

145 FERC ¶ 61,240
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

Terra-Gen Dixie Valley, LLC

Docket Nos. ER13-76-000
ER13-1837-000

ORDER GRANTING WAIVER OF ORDER NO. 1000 AND REJECTING TARIFF
REVISIONS AS UNNECESSARY

(Issued December 19, 2013)

1. On October 11, 2012, Terra-Gen Dixie Valley, LLC (Terra-Gen) submitted a compliance filing to revise Attachment K of its Open Access Transmission Tariff (OATT) and a request for waiver of the regional transmission planning and cost allocation requirements of Order No. 1000 (Regional Waiver).¹ In addition, on June 14, 2013, Terra-Gen requested waiver of the interregional transmission coordination and cost allocation requirements of Order No. 1000 (Interregional Waiver). This order grants the requests for waiver of the requirements of Order No. 1000 and, in light of such waiver, rejects the proposed OATT revisions filed in compliance with Order No. 1000 as unnecessary.

I. Background

2. In Order No. 1000, the Commission amended the transmission planning and cost allocation requirements of Order No. 890² to ensure that Commission-jurisdictional

¹ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g*, Order No. 1000-B, 41 FERC ¶ 61,044 (2012).

² *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, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

services are provided at just and reasonable rates and on a basis that is just and reasonable and not unduly discriminatory or preferential. Order No. 1000's transmission planning reforms require that each public utility transmission provider: (1) participate in a regional transmission planning process that produces a regional transmission plan; (2) amend its OATT to describe procedures for the consideration of transmission needs driven by Public Policy Requirements established by local, state, or federal laws or regulations in the local and regional transmission planning processes; (3) remove federal rights of first refusal from Commission-jurisdictional tariffs and agreements for certain new transmission facilities; and (4) improve coordination between neighboring transmission planning regions for new interregional transmission facilities.

3. Order No. 1000 also requires that each public utility transmission provider participate in a regional transmission planning process that has: (1) a regional cost allocation method for the cost of new transmission facilities selected in a regional transmission plan for purposes of cost allocation; and (2) an interregional cost allocation method for the cost of certain new transmission facilities that are located in two or more neighboring transmission planning regions and are jointly evaluated by the regions under the interregional transmission coordination procedures required by Order No. 1000.³

II. Terra-Gen

4. Terra-Gen owns and operates a 212-mile, 230 kV radial generator tie-line (Dixie Valley Line) that provides the interconnection between Terra-Gen's approximately 60 megawatt (MW) small power production geothermal qualifying facility, located in Churchill County, Nevada, and Southern California Edison Company's (SoCal Edison) 115 kV Oxbow-Bishop Control Substation, located near Bishop, California. Terra-Gen sells all its electric generation output to SoCal Edison pursuant to two back-to-back power purchase agreements that expire in 2038. Terra-Gen does not operate a balancing authority and has no native load customers.⁴

5. Terra-Gen filed its OATT, which was accepted for filing by the Commission,⁵ after receiving a transmission service request by a third party that sought transmission service over the Dixie Valley Line. Terra-Gen also notes that it has a pending request for clarification and rehearing of the Commission's directive that it file an OATT.⁶

³ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 9.

⁴ Regional Waiver at 3.

⁵ *Terra-Gen Dixie Valley, LLC*, 135 FERC ¶ 61,134 (2011).

⁶ Regional Waiver at 2. Terra-Gen's request for clarification and rehearing is pending. Terra-Gen, Request for Clarification and Rehearing and Motion for Waiver or

6. With respect to transmission planning, the Commission accepted Terra-Gen's proposal to prepare a transmission plan every five years. The Commission found that Terra-Gen's transmission planning process satisfied Order No. 890's openness, coordination, transparency, information exchange, regional participation, dispute resolution, and economic planning transmission planning principles;⁷ however, the Commission directed Terra-Gen to file a further compliance filing to address Order No. 890's comparability and cost allocation transmission planning principles.⁸ On June 13, 2011, Terra-Gen submitted a compliance filing, as directed. The filing is pending before the Commission.⁹

III. Compliance Filing and Requests for Waiver

A. Regional Filing

7. Terra-Gen explains that it intends to participate in regional transmission planning through the WestConnect planning region¹⁰ if the Commission recognizes, in Terra-Gen's pending request for clarification and rehearing, that Terra-Gen is not a traditional transmission owning public utility. However, Terra-Gen requests waiver of Order No. 1000's regional transmission planning and cost allocation requirements and proposes limited OATT revisions to reflect sharing of transmission information with WestConnect, as necessary, to permit WestConnect to include the tie-line's capabilities and usage

Stay of OATT Capacity Allocation Provisions, Docket Nos. ER11-2127-001, ER11-2127-002, and EL11-37-000 (filed June 13, 2011 and *errata* filed June 14, 2011).

⁷ *Terra-Gen Dixie Valley, LLC*, 135 FERC ¶ 61,134, at PP 59, 66 (2011).

⁸ *Id.* PP 63, 69.

⁹ *See* Docket No. ER11-2127-004.

¹⁰ Terra-Gen explains that WestConnect includes both public utility and non-public utility transmission providers working collaboratively to assess stakeholder and market needs and to develop cost-effective enhancements to the Western wholesale electricity market. Terra-Gen states that WestConnect also oversees subregional transmission planning processes conducted by the Colorado Coordinated Planning Group, Sierra Subregional Planning Group and Southwest Area Transmission and produces an annual transmission plan report. Terra-Gen states that it intends to participate in WestConnect through the Sierra Subregional Planning Group. Regional Waiver at 7. The Commission issued an order addressing the compliance filings submitted by public utility transmission providers in the WestConnect region to comply with Order No. 1000's regional transmission planning and cost allocation requirements. *Pub. Serv. Co. of Colo.*, 142 FERC ¶ 61,206 (2013).

information in the WestConnect regional and interregional transmission planning processes. Terra-Gen also states that it is willing to cooperate with and participate in (to the extent of its abilities) the WestConnect regional transmission planning process.¹¹

8. Terra-Gen asserts that it meets the Commission's requirements for waiver because it is a small public utility with less than 4 million MWh of sales a year, does not operate a control area, has no load serving obligations and it is not a traditional public utility transmission provider because it currently provides no transmission service to third parties under its OATT. Terra-Gen also notes that the Commission has stayed its obligation to provide transmission service under the OATT. Terra-Gen explains that the Dixie Valley Line is limited and discrete because it is a radial facility that does not form an integrated network. Terra-Gen states that the Commission has also recognized that the generator tie-line is a radial facility, rather than an integrated network, and that the line cannot offer network transmission service and is not a balancing authority.¹² In addition, Terra-Gen states that it has no transmission planning personnel to participate in the regional planning activities that Order No. 1000 envisions.¹³

9. Terra-Gen argues that, given its circumstances, it is appropriate and necessary for the Commission to waive Order No. 1000's requirements to set forth all of the regional transmission planning and cost allocation requirements for the WestConnect region in Terra-Gen's OATT.¹⁴ Terra-Gen argues that, while it expects to coordinate with WestConnect regarding data sharing, and proposes to reflect this coordination in its OATT, it is not in a position to play an active role in WestConnect's development of a regional transmission plan.¹⁵ As a result, Terra-Gen requests that the Commission grant a waiver of Order No. 1000, and limit Terra-Gen's obligations to sharing transmission information with WestConnect, the Western Electricity Coordinating Council's Transmission Expansion Planning Policy Committee, and the Sierra Subregional Planning Group, as necessary to permit those entities to include Terra-Gen's generator tie-line's capabilities and usage information in the WestConnect regional and interregional transmission planning processes. Specifically, Terra-Gen requests that the Commission waive Order No. 1000's requirements that Terra-Gen (1) set forth in its OATT all of the regional transmission planning and cost allocation rules for the

¹¹ Regional Waiver at 21-25.

¹² *Id.* at 22-23 (citing *Terra-Gen Dixie Valley, LLC*, 134 FERC ¶ 61,027, at P 12 (2011)).

¹³ *Id.* at 21-23.

¹⁴ *Id.* at 24.

¹⁵ *Id.* at 11.

WestConnect region; (2) incorporate in its OATT details addressing the WestConnect regional transmission planning process; and (3) incorporate in its OATT the WestConnect regional cost allocation rules. Terra-Gen argues that incorporating the entirety of the WestConnect region's Order No. 1000 regional transmission planning and cost allocation requirements in its OATT would force it to participate in a far more extensive, costly, and burdensome manner than it is reasonably capable of doing. In addition, Terra-Gen argues that these requirements would impose a potentially open-ended financial burden, despite the fact that Terra-Gen has no current customers who would benefit from the effort, and therefore Terra-Gen would be required to shoulder the cost burden alone.¹⁶

10. Terra-Gen proposes limited OATT revisions to reflect its commitment to participate in the regional and interregional transmission planning process through WestConnect. These revisions include a limited incorporation of the WestConnect regional cost allocation provisions, which provide for the flow-through of costs of new transmission projects identified through the WestConnect regional transmission planning process in proportion to the demonstrated benefits of those projects to Terra-Gen.¹⁷ Terra-Gen also proposes to include a high-level explanation of the transmission planning process.¹⁸

11. Terra-Gen also submitted proposed revisions to address Order No. 1000's requirements regarding consideration in local transmission planning of transmission needs driven by public policy requirements. Terra-Gen's revised OATT provides that Terra-Gen will undertake an assessment of the current and expected operations of the Dixie Valley Line to identify actions needed, among other things, "to assess needs or impacts driven by enacted federal, state or local laws that impose energy-related public policy requirements, such as renewable energy, energy efficiency or distributed generation mandates."¹⁹ The revised OATT further provides that Terra-Gen's "local economic planning studies will model energy-related public policy requirements to the extent these are specified in enacted federal, state or local laws, provided, however, that proposed public policy requirements may be reflected in [the Sierra Subregional Planning

¹⁶ *Id.* at 24-25.

¹⁷ Terra-Gen acknowledges that full participation in regional cost allocation is arguably appropriate if and when the configuration of its system changes to become integrated with the regional power grid, as opposed to operating in a radial configuration, and Terra-Gen indicates its willingness to file to incorporate those rules in its OATT at that time. *Id.* at 25.

¹⁸ Terra Gen OATT, Attachment K, Introduction and §§ 4.8, 10.

¹⁹ *Id.* § 1.1.

Group], WestConnect or other regional or interregional planning studies considered by Transmission Provider. Examples of public policy requirements that may be studied...include renewable energy, energy efficiency, demand response and distributed generation requirements.”²⁰

12. Finally, Terra-Gen proposes to add to its Attachment K that “[a]ll requests for economic planning studies that are not local economic planning studies shall be treated as regional economic planning studies” and that “[r]egional economic planning studies shall be performed by [the Transmission Expansion Planning Policy Committee], or WestConnect, as appropriate.”²¹

13. Terra-Gen states that its compliance filing is submitted to incorporate the transmission planning and cost allocation rules set forth in Order No. 1000 to the extent appropriate for entities owning radial generation tie-line facilities. However, it states that the OATT revisions are subject to Terra-Gen’s requests for clarification, rehearing and appeal of the Commission’s directive that it file an OATT, as well as changes to the Commission’s policies that may arise from the Commission’s Notice of Inquiry.²²

B. Interregional Filing

14. Terra-Gen separately seeks waiver of the requirement to file revisions to its OATT to implement Order No. 1000’s interregional transmission coordination and cost allocation requirements.²³ In its separate request, Terra-Gen states that the Commission’s OATT waiver standard has long recognized that the circumstances of particular utilities may make it unfairly burdensome or costly to require full compliance with the Commission’s requirements, and argues that the Commission was particularly mindful that applying Commission requirements to transmission providers like Terra-Gen that do

²⁰ *Id.* § 4.6.1.

²¹ *Id.*

²² *Open Access and Priority Rights on Interconnection Facilities*, Notice of Inquiry, FERC Stats. & Regs. ¶ 35,574 (2012) (seeking to explore whether, and if so, how the Commission should revise its policy concerning priority rights and open access regarding certain interconnection facilities).

²³ Terra-Gen also sought a 180 day extension of time to make its compliance filing, which was originally due on July 10, 2013. The Commission granted that extension, to January 6, 2014. *Terra-Gen Dixie Valley*, Docket No. RM10-23-000 (July 5, 2013) (notice of extension of time).

not operate a balancing authority may not be appropriate in all cases.²⁴ Terra-Gen cites recent waivers of Order No. 1000 granted by the Commission to transmission providers that own limited and discrete transmission facilities, and serve no third party transmission customers or provide only a few customers transmission service pursuant to pre-OATT agreements.²⁵ Terra-Gen argues that it likewise satisfies the requirements for waiver of Order No. 1000's interregional transmission coordination and cost allocation requirements because (1) the Dixie Valley Line is a limited and discrete radial generator tie-line that does not form an integrated transmission grid; (2) it serves no retail or wholesale load; and (3) does not provide any transmission services to any third parties, under its existing OATT, or otherwise.²⁶

IV. Discussion

A. Procedural Matters

15. Notice of Terra-Gen's regional compliance filing was published in the *Federal Register*, 77 Fed. Reg. 64,502 (2012), with interventions and comments due on or before November 9, 2012, subsequently extended to November 26, 2012. Notice of Terra-Gen's interregional compliance filing was published in the *Federal Register*, 78 Fed. Reg. 41,055 (2013), with interventions and comments due on or before July 11, 2013. None was filed. On October 11, 2013 and on October 29, 2013, Terra-Gen also filed motions requesting Commission action on its pending waiver requests.

²⁴ Interregional Waiver at 4 (citing *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,853-54 (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)).

²⁵ *Id.* at 6-7 (discussing *Lockhart Power Co.*, 143 FERC ¶ 61,040 (2013); *Alcoa Power Generating Inc. (Long Salt Div.)*, 143 FERC ¶ 61,038 (2013); *SU FERC, L.L.C.*, 143 FERC ¶ 61,139 (2013)).

²⁶ *Id.* at 4-9.

B. Substantive Matters

16. In Order No. 1000, the Commission stated that the criteria for waiver of the requirements of the Final Rule are unchanged from those used to evaluate requests for waiver under Order Nos. 888, 889, and 890.²⁷ The Commission subsequently clarified that it would “entertain requests for waiver of Order No. 1000 on a case-by-case basis.”²⁸

17. In *Black Creek Hydro, Inc.*,²⁹ the Commission stated that it would grant requests for waiver of Order No. 888 by public utilities that could show that they own, operate, or control only limited and discrete transmission facilities (i.e., facilities that do not form an integrated transmission grid), until such time as the public utility receives a request for transmission service. Should the public utility receive such a request, the Commission determined that the public utility must file an OATT with the Commission within 60 days of the date of the request, and must comply with any additional requirements that are effective on the date of the request. The Commission also explained that waiver of Order No. 889 would be appropriate: (1) if the applicant owns, operates, or controls only limited and discrete transmission facilities; or (2) if the applicant is a small public utility³⁰ that owns, operates, or controls an integrated transmission grid, unless other circumstances are present which indicate that a waiver would not be justified.³¹

18. We note that Terra-Gen received a request for transmission service over the Dixie Valley Line and, as a result, it filed an OATT governing transmission service. Under the circumstances presented, we grant Terra-Gen’s requests for waiver of the requirements of Order No. 1000.³²

²⁷ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 832.

²⁸ Order No. 1000-A, 139 FERC ¶ 61,132 at P 753.

²⁹ 77 FERC ¶ 61,232, at 61,941 (1996).

³⁰ The Commission stated that to qualify as a small public utility, the applicant must be a public utility that meets the Small Business Administration definition of a small electric utility, i.e., one that disposes of no more than 4 million MWh annually. *Id.*

³¹ *Id.* Although the Commission originally precluded waiver of the requirements for the OASIS and the Standards of Conduct for a small public utility that is a member of a tight power pool, in *Black Hills Power, Inc.*, 135 FERC ¶ 61,058, at PP 2-3 (2011), the Commission explained that membership in a tight power pool no longer disqualifies an applicant from obtaining a waiver of the Commission’s Standards of Conduct.

³² Terra-Gen requests waiver only of the requirements of Order No. 1000, and not the underlying requirement to have an OATT on file, and therefore we act herein on the waiver as requested.

19. Specifically, we find that waiver of Order No. 1000's requirements is warranted based on the representations that Terra-Gen's transmission facilities are limited and discrete. The Dixie Valley Line is a radial generator tie-line and currently used for the sole purpose of transmitting power produced by Terra-Gen's 60 MW geothermal facility to SoCal Edison. In addition, the facilities are not currently used to provide transmission service to non-affiliated third parties. Further, Terra-Gen does not have load-serving obligations and is a small public utility with less than 4 million MWh of sales a year. In light of these representations and the circumstances presented, we grant Terra-Gen's requests for waiver.³³

20. While we grant the requests for waiver, we note that Terra-Gen is not immune from the potential of being allocated costs of regional or interregional transmission facilities that are selected in the regional transmission plan for purposes of cost allocation. As noted in Order No. 1000-A, the public utility transmission providers in each transmission planning region, in consultation with their stakeholders, may consider proposals to allocate costs directly to entities (for example, generators or network customers) as beneficiaries that could be subject to regional or interregional cost allocation.³⁴

21. Finally, because we grant waiver of the requirements of Order No. 1000, we reject the proposed OATT revisions submitted by Terra-Gen as unnecessary. We accept Terra-Gen's commitment to share transmission planning information and participate, to the extent of its abilities, in the Order No. 1000-compliant regional and interregional transmission planning activities undertaken by public utility transmission providers participating in WestConnect, the Transmission Expansion Planning Policy Committee, and the Sierra Subregional Planning Group.

The Commission orders:

(A) Terra-Gen's requests for waiver of Order No. 1000's regional transmission planning and cost allocation requirements, and Order No. 1000's interregional transmission coordination and cost allocation requirements, are hereby granted, as discussed in the body of this order.

³³ We note that the Commission has previously granted waiver of Order No. 1000 for similar reasons. See *Alcoa Power Generating, Inc.*, 143 FERC ¶ 61,038 (2013); *Lockhart Power Co.*, 143 FERC ¶ 61,040 (2013); *SU FERC, L.L.C.*, 143 FERC ¶ 61,139 (2013).

³⁴ Order No. 1000-A, 139 FERC ¶ 61,132 at P 680.

(B) Terra-Gen's OATT revisions are hereby rejected as unnecessary, in light of the decision to grant waiver of Order No. 1000, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.