

130 FERC ¶ 61,028
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris

Trans Bay Cable LLC

Docket Nos. ER10-266-000
ER10-266-001

ORDER CONDITIONALLY ACCEPTING INITIAL TRANSMISSION OWNER
TARIFF

(Issued January 14, 2010)

1. On November 13, 2009, as amended on November 16, 2009, Trans Bay Cable LLC (Trans Bay) submitted a proposed transmission owner tariff,¹ pursuant to section 205 of the Federal Power Act² and section 35.12 of the Commission's rules and regulations.³ Trans Bay's proposed tariff sets forth the rates, terms, and conditions associated with Trans Bay's 400 megawatt submarine transmission line and associated facilities (the Project). This order accepts Trans Bay's tariff and suspends it for a nominal period, to be effective on the date Trans Bay's project commences commercial operation,⁴ subject to the outcome of Trans Bay's transmission revenue requirement proceeding established in Docket No. ER10-116-000⁵ and subject to a further compliance filing.

¹ Trans Bay designated its transmission owner tariff as FERC Electric Tariff, Original Volume No. 1 (tariff).

² 16 U.S.C. § 824d (2006).

³ 18 C.F.R. § 35.12 (2009).

⁴ Trans Bay states that upon commercial operation of the Project, which Trans Bay expects to occur in the first quarter of 2010, Trans Bay will turn over the operational control of the Project to the California Independent System Operator Corporation (CAISO).

⁵ See *Trans Bay Cable LLC*, 129 FERC ¶ 61,225 (2009), accepting and suspending Trans Bay's transmission revenue requirement filing and establishing hearing and settlement judge procedures (Revenue Requirement Order).

I. Background

2. Trans Bay's Project is a 53-mile, 400 MW high voltage, direct current, submarine transmission line underneath San Francisco Bay, that will be used to transmit electricity from an existing substation adjacent to the City of Pittsburg, California (the City), to an existing substation within the City of San Francisco.

3. On May 19, 2005, Trans Bay filed with the Commission an Operating Memorandum between Trans Bay, the City and Pittsburg Power Company. The Operating Memorandum set forth the proposed rate principles and operational responsibilities for the Project. The rate principles Trans Bay proposed included: (1) a post-tax return on equity (ROE) of 13.5 percent, (2) an assumed capital structure of 50 percent equity and 50 percent debt, (3) a three-year moratorium on Trans Bay's transmission revenue requirement, and (4) a thirty-year depreciation period for the Project. The Commission accepted Trans Bay's rate principles and Operating Memorandum in an order issued on July 22, 2005.⁶ In the Operating Memorandum Order the Commission stated that the significant reliability and environmental benefits offered by the Project, and the risk borne by Trans Bay as a new and independent entity, justified accepting Trans Bay's proposed rate principles and enhanced ROE.

4. On January 13, 2006, Trans Bay applied with the CAISO to become a participating transmission owner, and the CAISO subsequently approved Trans Bay's participating transmission owner status, conditioned upon the Commission's approval of Trans Bay's transmission revenue requirement and tariff. The CAISO accordingly filed with the Commission a revised transmission control agreement reflecting Trans Bay's participating transmission owner status. The Commission accepted the CAISO's revised transmission control agreement on October 10, 2006.⁷

5. On October 23, 2009, Trans Bay filed with the Commission its proposed transmission revenue requirement associated with the Project. Trans Bay requested an overall ROE of 14 percent, which included a 50 basis point adder for Trans Bay's participation in the CAISO, and an estimated annual revenue requirement of \$149.3 million. The Commission addressed that filing in the Revenue Requirement Order, wherein the Commission accepted and suspended Trans Bay's filing, subject to refund, to be effective on the date the Project commences commercial operation and is turned over to the operational control of the CAISO. The Commission reaffirmed Trans Bay's

⁶ *Trans Bay Cable LLC*, 112 FERC ¶ 61,095 (2005) (Operating Memorandum Order), *order on clarification*, 114 FERC ¶ 61,031 (2006).

⁷ *See California Independent Sys. Operator Corp.*, 117 FERC ¶ 61,029 (2006), *order on clarification*, 117 FERC ¶ 61,181 (2006).

previously-approved rate principles, and established hearing and settlement judge procedures for the proceeding.⁸ However, the Commission denied Trans Bay's request for an additional 50 basis point adder.⁹

II. Description of Filing

6. Trans Bay states that its proposed tariff is similar to the tariffs submitted by other CAISO participating transmission owners, and is appropriately modified to reflect Trans Bay's circumstance as a non load-serving participating transmission owner with no end-use customers. As described below, Trans Bay's tariff sets forth the rates, terms, and conditions associated with the Project.¹⁰

7. Section one of Trans Bay's proposed tariff describes Trans Bay as a non-load-serving participating transmission owner and includes the statement that Trans Bay has no end-use customers. Sections two through four of Trans Bay's proposed tariff address the tariff's effective date, the definitions used within the tariff, and the limits of service under Trans Bay's tariff to eligible customers. Section five of the tariff describes the access charges and transmission rates assessed by Trans Bay, in accordance with the CAISO tariff. Trans Bay notes that, pursuant to the CAISO tariff, its revenue requirement is divided between a high voltage transmission revenue requirement and a low voltage transmission revenue requirement based on an assessment of facilities with a voltage at or above 200 kV and facilities that are at a voltage below 200 kV.

8. In addition, section six of Trans Bay's proposed tariff addresses ancillary services, and specifically states that Trans Bay will not provide ancillary services directly to any transmission customer and that transmission customers are required to meet the ancillary services requirements in the CAISO tariff. The remaining terms and conditions of Trans Bay's proposed tariff set forth the billing and payment obligations, obligations to interconnect and construct facilities and other provisions typically found in participating transmission owner tariffs.

⁸ Revenue Requirement Order, 129 FERC ¶ 61,225 at P 20 and 25.

⁹ *Id.* P 23.

¹⁰ On November 13, 2009, Trans Bay submitted for filing a revision to its proposed tariff. Trans Bay states that based on comments by the CAISO, Trans Bay proposes to remove the sentence from section 5.1 that states that "Neither [Trans Bay] nor the [CAISO] shall assess the Low Voltage Access Charge to any other Participating TO for transmission service over [Trans Bay's] Low Voltage Facilities."

9. In addition, Trans Bay states that although its proposed tariff sets forth its transmission revenue requirement in Appendix I, Trans Bay's transmission revenue requirement is established in Trans Bay's transmission revenue requirement proceeding, and therefore, there is no rate impact associated with Trans Bay's tariff filing.¹¹ Accordingly, Trans Bay requests waiver of the requirement to file materials supporting its rate contained in section 35.12(b) of the Commission's rules and regulations.¹²

10. Finally, Trans Bay requests that the effective date of the proposed tariff coincide with the date on which the Project commences commercial operation and is turned over to the operational control of the CAISO. Trans Bay states that it expects the project to be in commercial operation during the first quarter of 2010.¹³

III. Notice of Filing and Responsive Pleadings

11. Notice of Trans Bay's filing in Docket Nos. ER10-266-000 and ER10-266-001 was published in the *Federal Register*, 74 FR 61344 (Nov. 24, 2009) and 74 FR 61669 (Nov. 25, 2009) with interventions and protests due on or before December 7, 2009. Timely motions to intervene were filed by Northern California Power Agency, San Diego Gas & Electric Company, Southern California Edison Company, Modesto Irrigation District, and the City of Santa Clara, California and M-S-R Public Power Agency. Pacific Gas and Electric Company (PG&E) filed a motion to intervene, comments and motion to consolidate. The California Department of Water Resources State Water Project (State Water Project) filed a motion to intervene and motion for consolidation. The Cities of Anaheim, Azusa, Banning, Colton, Pasadena and Riverside, California (Six Cities) filed a motion to intervene and protest. The CAISO filed a motion for leave to intervene out of time and response to comments. Trans Bay filed a motion for leave to answer and answer.

12. PG&E states that Trans Bay's proposed tariff contains provisions that are not applicable to Trans Bay since Trans Bay is a not a load-serving participating transmission owner and does not have a service area or end-use customers. First, PG&E states that Trans Bay should remove the first sentence of the proposed definition of transmission revenue balancing account adjustment, which refers to a mechanism that ensures that transmission revenue credits flow through to or are received from end-use customers. According to PG&E, the provision is not relevant to Trans Bay because Trans Bay does

¹¹ Trans Bay transmittal letter at 3.

¹² 18 C.F.R. § 35.12(b) (2009).

¹³ *Id.* at 1.

not have end-use customers, and therefore should be removed.¹⁴ In addition, PG&E states that Trans Bay should remove the reference to Trans Bay receiving ancillary service revenues from the CAISO, since Trans Bay does not provide ancillary services and will not receive any ancillary service revenues.¹⁵ PG&E also states that Trans Bay should remove section 13, which describes the procedures by which a participating transmission owner can review the creditworthiness and require the posting of security by other market participants. PG&E states that this provision is only relevant to protect a participating transmission owner against the risk of non-payment for the use of low voltage transmission facilities. PG&E argues that Trans Bay is insulated against such risks since it will not receive such payments, and thus, should remove the provision.¹⁶ In addition, PG&E contends that Trans Bay should remove section 15, which provides for the recovery of costs for reliability services, including reliability must-run contracts, exceptional dispatches, and minimum load costs. PG&E argues that such costs are only billed to participating transmission owners with service areas, and since Trans Bay does not have a service area, the provision should be removed.¹⁷

13. In addition, PG&E states that the Commission should not consider the acceptance of Trans Bay's tariff as acceptance of Trans Bay's transmission revenue requirement, since Trans Bay's transmission revenue requirement was filed separately in Docket No. ER10-116-000.¹⁸ Furthermore PG&E and the State Water Project request that the Commission consolidate this proceeding with the transmission revenue requirement proceeding since both proceedings are closely linked.

14. The Six Cities contend that Trans Bay's proposed tariff is unjust and unreasonable because it includes Trans Bay's transmission revenue requirement, which the Six Cities argue is an unjust and unreasonable transmission revenue requirement. Accordingly, the Six Cities request that the Commission clearly state that any acceptance of Trans Bay's proposed tariff is subject to refund and the outcome of the transmission revenue requirement proceeding in Docket No. ER10-116-000.¹⁹

¹⁴ PG&E comments at 2-3.

¹⁵ *Id.* at 3.

¹⁶ *Id.* at 4.

¹⁷ *Id.* at 4-5.

¹⁸ *Id.* at 5.

¹⁹ Six Cities protest at 1-2.

15. The CAISO stated in its comments that Trans Bay will not be allocated any reliability services costs, including those associated with exceptional dispatches.²⁰ Thus, the CAISO agrees that section 15 can be removed from the tariff. However, the CAISO states that it takes no position regarding whether any of the provisions referenced by PG&E, including section 15, should be removed or not.

16. Trans Bay responded to the comments of the intervenors. Trans Bay opposes consolidating the instant proceeding with the transmission revenue requirement proceeding. Trans Bay contends that consolidation is not necessary to accept Trans Bay's tariff, and argues that there are no common issues of law or fact between the two proceedings, and that any issues needed to be resolved concerning Trans Bay's transmission revenue requirement are pending in the transmission revenue requirement proceeding.²¹

17. In addition, regarding PG&E's comments, Trans Bay proposes to revise the definition of transmission revenue balancing account adjustment to be the same as the one in Atlantic Path 15, LLC's tariff.²² Trans Bay states that there is no need to revise the provision referencing ancillary services in section 7.1 as suggested by PG&E. Trans Bay contends that if it currently does not qualify for ancillary service payments, then it is clear that Trans Bay will not collect such payments. However, Trans Bay notes that it does have the ability to produce reactive power to provide voltage support to the surrounding transmission grid. Accordingly, Trans Bay states that the CAISO tariff could conceivably be modified in the future so that Trans Bay could qualify for payments from ancillary services if it provides such services. Trans Bay argues that the provision as currently drafted would provide for that recovery, and thus it is not necessary to remove it.²³

²⁰ The CAISO notes that the CAISO tariff section 11.5.6.2.5.1 provides that excess costs associated with exceptional dispatches due to transmission-related modeling limitations are "charged to the Participating Transmission Owner in whose PTO Service Territory the transmission-related modeling limitation . . . is located," and since Trans Bay has no load serving obligation, it has no service territory.

²¹ Trans Bay answer at 4.

²² Trans Bay proposes to revise the definition of transmission revenue balancing account adjustment to be "[a] mechanism established by the Participating TO which will ensure that all Transmission Revenue Credits and other credits specified in Sections 6 and 8 of Appendix F, Schedule 3 of the ISO Tariff, flow through to ISO Tariff and TO Tariff transmission customers." Trans Bay answer at 5.

²³ Trans Bay answer at 6.

18. Trans Bay proposes to revise section 13.1 of its proposed tariff to address PG&E's concerns regarding the procedures by which a participating transmission owner can review the creditworthiness and require the posting of security by other market participants if the participating transmission owner receives payments from the market participant for using the participating transmission owner's low voltage transmission facilities. Specifically, Trans Bay proposes to revise the section to make it clear that reasonable creditworthiness requirements would only be imposed if Trans Bay was no longer relying on the CAISO to collect the low voltage access charges for the Project. Trans Bay contends that this is an appropriate approach since the CAISO tariff provides for the possibility that Trans Bay could agree with PG&E (the participating transmission owner whose service territory the Project is in) that Trans Bay will collect low voltage access charges directly from market participants. Trans Bay states that the proposed provision provides for that possibility and adequately addresses PG&E's concern.²⁴

19. Finally, Trans Bay agrees with PG&E that section 15 can be deleted because, as clarified by the CAISO, costs associated with the exceptional dispatches will not be allocated to participating transmission owners that do not have service territories, as is the case with Trans Bay.

IV. Discussion

A. Procedural Matters

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009) the timely, unopposed motions to intervene serve to make those parties who filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2009), the Commission will grant the CAISO's motion to intervene out of time, given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

21. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a protest unless otherwise ordered by the

²⁴ Trans Bay proposes to revise the first sentence of section 13.1 as follows: "For the purpose of determining the ability of a UDC [Utility Distribution Company], MSS [Metered Subsystem], and Scheduling Coordinator to meet its obligations related to service using the Participating TO's Low Voltage Transmission facilities hereunder[,] *where the Participating TO is collecting the Low Voltage Access Charge directly from each UDC, MSS, and Scheduling Coordinator*, the Participating TO may require reasonable credit review procedures for the UDC, MSS, or Scheduling Coordinator." Trans Bay answer at 7-8.

decisional authority. We will accept Trans Bay's answer because it provided information that assisted us in our decision-making process.

B. Commission Determination

22. We will conditionally accept Trans Bay's proposed tariff, to be effective on the date Trans Bay's project commences commercial operation and is turned over to the operational control of the CAISO. The tariff is similar to the tariffs of the other similarly situated CAISO participating transmission owners. We disagree with the Six Cities assertion that Trans Bay's proposed tariff is unjust and unreasonable because the tariff shows Trans Bay's transmission revenue requirement in Appendix I. Trans Bay proposed to establish its transmission revenue requirement in the pending transmission revenue requirement proceeding, and has not included or proposed any new rates in the instant tariff filing. Therefore, Trans Bay's rates will be appropriately established in the pending transmission revenue requirement proceeding.²⁵ Accordingly, our acceptance of Trans Bay's tariff is subject to the outcome of Trans Bay's transmission revenue requirement proceeding.

23. Regarding PG&E's comments, we find that Trans Bay's proposed revision to the definition of transmission revenue balancing account adjustment adequately addresses PG&E's concern that the definition is only relevant for participating transmission owners with end-use customers. Furthermore, the revised provision has been previously accepted by the Commission for a similarly situated participating transmission owner.²⁶ Accordingly, we accept Trans Bay's proposal to revise the provision, and direct Trans Bay to file revised tariff sheets, within 30 days of the date of this order, reflecting the proposed revision to the definition of transmission revenue balancing account adjustment.

24. We will also accept Trans Bay's proposed revision to section 13.1. Section 13.1 delineates the procedures by which a participating transmission owner can review the creditworthiness and require the posting of security by other market participants which are directly billed for the use of low voltage transmission facilities. As revised by Trans Bay in its comments, the provision is clear that Trans Bay will only be able to review the creditworthiness and require the posting of security by market participants if Trans Bay

²⁵ The Commission accepted Trans Bay's transmission revenue requirement subject to refund and subject to the hearing established in the Revenue Requirement Order. *See* Revenue Requirement Order, 129 FERC ¶ 61,225 at P 25.

²⁶ *See Trans-Elect NTD Path 15, LLC*, 109 FERC ¶ 61,249 (2004) (Order Accepting and Suspending Filing and Establishing Hearing and Settlement Judge Procedures), 113 FERC ¶ 63,039 (2005) (Initial Decision), 117 FERC ¶ 61,214 (2006) (Order On Initial Decision).

agrees with the service territory owner (in this case PG&E) that Trans Bay will be the direct collector for low voltage access charges, instead of the CAISO. We find that as revised, the provision is consistent with the CAISO tariff which has been previously accepted by the Commission.²⁷ The CAISO tariff allows non-load-serving participating transmission owners to agree to be the direct collectors for low voltage access charges. In addition, we find that as revised, the provision ensures that market participants' creditworthiness will be rated properly and that PG&E's concern is adequately addressed. Our acceptance of Trans Bay's proposed tariff is conditioned upon Trans Bay filing revised tariff sheets, within 30 days of the date of this order, reflecting the proposed revisions to section 13.1.

25. PG&E additionally argues that Trans Bay should remove from section 7.1, references to Trans Bay potentially receiving ancillary service revenues from the CAISO. We agree with PG&E that the provision should be removed. In section 6 of Trans Bay's proposed tariff, Trans Bay states that it will not provide ancillary services directly to transmission customers, thus, the provision is not relevant to Trans Bay. In addition, we find that removing the reference to ancillary service revenues is consistent with the tariffs of similarly situated CAISO participating transmission owners.²⁸ Our ruling on this issue, however, is without prejudice to a future change should Trans Bay start to provide ancillary services. Accordingly, our acceptance of Trans Bay's tariff is conditioned on Trans Bay filing revised tariff sheets, within 30 days of the date of this order, reflecting the deletion of the reference to ancillary service revenues from section 7.1.

26. We also direct Trans Bay to delete section 15 of the tariff since, as clarified by the CAISO and acknowledged by Trans Bay, Trans Bay will not be allocated any reliability services costs, including those costs associated with exceptional dispatches. Accordingly, our acceptance of Trans Bay's tariff is conditioned on Trans Bay's filing revised tariff sheets, within 30 days of the date of this order, deleting section 15 from the tariff.

27. As stated above, we accept Trans Bay's proposed tariff, subject to the outcome of Trans Bay's transmission revenue requirement proceeding. In addition, acceptance of Trans Bay's tariff is conditioned upon Trans Bay filing revised tariff sheets, as discussed above, within 30 days of the date of this order. Our acceptance of Trans Bay's tariff is also conditioned upon Trans Bay filing a revised Appendix I to its tariff within 30 days of

²⁷ California Independent System Operator Corporation, FERC Electric Tariff, Fourth Replacement Volume No. 1 at section 26.1.

²⁸ Atlantic Path 15, LLC, FERC Electric Tariff, Original Volume No. 1, section 7.1; City of Anaheim, FERC Electric Tariff, Volume 1, section 7.1.

the conclusion of the transmission revenue requirement proceeding in Docket No. ER10-116-000, to reflect the transmission revenue requirement findings in that proceeding. In addition, we grant Trans Bay's request for waiver of section 35.12(b), because the instant filing does not have rate implications since Trans Bay's transmission revenue requirement was filed, and is still pending in Trans Bay's transmission revenue requirement proceeding.

The Commission orders:

(A) Trans Bay's tariff is hereby conditionally accepted, to be effective on the date the Project achieves commercial operation and is turned over to the operational control of the CAISO, as discussed in the body of this order.

(B) Acceptance of Trans Bay's tariff is conditioned upon Trans Bay filing within 30 days of the date of this order, revised tariff sheets as discussed in the body of this order.

(C) Acceptance of Trans Bay's tariff is conditioned upon Trans Bay filing within 30 days of the conclusion of the transmission revenue requirement proceeding in Docket No. ER10-116-000, a revised Appendix I to the tariff as discussed in the body of this order.

(D) Trans Bay's request for waiver of section 35.12(b) of the Commission's rules and regulations is granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.