¶ 61,021 (2011).

<sup>5</sup> *Id.* P 4.

<sup>6</sup> *Id.* P 53. See *Aero Energy, LLC*, 115 FERC ¶ 61,128 (2006), *order granting modification*, 116 FERC ¶ 61,149 (2006), *final order directing interconnection and transmission service*, 118 FERC ¶ 61,204 (2007), *order denying reh'g*, 120 FERC ¶ 61,188 (2007) (*Aero Energy*); *Milford Wind Corridor, LLC*, 129 FERC ¶ 61,149 (2009) (*Milford*).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* P 55.

4. Petitioners submitted evidence on November 15, 2010 (November 15 Filing)<sup>9</sup> to support their request that the Commission grant priority transmission rights for: (1) 100 MW of priority firm transmission rights for Terra-Gen's Coyote Canyon project; and (2) 100 MW of priority rights for the New York Canyon project owned by Terra-Gen's affiliate, New York Canyon.<sup>10</sup> In the same filing, Terra-Gen also submitted its OATT, as required by the September 16 Order.<sup>11</sup>

5. On January 13, 2011, the Commission denied Green Borders' request for rehearing of the September 16 Order.<sup>12</sup> The Commission found that, because Green Borders did not dispute Terra-Gen's request for waiver of OASIS requirements in either the petition for declaratory order or complaint proceedings, Green Borders' challenge on rehearing amounted to Green Borders impermissibly raising a new issue for the first time on rehearing.<sup>13</sup> The Commission also found that it was reasonable for the Commission to allow Petitioners until November 15, 2010 to provide additional information demonstrating pre-existing generation development plans for the Dixie Valley Line.

6. On January 14, 2011, the Commission rejected Terra-Gen's proposed OATT, finding that Terra-Gen had not demonstrated that its OATT was consistent with or superior to the *pro forma* OATT, and granted Terra-Gen's request for waiver of the OASIS and Standards of Conduct requirements.<sup>14</sup> On March 16, 2011, Terra-Gen submitted a revised OATT (Revised OATT) in compliance with the January 14 Order.

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<sup>9</sup> The Commission granted Petitioners an extension of time, to November 15, 2010, to comply with the September 16 Order. *Terra-Gen Dixie Valley, LLC*, Docket No. EL10-29-000 (Oct. 8, 2010) (notice of extension of time).

<sup>10</sup> As noted above, Petitioners abandoned their request for priority transmission rights for another 100 MW geothermal project, the Dixie Meadows project. Petitioners state that, in order to raise capital to finance ongoing generation expansion plans, Terra-Gen sold the Dixie Meadows leases. Because TGP Dixie no longer holds the Dixie Meadows leases, Petitioners state that it is no longer necessary to confirm priority rights for up to 100 MW of capacity on the Dixie Valley Line for the Dixie Meadows project. Terra-Gen January 20, 2011 Answer at 7-8.

<sup>11</sup> Terra-Gen's OATT was submitted in Docket No. ER11-2127-000.

<sup>12</sup> *Terra-Gen Dixie Valley, LLC*, 134 FERC ¶ 61,021 (2011) (January 13 Order).

<sup>13</sup> *Id.* P 12.

<sup>14</sup> *See Terra-Gen Dixie Valley, LLC*, 134 FERC ¶ 61,027 (2011) (January 14 Order) (waiving the OASIS and Standards of Conduct requirements on the basis that the Dixie Valley Line qualifies as a small public utility and thus altering the basis upon which waiver had previously been granted in the September 16 Order).

7. The Commission accepted Terra-Gen's Revised OATT on May 13, 2011, subject to modification and a further compliance filing, and set Terra-Gen's proposed transmission service rates for hearing and settlement judge procedures.<sup>15</sup> The Commission also found that Terra-Gen may exclude from its OATT, the 60 MW of existing service that is the subject of a pre-existing power purchase agreement between Terra-Gen and Southern California Edison (SoCal Edison). However, the Commission found that any future use of the Dixie Valley Line must be taken pursuant to the rates, terms, and conditions of Terra-Gen's OATT,<sup>16</sup> and that all future users of planned transmission capacity for which priority may be granted must take service subject to the OATT.<sup>17</sup>

## **II. Notice of Filing and Responsive Pleadings**

8. Notice of Petitioners' November 15 Filing was published in the *Federal Register*, 75 Fed. Reg. 73072 (2010), with interventions and comments due on or before December 6, 2010.

9. On November 17, 2010, Green Borders submitted a motion to intervene, a motion to extend the comment period by 30 days, a motion to shorten comment period on Green Borders' motion for extension of time, and a motion to consolidate Terra-Gen's November 15 Filing with Docket No. ER11-2127-000. In support of its motion to consolidate, Green Borders argued that both parts of Petitioners' November 15 Filing involve the same or closely related issues of law and facts, and that objectives of administrative efficiency and the avoidance of inconsistent results support consolidation of Docket Nos. ER11-2127-000, EL10-29-002 and EL10-36-002 into a single docket under Docket No. ER11-2127-000.

10. On November 19, 2010, a notice of extension of time for filing motions to intervene and comments in response to the November 15 Filing submitted in Docket No. ER11-2127-000 and in Docket Nos. EL10-36-002 and EL10-29-002 was granted to and including January 5, 2011. Also on November 19, 2010, Terra-Gen submitted an answer in opposition to Green Borders' motion for extension of time. On November 22, 2010, a notice was issued that rescinded the prior notice and modified the date for filing comments on the November 15 Filing. As to Docket No. ER11-2127-000, the notice rescinded the

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<sup>15</sup> *Terra-Gen Dixie Valley, LLC*, 135 FERC ¶ 61,134 (2011) (May 13 Order), *reh'g pending*.

<sup>16</sup> *Id.* P 23.

<sup>17</sup> *Id.* P 25. Terra-Gen has sought rehearing of the May 13 Order, including the Commission's decision that all other service, including any future use of the Dixie Valley Line, must be taken pursuant to its OATT. The Commission will address the requests for rehearing in a future order.

extension of time to and including January 5, 2011 for filing motions to intervene and comments, and granted an extension of time for filing motions to intervene and comments in Docket No. ER11-2127-000 to and including December 13, 2010. As to Docket Nos. EL10-29-002 and EL10-36-002, the notice stated that motions to intervene and comments were due on or before January 5, 2011.

11. On January 5, 2011, Green Borders submitted comments in opposition to Terra-Gen's request for priority rights, or in the alternative, a request for hearing. On January 20, 2011, Terra-Gen submitted an answer to Green Borders' comments in opposition. Green Borders submitted a motion for leave to answer and answer to Terra-Gen's answer on February 2, 2011, and a motion for leave to supplement its answer and supplement to its answer on February 28, 2011.

12. On July 12, 2011, Petitioners submitted a motion requesting that the Commission issue a ruling on their November 15 Filing confirming their priority rights as soon as possible because they are in advanced stages of development of their projects.

13. On September 20, 2011, Green Borders submitted a notice of withdrawal of certain pleadings and protests including those it filed on January 5, February 2, and February 28, 2011 in the proceeding in Docket No. EL10-29-002.<sup>18</sup>

14. On October 7, 2011, Petitioners submitted a motion for action on the compliance filing and request for an expedited ruling. Petitioners assert that, to eliminate any regulatory uncertainty, it is critical that the Commission take immediate action and issue an order confirming the Petitioners' priority use rights on the Dixie Valley Line. In particular, Petitioners assert that, to be eligible to be awarded a cash grant in lieu of tax credits by the Department of Treasury and the Department of Energy, the Coyote Canyon project must begin certain activities before the end of 2011.<sup>19</sup> Accordingly, Petitioners state that the motion and request are justified "because of (i) the advanced stages of the development of the Coyote Canyon project,<sup>[20]</sup> (ii) the Petitioners' attempt to meet certain delivery obligations under their power sales contract, (iii) the timing and performance requirements for eligibility under the cash grant program of Section 1603(g) of [the

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<sup>18</sup> See further Green Borders' Notice of Withdrawal of Pleadings, September 20, 2011 (Notice of Withdrawal).

<sup>19</sup> See Petitioners' October 17, 2011 Motion for Commission Action on Compliance Filing, and Request for Expedited Ruling at 4 (referencing American Recovery and Reinvestment Act, Pub. L. 111-5, 123 Stat. 115, Division B, Title I, Section 1603(g)).

<sup>20</sup> Petitioners state that Terra-Gen's affiliates have begun constructing the first phase of a 100 MW project at Coyote Canyon, with planned commercial operation dates for the second half of 2013. *Id.*

American Recovery and Reinvestment Act], and (iv) the withdrawal by Green Borders of its complaint and protests.”<sup>21</sup>

### III. Discussion

#### A. Petitioners’ Evidence Submitted to Support Request for Priority Rights

15. In support of their request for priority rights on the Dixie Valley Line, Petitioners submitted documentation which they claim shows the activities, milestones, and material progress that Terra-Gen and its predecessor in interest, Caithness Energy, LLC (Caithness Energy), have undertaken to develop geothermal projects in the Dixie Valley area. Petitioners explain that Caithness Energy was engaged in geothermal development in Nevada throughout the 1980s and 1990s, and that, in 2000, Caithness Energy acquired the Dixie Valley plant, the Dixie Valley Line, and various geothermal leases in the vicinity of the line from Oxbow Geothermal Corporation (Oxbow), and became successor-in-interest to Oxbow’s facilities and development plans. Petitioners state that part of the intent of this acquisition was that Caithness Energy desired to use the Dixie Valley Line as a foundation to develop 300 MW of new geothermal generation. Petitioners state that the development strategy that Caithness Energy followed in pursuing the phased construction of the Coyote Canyon and the New York Canyon projects included the following: (1) assemble a portfolio of U.S. Department of Interior, Bureau of Land Management (Bureau of Land Management) geothermal leases; (2) market the resources to position the company to enter into power purchase agreements once the resources were proven; (3) secure equity financing to support development and exploration efforts; and (4) drill production wells, execute power purchase agreements with power purchasers, select engineering, procurement, and construction contractors, secure construction financing, construct the project in six phases, and achieve commercial operation for all six phases by the end of 2016.<sup>22</sup> Petitioners state that the final steps of this development plan are being implemented by Terra-Gen Power, LLC (Terra-Gen Power)<sup>23</sup> as successor-in-interest to Caithness Energy.<sup>24</sup>

16. Petitioners state that, between 2000 and 2007, Caithness Energy acquired and maintained specific Bureau of Land Management leases for specific geothermal resources

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<sup>21</sup> *Id.* at 4-5.

<sup>22</sup> Petitioners’ November 15 Filing, Attachment E at 4 (citing Greco Aff. at 6-7; 16-18).

<sup>23</sup> Petitioners explain that Terra-Gen Power is a privately owned company that specializes in the development, acquisition, operation and management of renewable independent power generation. *Id.* at 5 (citing Gollan Aff. at 2; Greco Aff. at 13).

<sup>24</sup> *Id.* at 4-5 (citing Greco Aff. at 8-9).

in the vicinity of the Dixie Valley Line, explored the commercial viability of the parcels, sought purchasers for its planned generation capacity, and then sought and obtained financing to support this development activity. Petitioners state that Terra-Gen Power, through its subsidiaries and its affiliate, New York Canyon, has continued to implement Caithness Energy's plans to develop the Coyote Canyon and New York Canyon resources through separate project companies in order to support the financing and contracting for the electric output of each project.

17. Petitioners argue that these development activities, which include specific, substantial, and concrete financial commitments to investors, lenders, and power purchasers, as well as commitments by investors, constitute “specific activity that is being undertaken in furtherance of Terra-Gen Power’s particular plans to expand the Dixie Valley Plant.”<sup>25</sup> They contend that these development activities, financings, contractual commitments, and steps to implement them are substantially more concrete and specific than the development plans the Commission found to be acceptable in *Aero Energy* and *Milford*. In this regard, Petitioners argue that the petitioners in *Milford* did not provide documentary support for their specific progress towards meeting their milestones, nor did the Commission require such documentation.<sup>26</sup>

18. Petitioners further argue that the documents attached with their November 15 Filing demonstrate that, consistent with *Aero Energy* and *Milford*, Terra-Gen’s parent company, through its predecessor-in-interest and certain subsidiaries and affiliates, had specific, pre-existing plans to expand the Dixie Valley plant and develop additional generation projects totaling 300 MW that would use the Dixie Valley Line, with definite dates and milestones for construction, and material progress towards meeting those milestones, that pre-date Green Borders’ request for service. According to Petitioners, these milestones were driven by Bureau of Land Management regulatory requirements to develop the geothermal capability of leased lands, and by the commercial expectations of investors to receive a return on their capital. Petitioners also assert that, consistent with *Aero Energy* and *Milford*, the specific generation development plans included the future use of the Dixie Valley Line by the owner of the line, Terra-Gen, and its affiliates developing their own generation projects. Petitioners assert that the only difference is that Terra-Gen’s parent company chose a different corporate structure than the petitioners in *Milford*. Petitioners assert that they have developed their geothermal resources through separate project companies to facilitate development, project financing, and marketing of the resources, and that, had they developed the resources through a single development company, commercial requirements would cause Terra-Gen Power to spin the projects off into stand-alone project companies, as was contemplated by the petitioners in *Milford*. Petitioners

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<sup>25</sup> *Id.* at 6 (quoting September 16 Order, 132 FERC ¶ 61,215 at P 51).

<sup>26</sup> *Id.* at 11.

further argue that the specific corporate vehicle for development should have no regulatory significance in this case.<sup>27</sup>

19. Petitioners also argue that the development process for geothermal generation development requires extensive exploration and testing, and that the level of development activity in which Terra-Gen Power and Caithness Energy have been engaged over time is commensurate with the commitment required for successful geothermal generation development. In this regard, Petitioners assert that the geothermal projects at issue here have different development requirements and characteristics than the wind generation projects at issue in *Aero Energy* and *Milford*. Petitioners argue that geothermal project development generally takes much longer than a typical wind project, and that geothermal energy development is different from other generation development because success depends on acquiring and maintaining specific leases and conducting extensive exploration to identify the best resources before above ground development of the generating facility begins. Petitioners state that geothermal development to usually require eight to ten years, and occasionally up to fifteen years, between the time of site acquisition until the time that a the facility is placed in service.<sup>28</sup> Petitioners argue that, in contrast, wind resources are significantly easier to identify and measure and can often begin to move forward to financing with one or two years of meteorological data, and often become commercial within one to four years of site acquisition.

20. Petitioners also state that the key components of the geothermal development process and related timeframes include: (1) acquiring a lease on parcels of land; (2) proving the geothermal resource is available through exploration that includes surveys, shallow drilling, seismic testing, or other geophysical methods, followed by deep drilling, which may take between two and ten years; (3) securing permits, which may take between one and four years;<sup>29</sup> (4) securing transmission; (5) entering into an engineering,

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<sup>27</sup> *Id.* at 11-12.

<sup>28</sup> *Id.* at 7. Petitioners also state that, because the resource supporting geothermal development is normally located deep in the earth and can require two to six years of exploration efforts before the resource can be correctly assessed, the geothermal development timeline is subject to change and may contract or expand over time. In this regard, Petitioners point out that the Bureau of Land Management, the largest lessor of geothermal rights in the United States, allows lessees of geothermal rights on federal lands up to 20 years to develop a resource on that land before losing the lease. *Id.*

<sup>29</sup> Petitioners state that there are four stages of development within a Bureau of Land Management lease: (1) exploration (below-ground activities); (2) above-ground facilities; (3) production; and (4) closeout. They explain that each of the four stages under the lease requires separate authorization and compliance with the National Environmental Policy Act of 1969 when ground-disturbing activities are proposed. *Id.* at 8-9.

procurement, and construction contract for above ground equipment, which may take between one and one and a half years; (6) budgeting, marketing, and financing, which “can take many years”; and (7) construction of the power plant facility, which includes the drilling of the remaining production and injection wells and may take between one and one half years to two and one half years.<sup>30</sup>

### 1. Coyote Canyon Project

21. In support of their claim of specific pre-existing plans, milestones, and material progress for the Coyote Canyon project, Petitioners state that Oxbow, one of the prior owners of the Dixie Valley plant and the Dixie Valley Line, leased acreage in the Dixie Valley area that far exceeded what was required to support the 60 MW Dixie Valley project, with the expectation that additional phases of generation would be developed in the vicinity of the Dixie Valley plant. Petitioners state that Oxbow made annual payments to the Bureau of Land Management in order to maintain excess acreage within Dixie Valley (Coyote Canyon leases).<sup>31</sup> Petitioners also state that Caithness Dixie Valley LLC’s (Caithness Dixie Valley)<sup>32</sup> affiliates acquired lease parcels in the Dixie Valley area, with the intent to develop generation.<sup>33</sup> Petitioners also state that a December 1992 letter from GE Capital confirms one of Oxbow’s attempts to secure financing for one 22 MW expansion step, and that an engineering, procurement, and construction contract for 25 MW was executed with Mitsubishi for the construction of the facility, and a power agreement for 20 MW was executed with SoCal Edison. Petitioners represent that, in May 2002, Caithness Dixie Valley secured extensions of certain of the Coyote Canyon leases from the Bureau of Land Management, which required the lessee to meet certain conditions, such as continued commitment to exploration of the resource, or payment to the Bureau of Land Management of the equivalent to the amount required for work expenditure.<sup>34</sup>

22. Petitioners state that, in December 2003, an affiliate of ArcLight Capital Partners, LLC (ArcLight), one of the current investors in Terra-Gen Power, took a minority interest

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<sup>30</sup> *Id.* Petitioners also state that plans and milestones associated with geothermal development are grouped in the following categories by Terra-Gen Power: (1) budgeting; (2) land; (3) resource; (4) marketing; (5) permitting; (6) transmission; (7) engineering, procurement, and construction contracting; and (8) financing. *Id.* at 10.

<sup>31</sup> *Id.* at 12-13.

<sup>32</sup> Petitioners state that Caithness Dixie Valley was created to own, operate, and develop the Dixie Valley Project. *Id.* at 5 (citing Gollan Aff. at 4-5).

<sup>33</sup> *Id.* at 13.

<sup>34</sup> *Id.* at 14.

in Caithness Dixie Valley, and that this was a key equity financing milestone for the planned geothermal expansions because ArcLight ultimately provided access to needed capital.<sup>35</sup> Petitioners state that, in July 2006, Caithness Dixie Valley formally memorialized its plans to expand the existing 60 MW Dixie Valley project by an additional 100 MW through a management consent. They represent that the management consent specifically contemplates that the additional 100 MW of geothermal generation would require use of an additional 100 MW of transmission capacity on the Dixie Valley Line, and demonstrates specific plans for the development of 100 MW of generation at Coyote Canyon. Petitioners represent that the milestones in the management consent, which are tied to a specific resource, are consistent with the nature of geothermal generation development, where specifics such as the location of the wells and power plant within the land holdings are not finalized until after the exploration efforts have concluded.<sup>36</sup>

23. Further, Petitioners state that, in September 2006, Caithness Dixie Valley secured geothermal turbine pricing for the expansion, and submitted a proposal to SoCal Edison for 25 MW for a 20-year term expiring in 2029. Petitioners state that, in October 2006, Caithness Dixie Valley secured additional equipment pricing from another equipment supplier that covers options in size from 30 MW to 60 MW. They also state that, in October 2006, Caithness Dixie Valley issued multiple letters to SoCal Edison proposing 75 MW to 100 MW of expansion potential in the Dixie Valley corridor, and that a November 2006 letter to Sierra Pacific Power Company lists 50 MW of capacity from Coyote Canyon, and total development potential of 125 MW. Petitioners state that the various sizes reflected in the correspondence reflect the multiple options for ultimately developing the geothermal resource in phases. Petitioners also state that, after May 8, 2007, Caithness Dixie Valley, and later Terra-Gen Power as successor-in-interest, did not halt development, but rather continued making material progress towards meeting milestones for construction of geothermal generation.<sup>37</sup>

24. Petitioners state that Terra-Gen has completed environmental permitting for, and is about to complete the development stage of the Coyote Canyon project, and has signed a power purchase agreement with Pacific Gas & Electric Company for 53 MW, under which it will begin deliveries in 2012.<sup>38</sup> Petitioners state that Terra-Gen intended to secure construction financing in the first quarter of 2011 for the first phase, with continued work on completing a power purchase agreement and completing financing for the second phase

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<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 15.

<sup>37</sup> *Id.* at 16.

<sup>38</sup> *Id.* at 5-6.

later in 2011.<sup>39</sup> Petitioners state that Terra-Gen Power expects to place the second phase at Coyote Canyon into commercial operation between late-2013 and early-2015. Petitioners further represent that the Coyote Canyon project has been fast-tracked for economic stimulus funding under the American Recovery and Reinvestment Act of 2009 to support the development of 62 MW at the project.<sup>40</sup>

## 2. New York Canyon Project

25. In support of their claim of specific pre-existing plans, milestones, and material progress for the New York Canyon project, Petitioners state that, in October 2002, Nevada Power Vestors, an affiliate of Caithness Dixie Valley, acquired various leases from the Bureau of Land Management, comprising the New York Canyon project, to support its expansion plans along the Dixie Valley Line, and that the total lease area associated with the New York Canyon project is about 16,000 acres.<sup>41</sup> Petitioners state that the leases have been maintained through rent payments to the Bureau of Land Management. Petitioners also represent that, in addition to being a key equity financing milestone for Terra-Gen, the acquisition of a minority interest in Caithness Dixie Valley in December 2003 by ArcLight was also a key equity financing milestone for the planned geothermal expansion at New York Canyon.<sup>42</sup>

26. Petitioners further state that, in March 2005, New York Canyon sent a letter to Caithness Dixie Valley indicating that it planned to reserve 100 MW of transmission rights on the Dixie Valley Line for the New York Canyon geothermal project, and that Caithness Dixie Valley granted New York Canyon an option to lease an undivided interest in the Dixie Valley Line up to 100 MW for the proposed New York Canyon project. Petitioners state that, in April 2005, Nevada Power Vestors and New York Canyon entered into an option agreement for the purpose of supporting continued exploration and development of the New York Canyon resource, whereby Nevada Power Vestors grants New York Canyon the exclusive right and option to purchase about 2,600 acres from the New York Canyon lease area. Petitioners also rely on a November 2006 letter to Sierra Pacific Power

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<sup>39</sup> In July 2011, Petitioners subsequently indicated that “TGP Dixie is entering financing negotiations for its first phase at the 100 MW Coyote Canyon project, which is planned to secure financing in the first quarter of 2012 and achieve commercial operation in the summer of 2013.” Petitioners’ Motion for Commission Action on Compliance Filing, July 12, 2011 at 1-2.

<sup>40</sup> Petitioners’ November 15 Filing at 6.

<sup>41</sup> Petitioners state that in 2009, TGP Development Company, LLC, an affiliate of Dixie Valley, leased additional acreage from the Bureau of Land Management, which makes the total lease area 16,000 acres. *Id.* at 16-17.

<sup>42</sup> *Id.* at 17.

Company that lists 50 MW of capacity from New York Canyon, and total development potential of 125 MW, to demonstrate that they had specific pre-existing plans, milestones, and material progress for the New York Canyon project.

27. Petitioners state that, after May 8, 2007, specific plans and milestones have continued to be pursued at New York Canyon.<sup>43</sup> In particular, Petitioners state that the New York Canyon project has been fast-tracked for economic stimulus funding under the American Recovery and Reinvestment Act of 2009 to support the development of 62 MW at the project.<sup>44</sup> Petitioners state that, in January 2010, the Department of Energy granted Terra-Gen Power a \$10 million award for the use of Enhanced Geothermal Systems techniques for the 70 MW development phase of the New York Canyon project.<sup>45</sup> Additionally, Petitioners indicate that, in late-2010, Terra-Gen Power received a Phase II transmission report from the California Independent System Operator for 60 MW.<sup>46</sup> Overall, Petitioners assert that exploration, permitting, and marketing are near complete for the New York Canyon project.

### **B. Commission Determination**

28. Rule 216 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.216 (2011), provides that, if unopposed and not disallowed by the decisional authority, the withdrawal of any pleading is effective at the end of fifteen (15) days from the date of filing of a notice of withdrawal. No opposition to Green Border's Notice of Withdrawal was filed. We will therefore deem withdrawn all pleadings cited by Green Borders in its Notice of Withdrawal.

29. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to an answer unless otherwise ordered by the decisional authority. Notwithstanding Green Borders' withdrawal of its answers submitted on February 2, 2011, and February 28, 2011, we will accept the answer submitted by Petitioners' to Green Borders' comments in opposition to the November 15 Filing because it has provided information that assisted us in our decision-making process.

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<sup>43</sup> *Id.*

<sup>44</sup> Petitioners' November 15 Filing at 6.

<sup>45</sup> *Id.* at 17. We note that in their original filing, Petitioners claimed to have been granted an award in the total amount of \$14 million. *See* December 24 Petition at 13. Nonetheless, we will assume that the more recent statement is accurate.

<sup>46</sup> *Id.* at 18.

30. We will deny Green Borders' motion to consolidate Petitioners' November 15 Filing under Docket No. ER11-2127-000. As the Commission previously explained in the January 14 Order, such consolidation would result in an unnecessarily complicated proceeding.<sup>47</sup> In addition, we do not consolidate the dockets because, as discussed below, we do not find that a formal hearing is necessary to evaluate the issues addressed in this order.<sup>48</sup>

### 1. Substantive Issues

31. Under the standard established by the Commission in *Aero Energy* and applied in *Milford*, transmission owners that can demonstrate that they have specific, pre-existing generation expansion plans with milestones for construction of generation and that have made material progress toward meeting those milestones may have firm priority rights on their transmission lines.<sup>49</sup> Further, affiliates of current transmission owners, which are developing their own generation projects, may also obtain firm priority rights on a transmission line to the extent that they use the line to serve their own load or demonstrate specific generation expansion plans with milestones to use the line in the future, provided that the plans include a future transfer of ownership to such affiliates.<sup>50</sup>

32. With respect to the Coyote Canyon project, we find that Petitioners have shown specific, pre-existing plans with milestones for phased development of generation that will ultimately use 100 MW of capacity on the Dixie Valley Line. Moreover, we find that Petitioners have demonstrated sufficient initial and consistent material progress towards meeting those pre-existing plans and milestones. Accordingly, based on the submitted specific plans and milestones for construction, demonstration of material progress towards meeting those milestones, and the fact that Terra-Gen is the owner of both the Coyote

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<sup>47</sup> January 14 Order, 134 FERC ¶ 61,027 at P 7 (citing *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.”).

<sup>48</sup> See *Startrans IO, LLC*, 122 FERC ¶ 61,253 (2008) (finding formal consolidation inappropriate where a trial-type evidentiary hearing is not required to resolve common issues of law and fact and where consolidation will not ultimately result in greater administrative efficiency); *Cal. Pub. Utils. Comm'n*, 132 FERC ¶ 61,047 (2010) (finding formal consolidation unnecessary where two related petitions were addressed simultaneously via a single Commission order and no hearing was ordered).

<sup>49</sup> *Aero Energy*, 116 FERC ¶ 61,149 at P 28; *Milford*, 129 FERC ¶ 61,149 at P 22; *Alta Wind I, LLC*, 134 FERC ¶ 61,109, at P 16 (2011) (*Alta Wind*).

<sup>50</sup> See *SunZia Transmission, LLC*, 131 FERC ¶ 61,162, at P 37 & n.38 (2010). See also *Milford*, 129 FERC ¶ 61,149 at P 5; *Alta Wind*, 134 FERC ¶ 61,109 at P 16, 18.

Canyon project and the Dixie -Valley Line, we will grant Petitioners' request for firm priority rights for 100 MW of firm transmission capacity on the Dixie Valley Line for the Coyote Canyon project. We note that, while we are granting Petitioners' request for priority firm transmission rights for 100 MW of capacity, we will require Petitioners to offer service on the Dixie Valley Line to the extent Petitioners are not using such capacity, as well as to expand the Dixie Valley Line if a third party requests capacity and there is no capacity available to meet that request.<sup>51</sup>

33. With respect to the New York Canyon project, we find that Petitioners have offered similarly convincing evidence of specific, pre-existing plans with milestones for phased development of generation that will ultimately use 100 MW of capacity on the Dixie Valley Line. Moreover, we find that Petitioners have demonstrated sufficient initial and consistent material progress towards meeting those pre-existing plans and milestones. For these reasons, we will conditionally grant Petitioners' request for priority rights for 100 MW of capacity on the Dixie Valley Line for the New York Canyon project.<sup>52</sup>

The Commission orders:

Petitioners' request for priority firm transmission rights is hereby granted in part and conditionally granted in part, as discussed in the body of this order.

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<sup>51</sup> *Alta Wind*, 134 FERC ¶ 61,109 at P 19; *Milford*, 129 FERC ¶ 61,149 at P 23; Terra-Gen Dixie Valley, LLC OATT § 15.4(a) (0.0.0) (“[i]f the Transmission Provider determines that it cannot accommodate a Completed Application for Firm Point-To-Point Transmission Service because of insufficient capability on its Transmission System, the Transmission Provider will use due diligence to expand or modify its Transmission System to provide the requested Firm Transmission Service, consistent with its planning obligations in Attachment K, provided the Transmission Customer agrees to compensate the Transmission Provider for such costs pursuant to the terms of Section 27”).

<sup>52</sup> With respect to the New York Canyon project, the Commission's grant of priority rights to Terra-Gen's affiliate is conditioned upon that affiliate obtaining, prior to taking service on the line, a *pro rata* ownership interest in the line commensurate with the amount of capacity for which service is taken and priority rights have been conditionally granted. See *SunZia Transmission*, 131 FERC ¶ 61,162 at P 37 n.38 (citing and clarifying *Milford*, 129 FERC ¶ 61,149 at P 22).

By the Commission. Chairman Wellinghoff and Commissioner Spitzer are not participating.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.