137 FERC ¶ 61,242
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Trans-Allegheny Interstate Line Company — Docket No. EL12-14-000

ORDER GRANTING PETITION FOR DECLARATORY ORDER

(Issued December 29, 2011)

1. On December 14, 2011, as amended on December 20, 2011, Trans-Allegheny Interstate Line Company (TrAILCo) filed a petition for declaratory order requesting that the Commission find its proposed payment of one or more dividends by reducing the paid-in capital account, subject to a commitment described below, will not violate section 305(a) of the Federal Power Act (FPA).[1] In this order, for the reasons discussed below, we grant the petition for declaratory order.

**Background**

2. TrAILCo is engaged in interstate transmission of electricity in Pennsylvania, Virginia, and West Virginia. TrAILCo states that it is a wholly-owned subsidiary of Allegheny Energy Transmission, LLC (Allegheny Transmission), which is a wholly-owned subsidiary of FirstEnergy Corp. (FirstEnergy).

3. TrAILCo was organized to finance, own, construct, operate and maintain the Trans-Allegheny Interstate Line Project (TrAIL Project). TrAILCo completed construction of the TrAIL Project and placed those facilities into service on June 1, 2011.

4. In 2007, the Commission set for hearing TrAILCo's proposed transmission cost of service formula rate but authorized TrAILCo to utilize a hypothetical capital structure in its transmission cost of service formula rate throughout the construction of the TrAIL Project.[2] The Commission additionally directed TrAILCo "to adopt a capital structure

[1] 16 U.S.C. § 825d(a) (2006).

[2] *Trans-Allegheny Interstate Line Co.*, 119 FERC ¶ 61,219, at P 2, 75-76 (2007) (May 31 Order).

based on its actual financing upon completion."[3] In July 2008, the Commission accepted an uncontested settlement resolving all issues set for hearing in the May 31 Order.[4] Pursuant to that settlement, TrAILCo agreed to utilize a hypothetical capital structure of 50 percent equity and 50 percent debt until the TrAIL Project was completed and to utilize its actual capital structure after construction was completed.[5] Consequently, with respect to the annual transmission revenue requirement for the 2011 rate year—the year in which construction of the TrAIL Project was completed—TrAILCo must utilize its hypothetical capital structure for that part of the year prior to completion of the TrAIL Project and its actual capital structure as of December 31, 2011 for that part of the year following completion.[6]

5. TrAILCo states that, in order to "reduce the 'rate shock' that TrAILCo's transmission customers will experience as a result" of the transition to use of its actual capital structure, it is necessary to reduce the equity in its year-end capital structure.[7] TrAILCo explains that its transmission rates based on its actual capital structure (following completion of the TrAIL Project) will be higher than its rates were while they were based on its hypothetical capital structure (prior to completion). In order to reduce the equity percentage in its year-end capital structure and thus its rates, TrAILCo is proposing to pay one or more dividends not to exceed $130 million. In this regard, TrAILCo states that its expected balance of retained earnings is insufficient to significantly reduce its actual equity percentage, due to the fact that the TrAIL Project has been in operation for only six months and because TrAILCo's retained earnings were reclassified to paid-in capital as the result of purchase accounting adjustments made in connection with the merger of FirstEnergy and Allegheny Energy, Inc.[8] Accordingly, TrAILCo explains that $63,582,228 of the proposed dividends will reduce, i.e., be debited against, retained earnings and the balance, $66,417,772, will reduce, i.e., be

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[3] *Id.* P 76.

[4] *Trans-Allegheny Interstate Line Co.*, 124 FERC ¶ 61,075 (2008).

[5] *See* Trans-Allegheny Interstate Line Co., Settlement Filing, Docket No. ER07-562-004 (filed Mar. 14, 2008).

[6] *See* TrAILCo December 14, 2011 Filing at 3.

[7] TrAILCo requests Commission action no later than December 29, 2011. *Id.*

[8] FirstEnergy completed its merger with Allegheny Energy, Inc. on February 25, 2011. Based on TrAILCo's third-quarter 2011 FERC Form No. 3-Q, TrAILCo transferred $108,399,019 from retained earnings as a result of its purchase accounting adjustment.

debited against, paid-in capital.[9] TrAILCo estimates this dividend payment will reduce its transmission revenue requirement by approximately $7 million in the rate year commencing June 1, 2012 (a reduction from $179 million to $172 million).

6. TrAILCo states that it will fund the payment of the proposed dividends from cash on hand ($6 million) and from borrowings from affiliates ($124 million).[10]

7. TrAILCo argues that its proposed payment of dividends is consistent with the requirements of section 305(a). First, TrAILCo states that the source of dividends is clearly identified; TrAILCo explains that the proposed dividends will be paid from cash on hand and borrowings from affiliates. Second, TrAILCo states that it will limit the proposed dividends to an amount sufficient to reduce its equity to a level of no less than 50 percent of total capitalization. Thus, TrAILCo contends that the proposed dividends will not be excessive and will not adversely affect its ability to obtain additional funds when needed to support operations and future expansion. Third, TrAILCo posits its proposed dividends will not have an adverse effect on the value of shareholders' interests because all dividends will be paid to TrAILCo's sole shareholder, Allegheny Transmission.

8. On December 20, 2011, TrAILCo amended its petition to illustrate the effect of the proposed dividends on TrAILCo's financial condition and transmission rates.

## Notice of Filing

9. Notice of TrAILCo's filing was published in the *Federal Register*, 76 Fed. Reg. 79,678 (2011), with protests and interventions due on or before December 23, 2011. Notice of TrAILCo's December 20 amendment was published in the *Federal Register*, 76 Fed. Reg. 81,923 (2011), with protests and interventions due on or before December 27, 2011. No protests or interventions were filed.

## Discussion

10. We will grant TrAILCo's petition because the concerns underlying section 305(a) are not present in this transaction. Section 305(a) states:

> It shall be unlawful for any officer or director of any public utility to receive for his own benefit, directly or indirectly,

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[9] *See* TrAILCo December 20, 2011 Filing at 4.

[10] TrAILCo is currently authorized to borrow up to $300 million of secured or unsecured short-term debt or long-term debt for the period ending on July 28, 2012. *Trans-Allegheny Interstate Line Company*, 132 FERC ¶ 62,077 (2010). TrAILCo is not seeking authorization for any new borrowings to fund the proposed dividends.

> any money or thing of value in respect of the negotiation, hypothecation, or sale by such public utility of any security issued or to be issued by such public utility, or to share in any of the proceeds thereof, or to participate in the making or paying of any dividends of such public utility from any funds properly included in capital account.[11]

11. The concerns underlying the enactment of section 305(a) included the possibility "that sources from which cash dividends were paid were not clearly identified and that holding companies had been paying out excessive dividends on the securities of their operating companies. A key concern, thus, was corporate officials raiding corporate coffers for their personal financial benefit."[12]

12. TrAILCo's proposal to reduce paid-in capital by $66,417,772 to pay dividends of up to $130 million does not raise these concerns. TrAILCo has clearly identified the source from which the dividends will be paid: cash on hand and funds borrowed from affiliates. We also find that the proposed dividends, which will reduce the equity in the total capitalization to a level no less than 50 percent, are not excessive and will not jeopardize TrAILCo's financial condition given the record before us in this proceeding.[13] In this regard, TrAILCo has provided financial information demonstrating that borrowings to fund the payment of the dividends will not significantly impair its ability to finance its ongoing operations or to provide transmission service to customers.[14] Moreover, as noted, TrAILCo commits to limit the amount of dividends paid to that which is necessary to reduce its equity to a level not less than 50 percent of total capital.

13. Finally, TrAILCo's proposed dividends will not harm the value of shareholders' interests. As discussed above, TrAILCo is a wholly-owned subsidiary of Allegheny Transmission and will continue to be wholly-owned by Allegheny Transmission following payment of the proposed dividends.[15]

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[11] 16 U.S.C. § 825d(a) (2006).

[12] *E.g.*, *Citizens Utilities Co.*, 84 FERC ¶ 61,158, at 61,865 (1998) (citations omitted); *accord Allete, Inc.*, 107 FERC ¶ 61,041, at P 10 (2004); *Delmarva Power & Light Co.*, 91 FERC ¶ 61,043, at 61,158-59 (2000); *PPL Electric Utilities Corp.*, 99 FERC ¶ 61,137, at 62,356-57 (2002).

[13] *See Exelon Corp.*, 109 FERC ¶ 61,172, at P 8-9 (2004).

[14] *See supra* note 10 (noting TrAILCo's authorization to borrow up to $300 million).

[15] *E.g.*, *Allegheny*, 130 FERC ¶ 61,269 at P 9.

14. Therefore, we will grant TrAILCo's petition that section 305(a) of the FPA does not bar TrAILCo's proposed payment of dividends, as described above.

The Commission orders:

The petition for declaratory order is hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,
Secretary.