



Control Number: 14406



Item Number: 247

Addendum StartPage: 0

PROJECT NO. 14406

**REGISTRATION OF TENASKA-OXY POWER SERVICES, L.P.
AS A POWER MARKETER**

RECEIVED

02 NOV 22 AM 10:32

FILED

TO THE HONORABLE PUBLIC UTILITY COMMISSION OF TEXAS:

COMES NOW Tenaska-Oxy Power Services, L.P. ("TOPS"), and hereby registers with the Commission as a power marketer pursuant to Section 35.032 of the Texas Utilities Code and PUC Substantive Rule 25.105. In support of this registration TOPS shows the following:

1. In general, TOPS intends to be a merchant in the Texas wholesale power market, specifically in the ERCOT portion of the Texas market. The services it provides may include, but are not necessarily limited to, the purchase and sale of electric power and energy at wholesale; entering into associated transactions with other power marketers; and the use of financial instruments, such as options and futures, in support of such activities.

2. The name and address of registrant is:

Tenaska-Oxy Power Services, L.P.
1701 E. Lamar Blvd., Suite 100
Arlington, TX 76006

3. Registrant's office from which it conducts business in Texas is located at:

1701 E. Lamar Blvd., Suite 100
Arlington, TX 76006

4. The name, address, telephone, fax number and e-mail address of the persons to whom communications should be addressed are:

Attn: Keith Emery
1701 E. Lamar Blvd., Suite 100
Arlington, TX 76006
(817) 303-1870
(817) 303-1863
kemery@tnsk.com

247

5. The names and types of business of the owners, with percentage of ownership, are:

The partners in TOPS, with their percentage of equity ownership, are as follows:

General Partners: OEVC Energy, LLC - .5%
Tenaska Texas Power, Inc. - .5%

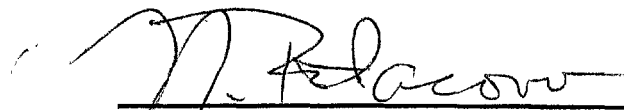
Limited Partners: OEVC LP Holder, Inc. – 49.5%
Tenaska Texas Power Services, L.P. – 49.5%

6. Affiliates that buy or sell electricity at wholesale in Texas, sell electricity at retail in Texas, or who are electric or municipally-owned utilities in Texas are as follows:

Ingleside Cogeneration, L.P.
Occidental Power Marketing, L.P.
Occidental Power Services, Inc.
Oxy Vinyls, L.P.
Tenaska Power Services Co.
Tenaska Frontier Partners, Ltd.
Tenaska Gateway Partners, Ltd.
Tenaska III Texas Partners
Tenaska-Oxy Power REP Services, L.P.

7. Attached hereto is a copy of all information supplied to the FERC in connection with TOPS' s registration as a power marketer, filed subsequent to June 28, 2000.
8. Attached hereto is an affidavit that TOPS is a power marketer.

RESPECTFULLY SUBMITTED,



Norma Rosner Iacovo

ATTORNEY FOR TENASKA-OXY POWER SERVICES, L.P.

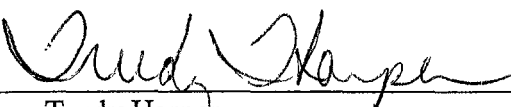
AFFIDAVIT

STATE OF TEXAS


COUNTY OF TARRANT

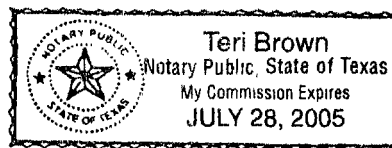
On this the 20th day of November, 2002, before me, Teri Brown, a Notary Public in and for the County and State aforesaid, personally appeared Trudy Harper, known to me as the Vice-President of Tenaska Texas Power, Inc., Managing Partner of Tenaska-Oxy Power Services, L.P., who, being duly sworn, on oath deposes and says:

1. That I am of full legal age and that my business address is 1701 E. Lamar Blvd., Suite 100, Arlington, TX 76006.
2. That I am the Vice-President of Tenaska Texas Power, Inc., Managing Partner of Tenaska-Oxy Power Services, L.P.
3. That the purpose of this affidavit is to verify that Tenaska-Oxy Power Services, L.P. ("TOPS") is a power marketer, as that term is defined in Sec. 31.002(11) of the Texas Utilities Code.
4. I have reviewed the Registration of TOPS as a power marketer, and the information included therein is true.


Trudy Harper

SUBSCRIBED AND SWORN TO BEFORE ME this 20th day of November, 2002.


Notary Public in and for Tarrant County, Texas



COPY**PROPERTY OF THE
PUBLIC REFERENCE ROOM
DO NOT REMOVE****FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426****Tenaska-Oxy Power Services, L.P.
Docket No. ER02-2550-000****Kirkland & Ellis
655 Fifteenth Street, N.W.
Suite 120
Washington, D.C. 20005****NOV 8 2002****Attention: Neil L. Levy, Esquire
Attorney for Tenaska-Oxy Power Services, L.P.****Reference: Market-Based Rate Tariff****Dear Mr. Levy:**

On September 12, 2002, you filed, on behalf of Tenaska-Oxy Power Services, L.P. (TOPS), an application for authorization to charge market-based rates for the sale of electricity. Your submittal included a proposed market-based rate tariff. The referenced tariff, which contains the terms and conditions under which TOPS will transact the sale of electricity at market-based rates, is accepted for filing, subject to the conditions set forth below, effective November 11, 2002, as requested. Any waivers or authorizations requested in your application are granted to the extent specified in Appendix A.

The rate schedule designation is: Tenaska-Oxy Power Services, L.P., FERC Electric Tariff, Original Volume No. 1, Original Sheet No. 1.

Your application states that TOPS is a limited partnership which does not own, operate or control any electric power generation, transmission, or distribution facilities, nor does TOPS own any electric generation assets. Further, your application states that TOPS is not affiliated with any entity that owns or controls transmission. Also, your application notes that TOPS does not hold a franchise or service territory for the transmission, distribution, or sale of electric power.

In AEP Power Marketing, Inc., 97 FERC ¶ 61,219 (2001), the Commission announced a new generation market power screen, the Supply Margin Assessment (SMA), to be applied to market-based rate applications on an interim basis pending a generic review of new analytical methods for analyzing market power. The SMA screen would be applied to all sales other than those in independent system operator (ISO) or

Docket No. ER02-2550-000

- 2 -

regional transmission organization (RTO) markets with Commission-approved market monitoring and mitigation.

This acceptance of TOPS' market-based tariff is subject to any tariff condition adopted by the Commission in Docket No. EL01-118-000, Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations, 97 FERC ¶ 61,220 (2001). TOPS agrees to amend its rate schedule within 15 days of the date of issuance of an order adopting a tariff condition in Docket No. EL01-118-000.

This filing was noticed on September 16, 2002, with comments, protests or interventions due on or before October 3, 2002. No protests or comments were received. Notices of intervention and unopposed timely filed motions to intervene are granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214). Any opposed or untimely filed motions to intervene is governed by the provisions of Rule 214.

This action does not constitute approval of any service, rate, charge, classification, or any rule, regulation, contract, or practice affecting such rate or service provided for in the filed documents; nor shall such action be deemed as recognition of any claimed contractual right or obligation affecting or relating to such service or rate; and such action is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Tenaska-Oxy Power Services, L.P.

This action is taken pursuant to the authority delegated to the Director, Division of Tariffs and Market Development - West under 18 C.F.R. § 375.307. Further, this order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713.

Sincerely,



Michael A. Coleman, Director
Division of Tariffs and Market
Development - West

cc: All Parties

Appendix A

Waivers and Authorizations¹

Any waivers or authorizations requested by the applicant are granted to the extent specified herein. Waiver of the prior or advance notice requirements, if requested, is granted. The applicant must comply with the reporting requirements specified herein.

If requested, the following waivers of the Commission's Regulations are granted:²

- 1) Part 41, regarding accounts, records, and memoranda;
- 2) Part 101, regarding the uniform system of accounts; and
- 3) Part 141, regarding statements and reports, with the exception of 18 C.F.R. §§ 141.14, .15 (2001). Licensees remain obligated to file the Form No. 80 and the Annual Conveyance Report.

See Citizens Energy Corporation (Citizens Energy), 35 FERC ¶ 61,198 (1986), Citizens Power and Light Corporation (Citizens P&L), 48 FERC ¶61,210 (1989), and Enron Power Marketing, Inc. (Enron), 65 FERC ¶ 61,305 (1993), order on rehearing, 66 FERC ¶ 61,244 (1994).

¹The Commission requested comments in Docket No. RM02-3-000, Accounting and Reporting of Financial Instruments, Comprehensive Income, Derivatives and Hedging Activities, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,558 (2001), on the continued applicability of the waivers of its accounting and reporting requirements (18 C.F.R. Parts 41, 101 and 141 (2001)), as well as continued applicability of the blanket authorization for the issuance of securities and the assumption of obligations and liabilities (18 C.F.R. Part 34 (2001)). The continued applicability of these waivers and blanket authorizations will be reevaluated as a result of the comments received in that proceeding. The waiver of the accounting and reporting requirements here notwithstanding, the Commission expects that applicant will keep its accounting records in accordance with generally accepted accounting principles.

²In Southern Company Services, Inc., et al., 99 FERC ¶ 61,103 (2002), the Commission put all utilities on the same footing with regard to Part 35 filing requirements. Therefore, Tariffs/Rate Schedules must be filed, but conforming service agreements do not. No waiver is necessary.

Appendix A
Page 2 of 6

The requirements of Part 34 of the Commission's Regulations regarding securities and assumptions of liabilities are statutory in nature and cannot be waived. If an applicant requested blanket approval under Part 34, a separate notice will be published in the Federal Register following this letter order, establishing a period during which protests may be filed. Absent a request to be heard in opposition within the period set forth in the notice, if the applicant has requested such approval, the applicant is authorized to issue securities and assume obligations or liabilities as guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the applicant, compatible with the public interest, and reasonably necessary or appropriate for such purposes. See Citizens P&L and Enron.

Requests that the Commission waive the requirements of Part 46 of its Regulations regarding interlocking directors are denied. In Enron, the Commission stated that the requirements of Part 46 regarding interlocking directors are statutory in nature and may not be waived.

If requested, until further order of the Commission, the full requirements of Part 45 of the Commission's Regulations, except as noted below, are hereby waived with respect to any person now holding or who may hold an otherwise proscribed interlocking directorate involving the applicant. Any such person instead shall file a sworn application providing the following information: (1) full name and business address, and (2) all jurisdictional interlocks, identifying the affected companies and the positions held by that person. See Enron.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of issuances of securities or assumptions of liabilities, or by the continued holding of any affected interlocks.

Requests for disclaimer of jurisdiction over brokering activities, in which title to electricity is not taken, must be filed separately as a petition for a declaratory order accompanied by the appropriate filing fee. See Citizens Energy and Heartland Energy Services, Inc., 68 FERC ¶ 61,223 (1994).

Requests that the Commission waive annual charges for power marketers, under Part 382 of the Commission's Regulations, are denied. See Morgan Stanley Capital Group Inc. (Morgan Stanley I), 69 FERC ¶ 61,175 (1994) and Morgan Stanley Capital Group Inc. (Morgan Stanley II), 72 FERC ¶ 61,082 (1995).

Appendix A
Page 3 of 6

Requests for waiver of the provisions of Section 203 regarding the disposition of jurisdictional facilities, the merger or consolidation of such facilities, or the acquisition of the securities of another public utility, are denied. The provisions of Section 203 are statutory in nature and may not be waived. See Resources Recovery (Dade County), Inc., 20 FERC ¶ 61,138 (1982). Requests for clarification that sales of accounts receivable are not dispositions of jurisdictional facilities and are, therefore, not within the scope of Section 203, are granted. See Enron. Requests for clarification that the assignment of a power sales contract constitutes a disposition of jurisdictional facilities under Section 203 are granted. See Enron. Requests for clarification that funds received from the sale of electricity are not jurisdictional facilities within the meaning of Section 203 are granted. See Citizens Energy. Also, requests for clarification that the requirements of Section 203 do not apply to the facilities of a power marketer that are not involved in the generation, transmission or sale for resale of electric energy, are granted. See Howell Gas Management Co., 40 FERC ¶ 61,336 (1987).

If requested, waiver of compliance with the requirements of Order Nos. 888 and 889 is granted. Waiver of compliance with the requirements of Order No. 888 is granted until such time as the applicant receives a request for transmission service. See Black Creek Hydro, Inc., et al., 77 FERC ¶ 61,232 at 61,941 (1996). Waiver of compliance with the requirements of Order No. 889 is appropriate because: (1) the applicant owns, operates, or controls only limited and discrete transmission facilities (rather than an integrated transmission grid); or (2) the applicant is a small public utility that owns, operates, or controls an integrated transmission grid. See Midwest Energy, Inc., et al., 77 FERC ¶ 61,208 at 61,854 (1996).

Requests that the Commission waive its requirement that purchasers of electricity under market-based rate schedules certify that the purchase price was equal to or less than its avoided cost, are moot. The Commission eliminated the requirement in Louisville Gas & Electric Company, 62 FERC ¶ 61,016 (1993).

Requests for approval to reassign transmission capacity are found to be consistent with the Commission's requirements. See Southwestern Public Service Company, 80 FERC ¶ 61,245 (1997). Power marketers not requesting approval to reassign transmission capacity are informed that they are authorized to reassign transmission capacity pursuant to the Commission's order in Enron Power Marketing, Inc., 81 FERC ¶ 61,277 (1997).

Appendix A
Page 4 of 6

Requests for approval to buy and sell firm transmission rights are found to be consistent with the Commission's requirements. See California Independent System Operator, Inc., 89 FERC ¶ 61,153 (1999).

Should an applicant or any of its affiliates deny, delay, or require unreasonable terms, conditions, or rates for natural gas fuel or services to a potential electric competitor in bulk power markets, then that electric competitor may file a complaint with the Commission that could result in the applicant's or its affiliate's authority to sell power at market-based rates being suspended. See, e.g., Louisville Gas & Electric Company, 62 FERC ¶ 61,016 at 61,148 (1993).

Reporting Requirements

Order No. 2001³ changes the filing requirements applicable to agreements for public utilities with market-based power sales tariffs and rate schedules. The old requirements for public utilities to file agreements and Quarterly Transaction Reports detailing their market-based power sales transactions were rescinded as of July 1, 2002. Effective July 1, 2002, all executed market-based rate agreements will not be filed with the Commission in hard copy format. Instead, each public utility must file electronically with the Commission an Electric Quarterly Report containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or greater) market-based power sales during the most recent calendar quarter.⁴ Quarterly Transaction Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.⁵

Order No. 2001 implements the electronic filing of Electric Quarterly Reports in two phases. In the first phase, for the filing periods ending July 31, 2002 and October 31, 2002, applicant will use the FERC electronic filing system (available on the FERC Internet site, www.ferc.gov) using the link labeled e-Filing to file transaction data and contract data. Contract data for agreements entered into between July 1, 2002 and

³Revised Public Utility Filing Requirements, 99 FERC ¶ 61,107, reh'g denied, 100 FERC ¶ 61,074 (2002).

⁴Required data sets for contractual and transaction information are described in Attachments B and C of Order No. 2001.

⁵The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b.

Appendix A

Page 5 of 6

September 30, 2002 under which service has commenced will be reported in the October 31, 2002 filing and thereafter until the quarter after the contract expires. Contract data for all conforming and non-conforming contracts will be reported in the January 31, 2003 filing.

When submitting the October 31, 2002 Electric Quarterly Report, applicant will file documents in either Microsoft Excel or ASCII Comma Separated Values (CSV) format. A sample Microsoft Excel format document is posted on the FERC internet. Applicant will be able to view and download filed documents from the FERC internet site using either the RIMS or FERRIS document management systems. In the second phase, for filings after October 31, 2002, this filing format will be replaced by the more advanced, relational database now under development. The second phase will be implemented in a subsequent Commission order. The final format will incorporate the same data sets adopted in Order No. 2001.

Order No. 2001 requires applicant to identify all market-based rate service agreements in its market-based power sales tariff currently on file with the Commission so that they can be removed from the Commission-maintained tariff. The Commission will implement this procedure in phase two after the final software format is implemented and will discuss this issue further in the order implementing the final software format. Once the final software format is implemented, the Commission will remove, as redundant, the service agreements from the Commission-maintained tariff. Removal of these agreements from the Commission-maintained version of the applicant's tariff is simply an administrative function. It does not terminate, cancel or in any way change the terms, conditions, rates or effectiveness of these agreements. Service agreements that remain in applicant's tariff at the Commission will continue to be subject to the filing, format, and designation requirements of Part 35 of the Commission's regulations.

The requirement to file contract data and transaction data begins with the first Electric Quarterly Report filed after service commences under an agreement, and continues until the Electric Quarterly Report filed after the agreement expires or by order of the Commission. Agreements for which service has not commenced as of the reporting period do not have to be reported in Electric Quarterly Reports. However, once reported, the contract data continues to be reported in all subsequent Electric Quarterly Reports until the agreement terminates by its own terms or by order of the Commission, even if no further transactions occur under the agreement.

Appendix A
Page 6 of 6

Market-based rate agreements may terminate by their own terms without the need for the applicant to file a notice of cancellation or cancellation tariff sheet with the Commission. The applicant simply removes the agreement from its Electric Quarterly Report the quarter after it terminates. All proposals to change terms of an agreement without the consent of the customer must be filed with the Commission. Additionally, if an agreement terminates on a date other than the original agreement termination date (for instance, due to extension provisions being executed or termination by mutual agreement), the utility must enter the actual termination date in the subsequent Electric Quarterly Report. If an agreement terminates on a date within the reporting quarter, the utility must enter the actual termination date in the Electric Quarterly Report for that calendar quarter, and remove the agreement from the subsequent Electric Quarterly Report.

If the applicant fails to file an Electric Quarterly Report (without an appropriate request for extension), or fails to report an agreement in a report, the applicant may forfeit its market-based rate authority and may be required to file a new application for market-based rate authority if it wishes to resume making sales at market-based rates.

Applicant may request confidential treatment of Electronic Quarterly Reports, but the Commission has explained that it expects to deny all such claims, to accomplish the purposes of the rule. See Order No. 2001 at 30,129.

Each applicant must file an updated market analysis within three years of the date of this order, and every three years thereafter. The Commission also reserves the right to require such an analysis at any intervening time. The applicant must also inform the Commission promptly of any change in status that would reflect a departure from the characteristics the Commission has relied upon in approving market-based pricing. These include, but are not limited to: (a) ownership of generation or transmission supplies; or (b) affiliation with any entity not disclosed in the applicant's filing and that owns generation or transmission facilities or inputs to electric power production, or that has a franchised service area. Alternatively, the applicant may elect to report such changes in conjunction with the updated market analysis required above. Each applicant must notify the Commission of which option it elects in the first Electric Quarterly Report filed with the Commission.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Tenaska-Oxy Power Services, L.P.

Docket No. ER02-2550-000

NOTICE OF FILING

(September 16, 2002)

Take notice that on September 12, 2002, Tenaska-Oxy Power Services, L.P., 1701 E. Lamar Boulevard, Suite 100, Arlington, TX 76006 (TOPS) submitted for filing with the Federal Energy Regulatory Commission an application for blanket authorization and certain waivers under regulations of the Commission, and for an order accepting its Rate Schedule FERC No. 1 to be effective the earlier of November 11, 2002, or the date of a Commission order granting approval of its Rate Schedule.

TOPS intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where TOPS purchases power, including capacity and related services from electric utilities, qualifying facilities, and independent power producers, and resells such power to other purchasers, TOPS will be functioning as a marketer. In TOPS' marketing transactions, TOPS proposes to charge rates mutually agreed upon by the parties. In transactions where TOPS does not take title to electric power and/or energy, TOPS will be limited to the role of a broker and will charge a fee for its services. TOPS is not in the business of producing electric power nor does it contemplate acquiring title to any electric power transmission facilities.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at <http://www.ferc.gov>, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the

PROPERTY OF THE
PUBLIC REFERENCE ROOM
DO NOT REMOVE

09/16/2002 16:23 FAX

09/16/02 13:11 FAX 202 090

A.E.I.U. #1

2003
12003

document. For assistance, call (202) 502-8222 or TTY, (202) 502-8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: October 3, 2002

Magalie R. Salas
Secretary

KIRKLAND & ELLIS
PARTNERSHIPS INCLUDING PROFESSIONAL CORPORATIONS

Neil L. Levy
To Call Writer Directly:
(202) 879-5116
neil_levy@dc.kirkland.com

655 Fifteenth Street, N.W.
Washington, D.C. 20005
202 879-5000

FILED
OFFICE OF THE SECRETARY
02 SEP 12 PM 4:18
FEDERAL ENERGY
REGULATORY COMMISSION
Facsimile:
202 879 5200

September 12, 2002

VIA HAND DELIVERY

Ms. Magalie R. Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

**RE: Application Of Tenaska-Oxy Power Services, L.P. For Blanket
Authorizations, Certain Waivers, And Order Accepting Rate
Schedule, Docket No. ER02- -000**

Dear Secretary Salas:

Please find enclosed for filing an original and six (6) copies of the Application of Tenaska-Oxy Power Services, L.P. ("TOPS") for Blanket Authorizations, Certain Waivers, and Order Accepting Rate Schedule requesting authorization to charge market-based rates for the sale of electricity. TOPS' Application includes TOPS' Rate Schedule FERC No. 1. Also included is a Notice suitable for publication in the *Federal Register*, together with a 3½" diskette containing the same Notice in electronic format. Five (5) additional copies of the filing are enclosed to be date stamped and returned to our messenger.

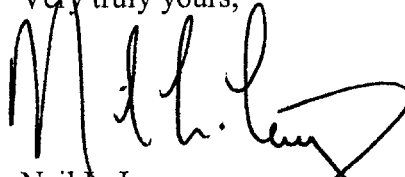
TOPS' Application requests that the Commission issue an Order that: (i) accepts and approves TOPS' Rate Schedule FERC No. 1; (ii) grants blanket authorization for TOPS to make wholesale sales of electric power in interstate commerce at rates to be negotiated with the purchaser; (iii) disclaims jurisdiction over TOPS' brokering and risk management transactions; and (iv) grants waivers, authorizations, and jurisdictional determinations as necessary for TOPS to perform its requested sales service. TOPS' is requesting an effective date the earlier of November 11, 2002, or the date the Commission approves its Application.

TOPS is a Texas limited partnership with its principal office located in Arlington, Texas. TOPS does not own, operate, or control electric power generation, transmission, or distribution facilities, nor does TOPS own any electric generation assets. TOPS is not affiliated with any entity that owns or controls transmission facilities. Additionally, TOPS does not hold a franchise or service territory for the transmission, distribution, or sale of electric power.

KIRKLAND & ELLIS

If you have questions regarding this filing, please feel free to contact the undersigned at the number above.

Very truly yours,

A handwritten signature in black ink, appearing to read "Neil E. Levy". The signature is fluid and cursive, with the first name "Neil" being the most prominent part.

Neil E. Levy

Counsel for ~~Tenaska-Oxy~~ Power Services, L.P.

Enclosures

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Tenaska-Oxy Power Services, L.P.)

Docket No. ER02-____-000

**PETITION OF
TENASKA-OXY POWER SERVICES, L.P.
FOR ORDER ACCEPTING INITIAL RATE SCHEDULE, WAIVING
REGULATIONS, AND GRANTING BLANKET APPROVALS**

Neil L. Levy, Esquire
KIRKLAND & ELLIS
655 Fifteenth Street, N.W.
Suite 1200
Washington, DC 20005
(202) 879-5116

**Counsel for Tenaska-Oxy Power
Services, L.P.**

Dated: September 12, 2002

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Tenaska-Oxy Power Services, L.P.)

Docket No. ER02-____-000

**PETITION OF TENASKA-OXY POWER SERVICES, L.P. FOR
ORDER ACCEPTING INITIAL RATE SCHEDULE FOR FILING,
WAIVING REGULATIONS, AND GRANTING BLANKET APPROVALS**

Pursuant to Rules 205 and 207 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("FERC" or "Commission"), 18 C.F.R. §§ 385.205 and 385.207 (2002), Rule 35.12 of the Commission's regulations, 18 C.F.R. § 35.12 (2002), and Section 205 of the Federal Power Act ("FPA"), 16 U.S.C. § 824d, Tenaska-Oxy Power Services, L.P. ("TOPS") petitions the Commission to (i) authorize TOPS to engage in the sale of electric energy and capacity at market-based rates pursuant to TOPS' Rate Schedule FERC No. 1 (attached as Exhibit A hereto); (ii) waive certain of the Commission's regulations promulgated under the FPA; and (iii) grant certain blanket approvals under other such Commission regulations.

In support of its Petition, TOPS states as follows:

I.

CORRESPONDENCE AND COMMUNICATIONS

All correspondence, communications, pleadings, and other documents related to this proceeding should be addressed to the following persons:

Norma Rosner Iacovo
Tenaska-Oxy Power Services, L.P.
1701 E. Lamar Boulevard
Suite 100
Arlington, TX 76006
Tel: (817) 462-1507
Fax: (817) 303-1104

Neil L. Levy
Kirkland & Ellis
655 Fifteenth Street, N.W.
Suite 1200
Washington, DC 20005
Tel: (202) 879-5116
Fax: (202) 879-5200

II.

IDENTITY OF TOPS

The exact legal name of TOPS is Tenaska-Oxy Power Services, L.P. TOPS is a Texas limited partnership whose principal place of business is located at 1701 E. Lamar Boulevard, Suite 100, Arlington, TX 76006. The TOPS partnership will manage and market electric power for wholesale and large industrial electric power markets primarily within the Electric Reliability Council of Texas ("ERCOT"), but may potentially engage in transactions involving electric power entering interstate markets from ERCOT or involving electric power emanating from interstate markets into ERCOT. TOPS is ultimately owned by Tenaska Energy, Inc. ("Tenaska"), a Delaware corporation, and Occidental Energy Ventures Corp. ("OEVC"), a subsidiary company of Occidental Petroleum Corporation ("OPC").

Specifically, TOPS has two general partners, each with a 0.5% interest: (i) Tenaska Texas Power, Inc., a Delaware corporation, and (ii) OEVC Energy, LLC, a Texas limited liability company. Tenaska Texas Power, Inc. will also serve as the Managing Partner of TOPS. There are also two limited partners, each with a 49.5% interest in the TOPS partnership: (i) Tenaska Texas Power Services, L.P., a Delaware limited partnership, and (ii) OEVC LP Holder, Inc., a Delaware corporation. A chart depicting the ownership structure of TOPS is attached hereto as Exhibit B.

Importantly, neither TOPS nor any of its affiliates are affiliated, either directly or indirectly, with:

- any investor-owned electric utility or with any entity that has a franchised service area for the sale of electric power to captive customers;
- any entity that owns or controls facilities for the transmission of electric power, other than interconnection facilities;
- any entity that owns or controls facilities for interstate or intrastate natural gas fuel transportation, subject to the jurisdiction of the Commission under the Natural Gas Act or Natural Gas Policy Act, or with any entity that has a franchised service area for the sale of natural gas to captive customers;¹ or
- any entity that owns or controls a construction or engineering firm that could engage in the construction of generation or transmission facilities or that owns or controls sites for the construction of generation or transmission facilities.

1. Tenaska Affiliations

Both Tenaska Texas Power, Inc. and Tenaska Texas Power Services, L.P. are wholly owned subsidiaries of Tenaska Energy, Inc. Tenaska is a privately held corporation organized and existing under the laws of the state of Delaware. It is an independent developer and owner of electric power production facilities located throughout the United States and abroad. Tenaska also has affiliates that engage in natural gas and electric power marketing.

Currently, Tenaska has six indirect subsidiaries that own or control facilities used for the generation of electric power:

- Tenaska III Texas Partners, Ltd. An independent power partnership formed by affiliates of Tenaska, which operates a 223 MW cogeneration plant in Paris, Texas. This plant commenced commercial operation in 1989. Electric power from this cogeneration plant is delivered to TXU, and the process steam is delivered to the Campbell Soup Company.

¹ OEVC is affiliated with entities that own or control natural gas gathering facilities, but such entities are not subject to the jurisdiction of the Commission under the Natural Gas Act or Natural Gas Policy Act.

- Tenaska Washington Partners, L.P. A 226 MW cogeneration facility located in Ferndale, Washington, and owned by affiliates of Tenaska, CES Acquisition Corp., Dynegy, Inc., LG&E Energy Corp., and Diamond Generating Corp. This cogeneration plant produces electric power for Puget Sound Energy, Inc, and steam for an adjacent Phillips 66 Company refinery. The Ferndale, Washington plant commenced commercial operations in 1994.
- Tenaska Frontier Partners, Ltd. This 830 MW combined-cycle electric power plant is located in Shiro, Grimes County, Texas, and commenced commercial operations in the summer of 2000. The Tenaska Frontier partnership consists of a Tenaska affiliate, Diamond Generating Corp., CES Acquisition Corp., and Dynegy, Inc. All of the output from the Frontier Plant is sold to Power Team, a division of Exelon. The Commission granted Tenaska Frontier Partners, Ltd. authority to sell electricity at market-based rates in *Tenaska Frontier Partners, Ltd.*, 82 FERC ¶ 61,323 (1998).
- Tenaska Gateway Partners, Ltd. This 845 MW gas-fired, combined-cycle electric power plant is located in Mt. Enterprise, Texas, and is owned by affiliates of Tenaska, Coral Energy, L.L.C., and Diamond Generating Corp. The entire output of the plant is sold to an affiliate of Coral Energy, L.L.C. The Commission granted Tenaska Gateway Partners, Ltd. authority to sell electricity at market-based rates on July 14, 1999. *See* 88 FERC ¶ 61,047 (1999).
- Tenaska Georgia Partners, L.P. This partnership, which consists of affiliates of Tenaska and Diamond Generating Corp., leases and operates a 936 MW electric power peaking plant located in Franklin, Georgia. The entire output of the facility is sold to Power Team. The Commission granted Tenaska Georgia Partners, L.P. authority to sell electricity at market-based rates on July 28, 1999. *See* 88 FERC ¶ 61,102 (1999).
- Tenaska Alabama Partners, L.P. This 846 MW combined-cycle, gas-fired electric power plant sited in Billingsley, Alabama is owned by affiliates of Tenaska and Diamond Generating Corp. Commercial operation commenced on May 1, 2002. The output of the facility is sold to Williams Energy Marketing & Trading Company. The Commission granted Tenaska Alabama Partners, Ltd. authority to sell electricity at market-based rates on February 9, 2000. *See* 90 FERC ¶ 61,115 (2000).

All of the electrical output from the Tenaska power plants is sold under long-term contracts to either unaffiliated investor-owned utilities or unaffiliated independent power marketers.

Other Tenaska affiliates include Tenaska Marketing Ventures and Tenaska Marketing Canada, both involved in the marketing of natural gas. Tenaska Power Services Co. is an

electric power marketer, and received authorization to sell electric power at market-based rates on May 26, 1994, in Docket No. ER94-389-000.

2. OPC Affiliations

OPC has several direct and indirect subsidiaries participating in the electric industry. In particular, OPC has several subsidiaries engaged in the marketing and trading of natural gas, oil, and electricity. Occidental Power Services, Inc. (“OPSI”) is a Delaware corporation and an indirect, wholly-owned subsidiary of OPC. On May 1, 2001, OPSI filed for a power marketer certificate of its own. The recent OPSI application seeks to, in effect, transfer Occidental Energy Marketing, Inc.’s (“OEMI”) power certificate to OPSI. The Commission accepted OPSI’s filing via delegation order on July 30, 2002, in Docket No. ER02-1947-000.

OEMI is a power marketer that received authorization from the Commission on March 20, 2002, to sell energy and capacity at market based rates. *See* Letter Order, March 30, 2002, in Docket No. ER02-799-000. In addition, OEMI provides marketing, trading, and related risk management services for clients involved in the crude oil and natural gas markets. These services include competitive, real-time quotes and various pricing and hedging strategies. OEMI marketers, traders, and logistic specialists are involved with major crude oil markets in the U.S., Latin America, Europe, and the Middle East. OEMI trades more than 2 Bcf of natural gas per day.

Occidental Power Marketing, L.P. (“OPM”) is a power marketer that received authorization in 1999 to sell electric energy and capacity at market based rates. *See* Letter Order issued August 23, 1999, in Docket No. ER99-3665-000.

OPC has an ownership interest in four electric generation facilities:

- Occidental Chemical Corporation (“OCC”). OCC is a New York corporation that is indirectly wholly owned by OPC. OCC holds an indirect ownership interest in two qualifying facilities as a result of its 76% interest in Oxy Vinyls, L.P., a Delaware limited partnership (The Geon Company owns the remaining 24% interest). Oxy Vinyls, L.P. owns a 221 MW cogeneration facility located at its chemical plant in La Porte, Texas. The La Porte cogeneration facility filed a notice of self-recertification as a qualifying facility on January 19, 2001, in Docket No. QF82-69-004. A portion of its electrical output is dedicated to the La Porte chemical plant, and a portion is purchased by Reliant Energy, with which the facility is interconnected. In addition, Oxy Vinyls, L.P. owns and operates another 93 MW cogeneration facility located at OCC’s chemical plant in Deer Park, Texas. The Deer Park cogeneration facility filed a notice of self-recertification as a qualifying facility on January 19, 2001, in Docket No. QF85-238-004. A portion of its electrical output is dedicated to the Deer Park chemical plant, and a portion is purchased by Houston Lighting & Power Company, with which the facility is interconnected.
- Occidental of Elk Hills, Inc. (“Elk Hills”). Elk Hills is a wholly owned subsidiary of Occidental Oil and Gas Holding Corporation, a California corporation that is, in turn, indirectly wholly owned by OPC. Elk Hills owns a 77.79% interest in a 47 MW cogeneration facility located at the former Naval Petroleum Reserve at Elk Hills, California; Chevron USA, Inc. owns the remaining 22.21% interest. The Elks Hills cogeneration facility filed a notice of self-recertification as a qualifying facility on February 5, 1998. *See* Docket No. QF93-149-001. A portion of the electrical output of this facility is dedicated to Elk Hills, and a portion is purchased by Pacific Gas & Electric Company under a long-term contract not due to expire until November 30, 2004.
- Ingleside Cogeneration, L.P. (“Ingleside”). OPC owns an indirect 49% limited partnership interest, and an indirect 1% general partnership interest, in Ingleside (E.I. Dupont de Nemours and Company indirectly owns the remaining 49% limited partnership interest and 1% general partnership interest). Ingleside owns a 440 MW cogeneration facility located in Ingleside, Texas. The facility filed a notice of QF self-certification on December 19, 1997. *See* Docket No. QF98-18-000. A portion of the electrical output of this facility is dedicated to the chemical plant in Ingleside, Texas, and a portion is purchased by Central Power & Light Company, with which the facility is interconnected.

Thus, the majority of the electrical output from OPC affiliates is either committed to internal use, or sold under long-term contract.²

² The Commission has held that a qualifying facility under a contractual commitment to sell the entire output of its facility on a long-term basis is not in a position to sell electric power to other parties in the market and thus may be excluded from an examination of generation market power. *See, e.g., New Energy Ventures, Inc.*, 71 FERC ¶ 61,239 at 61,157 (1996).

III.

TOPS REQUESTS THAT THE COMMISSION DISCLAIM JURISDICTION OVER TOPS' BROKERING TRANSACTIONS AND ASSERT LIMITED JURISDICTION OVER TOPS' POWER MARKETING TRANSACTIONS

TOPS expects to participate as both a broker and a marketer in electric power transactions. The distinction between a broker and a marketer is significant. A broker does not take title to power; instead, it matches willing buyers and sellers. A marketer, however, takes title to purchased power and then resells that power. In acting as a broker, TOPS will bring together buyers and sellers, but will not actually take title to power or sell power. In acting as a power marketer, TOPS will take title to power.

TOPS may also contract for transmission and other services in connection with its business as a marketer. Specifically, TOPS may facilitate wholesale electric power transactions between willing buyers and sellers by engaging in one or more of the following: (1) identifying sources of supply and demand in the wholesale electric power market; (2) matching potential buyers and sellers of wholesale power; (3) purchasing electric capacity and energy and reselling such electric capacity and energy to others; (4) arranging for appropriate dispatching capability and transmission service; and (5) engaging in all activities that power marketers are permitted to conduct. The electric power sales transactions that TOPS intends to enter into will vary in form and substance. TOPS may purchase electric capacity and energy from affiliates and may sell electric capacity and energy to affiliates. Prices for capacity and energy in these sales transactions are proposed to be market-based as proposed in TOPS' FERC Electric Rate Schedule No. 1.

The Commission has definitively stated that it does not have jurisdiction under the Federal Power Act over transactions involving the brokering of power, *i.e.*, where the broker

does not take title to the electric power bought and sold. *See, e.g., Louis Dreyfus Elec. Power, Inc.* (“*Louis Dreyfus*”), 61 FERC ¶ 61,303 (1992); *Chicago Energy Exch. of Chicago, Inc.*, 51 FERC ¶ 61,054 (1990); *Torco Energy Mktg., Inc.*, 48 FERC ¶ 61,294 (1989); *Howell Gas Mgmt. Co.* (“*Howell Gas*”), 40 FERC ¶ 61,336 (1987); *Citizens Energy Corp.* (“*Citizens Energy*”), 35 FERC ¶ 61,198 (1986). Specifically, the Commission has disclaimed jurisdiction over power brokering activities that do not involve the actual purchase and sale of electricity by the applicant. *Howell Gas, supra* (citing *Citizens Energy, supra*).

Similarly, when TOPS acts as a power broker, TOPS will not purchase or sell electric capacity or energy. In those instances, title to such power and capacity will pass directly from the seller to the buyer. Because the brokering services to be provided by TOPS will be substantially identical to those over which the Commission has consistently disclaimed jurisdiction, TOPS requests that the Commission disclaim jurisdiction over TOPS’ power brokering activities as well.

The Commission has, however, assumed jurisdiction over power marketers to the extent they are engaged in wholesale sales of electric power in interstate commerce. In one particular case, the Commission was asked to find that power marketers are not “public utilities” within the meaning of the Federal Power Act and therefore are exempt from Commission regulation. *See Citizens Power & Light Corp.* (“*Citizens Power*”), 48 FERC ¶ 61,210 at 61,774 (1989) (assuming jurisdiction over the marketing of wholesale energy for purposes of the rate schedule filed, but reserving a decision on the jurisdictional issue for resolution in Docket No. EL89-31-000).

It is TOPS’ understanding that the Commission has not ruled on the jurisdictional issue in *Citizens Power*, Docket No. EL89-31-000, but has asserted jurisdiction over the wholesale sales

of power of other marketing companies. *See, e.g., Louis Dreyfus*. Thus, TOPS requests that the Commission authorize TOPS to make wholesale sales at market-based rates, but, pending resolution of *Citizens Power*, reserves its right to challenge the Commission's assertion of jurisdiction over marketing activities. Accordingly, TOPS requests that the Commission assume jurisdiction over TOPS' marketing activities solely for the purpose of granting the requested authorizations and waivers, without prejudice to reconsidering the jurisdictional issue at a later date in a separate proceeding, such as the Docket No. EL89-31-000 proceeding, or some other proceeding, initiated by TOPS, another party, or the Commission itself.³

IV.

THE COMMISSION SHOULD GRANT BLANKET APPROVAL OF TOPS' WHOLESALE SALES OF ELECTRIC POWER AT MARKET-BASED RATES

The Commission has routinely granted power marketers blanket authorization to make sales for resale at rates negotiated between the applicant and the purchaser. *See, e.g., Citizens Power*, 48 FERC at 61,779-80. In so doing, the Commission determined that, in light of each applicant's lack of market power, the market for electric power would best be served by granting power marketers the pricing flexibility they require to operate most effectively in the market. Indeed, the Commission has determined that granting power marketers flexibility permits them "to respond quickly to changing market conditions and to be more effective. Pricing flexibility would also help to ensure that prices accurately reflect market conditions . . . and . . . would

³ For example, if, in Docket No. EL89-31-000, the Commission were to disclaim jurisdiction over Citizens' marketing activities, TOPS requests that the disclaimer apply to its marketing activities as well. Such a finding would be required in light of the similarity between TOPS' contemplated transactions and those described by Citizens. Notwithstanding, TOPS affirmatively reserves the right to seek a disclaimer of jurisdiction in the future should the Commission disclaim jurisdiction in the *Citizens Power* proceeding.

further the Commission's statutory goals of promoting efficiency and coordination." *Citizens Power*, 48 FERC at 61,777 (footnote omitted).

The Commission has found in numerous cases that market-based rates may be accepted and will be found to be just and reasonable if the seller can demonstrate that it lacks market power over the buyer, or that it has adequately mitigated its market power. *See, e.g., Louisville Gas and Elec. Co.*, 62 FERC ¶ 61,016 at 61,143 (1993) and cited cases; *Tenaska Frontier Partners, Ltd.*, 82 FERC at 62,265. Moreover, the Commission has held that a seller can demonstrate that it lacks market power if it can show that neither it nor any of its affiliates: (1) is a dominant firm in the sale of generation in the relevant market; (2) owns or controls transmission facilities through which the buyer could reach alternative sellers (or, if the seller or any of its affiliates does own such facilities, it has adequately mitigated its ability to block the buyer from reaching other sellers); and (3) can erect or control any other barrier to market entry. *Louisville, supra*, at 61,143-44. The Commission also seeks assurances that there will not be affiliate abuse or reciprocal dealing. *Louisville*, at 61,144. As set forth in detail below, TOPS will demonstrate that it lacks market power in both generation and transmission and cannot erect other barriers to market entry. Accordingly, the Commission should accept TOPS' proposed market-based rate schedule for wholesale power sales.

1. TOPS Does Not Possess Generation Market Power.

On November 20, 2001, the Commission announced that it would begin to evaluate generation market power using the Supply Margin Assessment ("SMA") screen. *See AEP Power Mktg., Inc.*, 97 FERC ¶ 61,219 (2001) ("*AEP Power Mktg.*"). The Commission stated that it would not apply the SMA screen to sales into ISOs or RTOs with Commission-approved market monitoring and mitigation. *Id.* Because TOPS will be selling into the ERCOT market, it is not required to provide a SMA screen. Notwithstanding, in response to the Commission's new SMA

analysis, TOPS has provided, as Exhibit C, a generation market power analysis that is consistent with the Commission's SMA screen and demonstrates that neither TOPS nor its affiliates possess generation market power.

While explaining how to apply the SMA screen, the Commission stated:

In applying the SMA, we will first consider the control area market where the applicant is located. Next we will consider the markets outside the applicant's control area market. An applicant will pass the screen if it or its affiliates own or control through contract an amount of generation located in a control area which is less than the supply margin (generation in excess of load) in the control area. The margin will include the amount of generation that can be imported into the control area limited by the total transfer capability (TTC) of the transmission system (*i.e.*, the lesser of uncommitted capacity or TTC). Sellers and their affiliates would continue to be allowed to sell into any control area where they pass the screen.

AEP Power Mktg., 97 FERC at 61,970 (footnotes omitted).

TOPS itself does *not* own any generation. Its affiliates (both Tenaska and OPC affiliates) own facilities with installed capacity of 2,652 MW in ERCOT. Because TOPS does not own any generation, TOPS used its affiliates' (Tenaska's and OPC's) generation holdings to conduct the SMA test. It is significant that the entire electrical output of the six Tenaska generation facilities is sold under long-term contracts to either investor-owned utilities or unaffiliated independent power marketers. With respect to the OPC facilities, a significant portion of the electrical output of four facilities is dedicated to OPC's chemical plants or the petroleum reserve where the cogeneration facilities are located, or, in the case of Elk Hills, is sold to an investor-owned utility under a long-term contract. Thus, a significant portion of the electrical output of TOPS' affiliate-controlled generation is fully committed either for internal use or under long-term contract to unaffiliated entities.

Notwithstanding these indicia demonstrating a lack of TOPS' generation market power, TOPS calculated the SMA screen consistent with the Commission's discussion in *AEP Power Mktg.* TOPS readily passes the screen. As demonstrated by Exhibit C, TOPS' affiliate-controlled generation accounts for only 12.0% of the supply margin of the ERCOT control area where six of the ten TOPS affiliate-controlled generation facilities (the three Tenaska facilities with an installed capacity of 1,898 MW – Tenaska III Texas Partners, Tenaska Frontier, Tenaska Gateway, and the three OPC cogeneration facilities with an installed capacity of 754 MW – La Porte, Deer Park, and Ingleside) are located.⁴ Therefore, TOPS is unable to exercise market power in generation and qualifies for market-based rate authority. *See, e.g., Wrightsville Power Facility, L.L.C.*, Docket No. ER02-1028-000, Letter Order (Mar. 20, 2002); *Occidental Power Servs., Inc.*, Docket No. ER02-1947-000, Letter Order (July 30, 2002).

2. TOPS Does Not Possess Transmission Market Power.

Other than certain related transmission interconnection components necessary to interconnect the generation facilities to the grid, neither TOPS nor its affiliates own or control any electric transmission facilities. Further, neither TOPS nor its affiliates own or control any sites required for that purpose within the United States. Accordingly, TOPS does not possess transmission market power.

3. No Other Possible Barriers to Market Entry Exist.

TOPS is unable to erect or control any barrier to market entry. Moreover, the Commission's complaint procedures provide any future complainant with adequate protection. *See, e.g., Millennium*, 82 FERC ¶ 61,024 at 61,074 (1998).

⁴ As noted above, the remaining four affiliate-controlled generation facilities are located in Elk Hills California, Ferndale, Washington, Franklin, Georgia, and Billingsly, Alabama.

4. *There is No Danger of Affiliate Abuse.*

TOPS is unaffiliated with any entity that owns or controls transmission facilities. Further, TOPS' Rate Schedule FERC No. 1 forbids power sales to, or power purchases from, any affiliate of TOPS which has a franchised service territory for the sale of electricity in the absence of Commission approval of a separate rate filing under Section 205 of the FPA. Thus, in view of the foregoing, it is clear that there is no danger of abuse of self-dealing or reciprocal dealings; TOPS meets the Commission's test for acceptance and approval of market-based rates.

V.

TOPS REQUESTS THE COMMISSION GRANT THE FOLLOWING WAIVERS, AUTHORIZATIONS, AND JURISDICTIONAL DETERMINATIONS

The Commission has granted the following authorizations, waivers, and jurisdictional determinations to power marketers:

- (i) waiver of the accounting and other requirements of Part 35, Subparts B and C (except for Sections 35.12(a), 35.13(b), 35.15 and 35.16) and Parts 41, 101, and 141 of the Commission's regulations;
- (ii) waiver of the full reporting requirements found in Parts 45 and 46 governing authorization for interlocking officers and directors, to permit the filing of an abbreviated statement identifying any jurisdictional interlocks;
- (iii) waiver of approval under part 34 of all future issuances of securities and assumptions of liability; and
- (iv) confirmation that funds received in connection with power sales are not "facilities" under Section 203 of the Federal Power Act and therefore sale or disposition of such funds does not require Commission approval.

See, e.g., Louis Dreyfus, 61 FERC at 61,142; and *Citizens Power*, 48 FERC at 61,779-80. As the Commission has recognized, these regulatory standards and reporting requirements were designed for entities holding substantial market power through their ownership of traditional

electric utility facilities. *See, e.g., Citizens Power*, 48 FERC at 61,779-80. As such, the Commission has waived these standards and reporting requirements with respect to power marketers. Thus, for all of the reasons provided above, and for the reasons relied upon by the Commission in *Louis Dreyfus*, and *Citizens Power*, and subsequent power marketer cases, TOPS respectfully requests that the Commission grant TOPS these same waivers, and other waivers customarily granted to electric power marketers.

VI.

EFFECTIVE DATE

TOPS requests that the Commission act within the 60-day time frame in Section 205(d) of the Federal Power Act, 16 U.S.C. § 824d, and Section 35.3 of the Commission's regulations, 18 C.F.R. § 35.3 (2002), to allow for any jurisdictional sale of electricity or transmission service where TOPS is the purchaser, and permit TOPS' rate schedule to become effective sixty (60) days from the date this Application is filed, or the date that the Commission issues an order in the instant proceeding, whichever is earlier.

VII.

CONCLUSION

WHEREFORE, for the reasons stated above, TOPS maintains that the competitive benefits of its participation in the power market, and the benefits of increased competition among power suppliers to potential purchasers, support its Application. Thus, TOPS respectfully

requests that the Commission approve its proposed Rate Schedule FERC No. 1 and grant the blanket authorizations and waivers sought herein.

Respectfully submitted,

TENASKA-OXY POWER SERVICES, L.P.

By: 

Neil L. Levy, Esq.
KIRKLAND & ELLIS
655 Fifteenth Street, N.W.
Suite 1200
Washington, DC 20005
(202) 879-5116

Counsel for **Tenaska-Oxy Power Services,
L.P.**

Dated: September 12, 2002

EXHIBIT A

TENASKA-OXY POWER SERVICES, L.P.

RATE SCHEDULE FERC NO. 1

Tenaska-Oxy Power Services, L.P.
Rate Schedule FERC No. 1, Original Volume No. 1

Original Sheet No. 1

1. Availability: Tenaska-Oxy Power Services, L.P. ("TOPS") sells electric energy and capacity at wholesale under this Rate Schedule to any purchaser for resale with whom TOPS has contracted.
2. Applicability: This Rate Schedule is applicable to all wholesale sales of energy and/or capacity by TOPS that are not otherwise subject to a particular rate schedule or contract of TOPS.
3. Rates: All sales made under this Rate Schedule shall be made at the rates established by agreement between the purchaser and TOPS.
4. Other Terms and Conditions: All other terms and conditions of sale shall be established by agreement between the purchaser and TOPS.
5. Affiliate Sales and Purchases Prohibited: No sales or purchases may be made pursuant to this Rate Schedule to or from any affiliate of TOPS which has a franchised service territory for the sale of electricity in the absence of Commission approval of a separate rate filing under Section 205 of the Federal Power Act.
6. Transmission Reassignment: TOPS may reassign transmission capacity that it has reserved for its own use at a price not to exceed the highest of: (1) the original transmission rate paid by TOPS; (2) the applicable transmission provider's maximum stated firm transmission rate on file at the time of the transmission reassignment; or (3) TOPS' own opportunity costs, capped at the applicable transmission provider's cost of expansion at the time of the sale to the eligible customer. TOPS will not recover opportunity costs in connection with reassignments without making a separate filing under Section 205. Except for the price, the terms and conditions under which the reassignment is made shall be the terms and conditions governing the original grant by the transmission provider. Transmission capacity may only be reassigned to a customer eligible to take service under the transmission provider's open access transmission tariff or other transmission rate schedules. TOPS will report the name of the assignee in its quarterly reports.
7. Seller Prohibitions: As a condition of obtaining and retaining market-based rate authority, TOPS is prohibited from engaging in anticompetitive behavior or the exercise of market power. TOPS' market-based rate authority is subject to refunds or other remedies as may be appropriate to address any anticompetitive behavior or exercise of market power.
8. Effective Date: This Rate Schedule is effective on and after November 11, 2002

Issued By: Keith Emery
Managing Director

Effective: November 11, 2002

Issued On: September 12, 2002

EXHIBIT B

TENASKA-OXY POWER SERVICES, L.P.

CHART DEPICTING OWNERSHIP STRUCTURE

TENASKA-OXY POWER SERVICES, L.P.
(A Texas limited partnership)
OWNERSHIP STRUCTURE

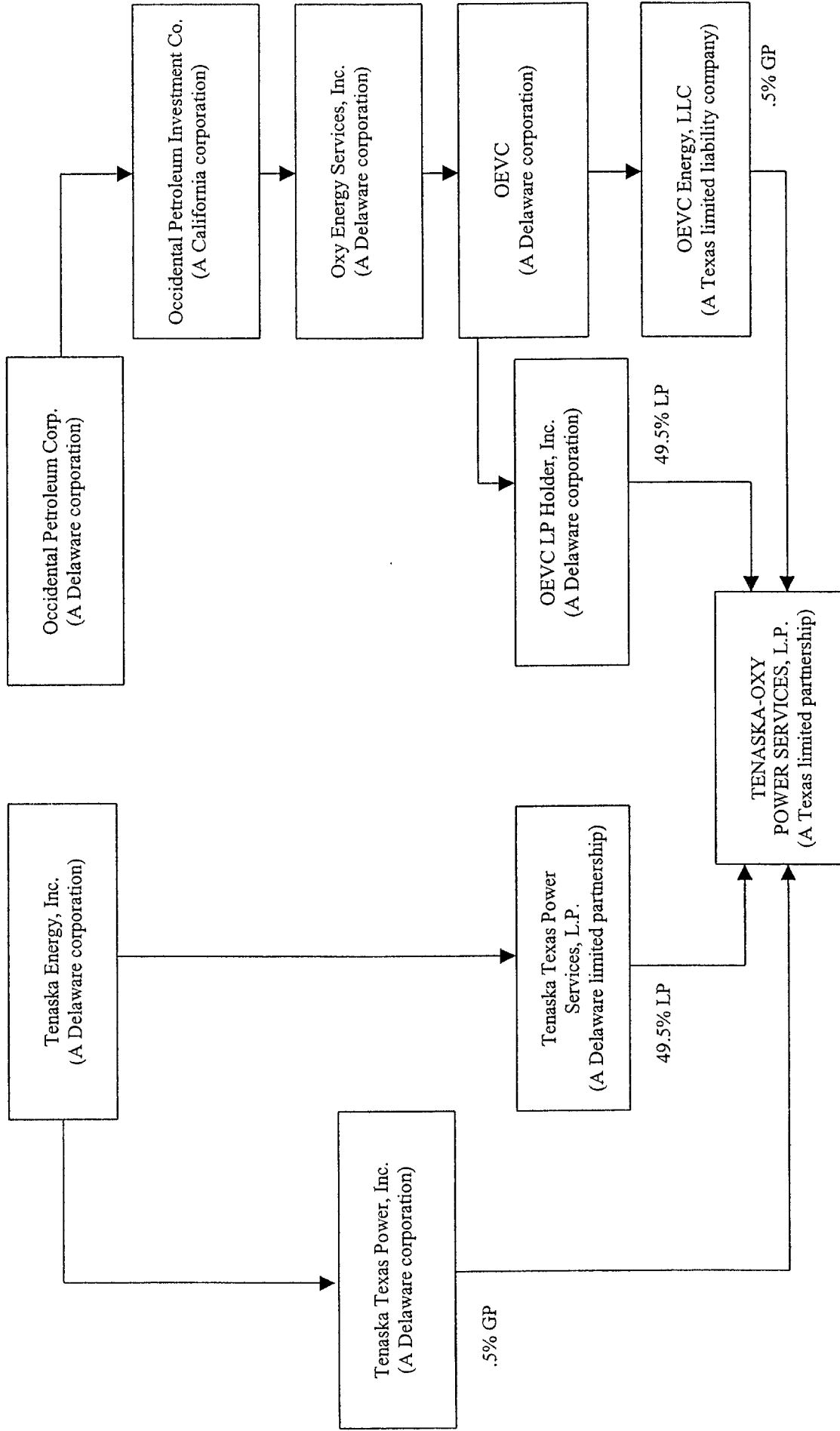


EXHIBIT C

TENASKA-OXY POWER SERVICES, L.P.

SUPPLY MARGIN ASSESSMENT

EXHIBIT C

**Supply Margin Assessment
Tenaska-Oxy Power Services, L.P.
For ERCOT Region**

**Control Area: ERCOT
NERC Region: ERCOT**

Line Number	Description	MW	Note
1	Tenaska-Affiliated Generation Facilities (Installed Capacity)	1,898	A
2	OPC-Affiliated Generation Facilities (Installed Capacity)	754	B
3	ERCOT Aggregate Installed Plant Capacity	79,860	C
4	Import Transmission Capacity	856	D
5	Annual Peak Load for 2002	58,608	E
6	Supply Margin Assessment	22,108	
7	Difference in Load ((L1+L2) - L6)	(19,456)	
8	TOPS' Portion of Supply Margin	12.0%	F
9	<u>Notes:</u> A. See Application at 3-4 B. See Application at 6 C. <i>NERC Electric Supply & Demand, 2001</i> D. OASIS TTC E. <i>NERC Electric Supply & Demand, 2001</i> F. Line 1 and Line 2 divided by Line 6		

ERCOT Transmission Import Capability

ERCOT

Interchange	MW
East DC Tie (SPP)	600
North DC Tie (SPP)	200
Valley DC Tie (Mexico)	56
TOTAL	856

EXHIBIT D

TENASKA-OXY POWER SERVICES, L.P.

NOTICE OF FILING

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Tenaska-Oxy Power Services, L.P.

)

Docket No. ER02-__-000

NOTICE OF FILING

(September __, 2002)

Take notice that on September 12, 2002, Tenaska-Oxy Power Services, L.P., 1701 E. Lamar Boulevard, Suite 100, Arlington, TX 76006 ("TOPS") submitted for filing with the Federal Energy Regulatory Commission an application for blanket authorization and certain waivers under regulations of the Commission, and for an order accepting its Rate Schedule FERC No. 1 to be effective the earlier of November 11, 2002, or the date of a Commission order granting approval of its Rate Schedule.

TOPS intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where TOPS purchases power, including capacity and related services from electric utilities, qualifying facilities, and independent power producers, and resells such power to other purchasers, TOPS will be functioning as a marketer. In TOPS' marketing transactions, TOPS proposes to charge rates mutually agreed upon by the parties. In transactions where TOPS does not take title to electric power and/or energy, TOPS will be limited to the role of a broker and will charge a fee for its services. TOPS is not in the business of producing electric power nor does it contemplate acquiring title to any electric power transmission facilities.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions and protests should be filed on or before October 3, 2002, and must be served on the Applicant. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at <http://www.ferc.fed.us/online/ferris.htm> (call 202-208-2222 for assistance).

Magalie R. Salas
Secretary