

141 FERC ¶ 61,271  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Startrans IO, LLC

Docket Nos. ER13-272-000  
EL13-26-000

ORDER ACCEPTING AND SUSPENDING PROPOSED TRANSMISSION  
REVENUE REQUIREMENT AND ESTABLISHING HEARING AND  
SETTLEMENT JUDGE PROCEDURES

(Issued December 31, 2012)

1. On November 1, 2012, pursuant to section 205 of the Federal Power Act (FPA),<sup>1</sup> Startrans IO, LLC (Startrans), a Participating Transmission Owner (Participating TO) in the California Independent System Operator Corporation (CAISO), filed tariff revisions to reflect a proposed rate reduction to its base transmission revenue requirement (TRR) associated with Startrans' interests in the Mead-Adelanto Project (MAP) and Mead-Phoenix Project (MPP) (collectively, Mead Transmission Interests). Startrans requests that the proposed TRR decrease be made effective on January 1, 2013. In this order, the Commission accepts Startrans' proposed TRR, suspends it for a nominal period, to be effective January 1, 2013, subject to refund, and establishes hearing and settlement judge procedures. Also, because Startrans is proposing a TRR reduction and a further decrease may be warranted, we are instituting an investigation pursuant to section 206 of the FPA<sup>2</sup> in Docket No. EL13-26-000 to determine whether Startrans' proposed TRR reduction is just and reasonable.

**I. Background**

2. Startrans purchased the Mead Transmission Interests from the City of Vernon, California (Vernon) in March, 2008. The MAP is a 1,296 MW transmission line extending 202 miles from the Marketplace Switching Station in Southern Nevada to the Adelanto Switching Station in Southern California. Startrans owns a 6.25 percent interest

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<sup>1</sup> 16 U.S.C. § 824d (2006).

<sup>2</sup> 16 U.S.C. § 824e.

in the MAP. The MPP is a 1,300 MW transmission line extending 256 miles from the Perkins Switchyard near Sun City, Arizona to the Marketplace Switching Station. The MPP consists of three primary components, in which Startrans holds interests of 2.15 percent, 3.79 percent, and 4.05 percent, respectively.

3. Upon acquisition of the Mead Transmission Interests, Startrans became an independent, stand-alone transmission company (Transco) and public utility that owns and manages transmission facilities subject to the jurisdiction of the Commission. The Mead Transmission Interests are under the functional control of CAISO and Startrans is a non-load serving Participating TO.

4. On January 4, 2008, Startrans submitted with the Commission a proposed Transmission Owner Tariff (TO Tariff) and its initial TRR associated with its acquisition of the Mead Transmission Interests from Vernon in Docket No. ER08-413. On March 31, 2008, the Commission issued an Order accepting the filing, subject to refund, and established hearing and settlement judge proceedings.<sup>3</sup> In the March 2008 Order, the Commission accepted Startrans' proposed Return on Equity (ROE) of 13.5 percent based upon a filed range of reasonable returns, finding that the "overall ROE of 13.5 percent falls in the upper end of the zone and is reasonable because it includes appropriate incentives for current and future investments by a Transco."<sup>4</sup> The Commission also accepted Startrans' proposal to use its actual capital structure, subject to a future compliance filing and denied Startrans' proposed acquisition adjustment. Other issues were set for settlement and hearing procedures.

5. On May 28, 2009, Startrans filed an Offer of Settlement and Settlement Agreement (Settlement) resolving all issues set for hearing.<sup>5</sup> The Settlement required Startrans to file a new TRR rate case no later than November 1, 2012, with an effective date no later than January 1, 2013.<sup>6</sup> Startrans states that the instant TRR filing is in compliance with the March 2008 Order and the Settlement.

6. Startrans requests that the Commission approve its proposed TRR and accept its revised TO Tariff provisions, effective January 1, 2013.

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<sup>3</sup> *Startrans IO, LLC*, 122 FERC ¶ 61,306 (2008) (March 2008 Order).

<sup>4</sup> *Id.* P 26.

<sup>5</sup> Offer of Settlement and Settlement Agreement filed May 28, 2009 in Docket No. ER09-413-004.

<sup>6</sup> *See* Section 8.1 of the Settlement.

## II. The Filing

7. Startrans proposes to reduce its TRR from \$5,220,000 to \$4,355,881,<sup>7</sup> which would be a reduction of \$864,119 from the current rates on file with the Commission. According to Startrans, the proposed TRR was developed consistent with the Commission's regulations and is based on a test year consisting of the 12-months ended June 30, 2012 (Test Year). Startrans also states that the only adjustments made to the Test Year reflect: (1) recovery of actual rate case expenses incurred by Startrans in its last rate case; and (2) removal of rate impacts from the acquisition adjustment previously rejected by the Commission.

8. Startrans also requests continuation of its previously approved ROE of 13.5 percent without any suspension, hearing, or refund. Startrans contends that the 13.5 percent ROE: (1) is just and reasonable pursuant to the Commission's traditional rate of return analysis; (2) is consistent with the Commission's policy, precedent, and prior orders approving Startrans' rates; (3) is appropriate in light of the continuing and future benefits Startrans' Mead Transmission Interests provide to the broader Western Interconnection transmission system; and (4) meets investor expectations and conforms with the Commission's goals of promoting new transmission investment by Transcos.<sup>8</sup>

## III. Notice of Filing and Responsive Pleadings

9. Notice of Startrans' filing was published in the *Federal Register*, 77 Fed. Reg. 67,354 (2012), with interventions and comments due on or before November 23, 2012. Timely motions to intervene were filed by the M-S-R Public Power Agency and Trans Bay Cable LLC. Timely motions to intervene and comments or protests were filed by the Northern California Power Agency (NCPA), Southern California Edison Company (SoCal Edison), Pacific Gas and Electric Company (PG&E), the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (collectively, Six Cities) and the California Department of Water Resources State Water Project (SWP). Startrans filed an answer to the protests.

10. Intervenors all argued that Startrans' proposed TRR is not just and reasonable, and should not be approved by the Commission as filed.<sup>9</sup> Intervenors requested that the

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<sup>7</sup> Startrans' TRR of \$4.3 million is part of CAISO's Transmission Access Charge, which has a total TRR of \$1.4 billion.

<sup>8</sup> March 2008 Order, 122 FERC ¶ 61,306 at PP 4-8.

<sup>9</sup> NCPA did not submit specific comments, but indicated support for the requests submitted by Six Cities and SWP.

Commission accept Startrans' proposed reduction in TRR, subject to refund, impose a nominal suspension period, and establish hearing and settlement judge procedures in order for the Commission to establish a just and reasonable rate. Intervenors also requested that, because a further decrease may be warranted beyond what Startrans has proposed, the Commission should institute an investigation pursuant to section 206 of the FPA,<sup>10</sup> and establish the earliest possible refund effective date in order to determine just and reasonable rates for Startrans.

11. Six Cities, PG&E, and SWP all argue that Startrans' proposed continuation of an ROE of 13.5 percent is unjust and unreasonable. Six Cities argues that Startrans' proxy group screening is improper, that Startrans' proposed ROE incorporates excessive ROE incentive levels and that Startrans is prematurely seeking ROE incentives for future new infrastructure investment. SWP argues that Startrans' proposed ROE includes implicit incentives that are excessive and not justified by Startrans, that Startrans proxy group screening is improper, and that the Commission should separately identify a "base" ROE, and, with separately identified incentives, a total ROE for Startrans should not be higher than 10.06 percent.<sup>11</sup> PG&E argues that this case is not the proper forum in which to determine ROE incentives predicated on planned future infrastructure investment.

12. Six Cities, SoCal Edison, PG&E, and SWP all argue that Startrans' requested rate case expense in this proceeding is excessive. SoCal Edison notes that Startrans is requesting rate case expenses totaling \$2.58 million, amortized over a three-year period which results in an annual rate case expense of \$860,000. SoCal Edison argues that with a total proposed TRR of approximately \$4.4 million, Startrans' proposed rate case expense is excessive on its face, as well as by comparison to rate case expenses forecasted in other, similar-sized TRR proceedings.<sup>12</sup>

13. Intervenors also argue that Startrans' administrative and general expenses may be excessive or redundant with rate case expense,<sup>13</sup> that rate base may be overstated<sup>14</sup> and that Startrans' use of Period I data may not be appropriate.<sup>15</sup>

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<sup>10</sup> 16 U.S.C. § 824e.

<sup>11</sup> SWP Protest at 15.

<sup>12</sup> SoCal Edison Protest at 3. SoCal Edison includes a chart that purports to demonstrate rate case expenses from other TRR proceedings that SoCal Edison argues are comparable to the instant case.

<sup>13</sup> *Id.* at 4. PG&E Comments at 4.

<sup>14</sup> SoCal Edison Protest at 5.

#### IV. Discussion

##### A. Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest and/or answer unless otherwise ordered by the decisional authority. We are not persuaded to accept Startrans' answer and will, therefore, reject it.

##### B. Hearing and Settlement Judge Procedures

16. Startrans' proposed TRR, including the requested 13.5 percent ROE, raises issues of material fact that cannot be resolved based upon the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below. At the hearing, the presiding judge shall consider the justness and reasonableness of all issues arising out of Startrans' proposed TRR reduction. Therefore, we will accept Startrans' proposed TRR, suspend it for a nominal period, make it effective January 1, 2013, subject to refund, and set it for hearing and settlement judge procedures.

17. In the March 2008 Order, the Commission accepted Startrans' proxy group, which resulted in a range of reasonable ROEs of 7.63 percent to 13.67 percent and concluded that Startrans' proposed 13.5 percent ROE was reasonable because it fell within the upper end of the zone. Additionally, in Order No. 679, we found that the for-profit nature of the transmission-only business model provides more incentive to increase infrastructure investment. The Commission stated in Order No. 679 that it would provide to Transcos a ROE that both encourages Transco formation and is sufficient to attract investment after the Transco is formed.<sup>16</sup> The Commission based its decision in Order No. 679 on the proven and encouraging track record of Transco investment in transmission infrastructure.<sup>17</sup> The Commission concluded in the March 2008 Order that Startrans had satisfied the requirements of Order No. 679 finding that an incentive ROE was

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

<sup>16</sup> *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, at P 221 (2006), *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236, *order on reh'g*, 119 FERC ¶ 61,062 (2007).

<sup>17</sup> *Id.* PP 326-33.

appropriate because of Startrans' status as a Transco. Further, Transcos, such as Startrans, had demonstrated an inclination to react more rapidly to market signals indicating when and where transmission investment is needed.

18. Accordingly, in the March 2008 Order, the Commission concluded that Startrans' proposed 13.5 percent ROE was reasonable since it fell within the upper end of the zone and because it included appropriate incentives for current and future investments by a Transco. Accordingly, we accepted Startrans' use of a 13.5 percent ROE, conditioned upon Startrans' continued participation in CAISO.

19. In the instant proceeding, Startrans has filed a new TRR rate case, including requesting continuation of its current 13.5 percent ROE, as required by a 2009 settlement agreement.<sup>18</sup> Our preliminary analysis of Startrans' proposed ROE indicates that the 13.5 percent ROE may no longer fall within the zone of reasonable returns. Thus, Startrans' proposed TRR, including the 13.5 percent ROE, has not been shown to be just and reasonable, and may be unjust and unreasonable. Therefore, we direct the presiding judge to determine the appropriate range of reasonable returns, and in recognition of the benefits of Startrans' status as a Transco, Startrans' continued membership in CAISO and the continued benefits of the Mead Transmission Interests, set the ROE at the upper end of this range, not to exceed the filed 13.5 percent ROE.

20. In addition, because Startrans is proposing a rate reduction to its TRR, and a further decrease may be warranted, we are instituting a section 206 investigation in Docket No. EL13-26-000 with respect to the justness and reasonableness of Startrans' proposed TRR reduction. In cases where, as here, the Commission institutes a section 206 investigation on its own motion, section 206(b) of the FPA, as amended by section 1285 of the Energy Policy Act of 2005,<sup>19</sup> requires that the Commission establish a refund effective date that is no earlier than publication of the notice of the Commission's initiation of its investigation in the *Federal Register*, and no later than five months after

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<sup>18</sup> The Settlement further provided that PG&E, SoCal Edison, and San Diego Gas & Electric Company would retain the right to pursue their pending rehearing requests challenging the Commission's determinations with respect to (1) the use a WECC-wide regional proxy group in calculating requested ROEs; and (2) up-front ROE determinations. Startrans IO, LLC Nov. 1, 2012 Transmittal Letter, Docket No. ER13-272-000, at 2. We note that the Commission issued the Order on rehearing referenced in the Settlement on November 18, 2010. *Startrans*, 133 FERC ¶ 61,154 (2010).

<sup>19</sup> Energy Policy Act of 2005, Pub. L. No. 109-58, § 1285, 119 Stat. 594, 980-81 (2005).

the publication date. We establish a refund effective date to be the earliest date possible in order to provide maximum protection to customers, i.e., the date the notice of the initiation of the investigation in Docket No. EL13-26-000 is published in the *Federal Register*.

21. Section 206(b) of the FPA also requires that if no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of the section 206 proceeding, the Commission shall state the reason why it has failed to render such a decision and state its best estimate as to when it reasonably expects to make such a decision. To implement that requirement, we will direct the presiding administrative law judge (judge) to provide a report to the Commission no later than 15 days in advance of the conclusion of the 180-day period in the event the judge has not by that date: (1) certified to the Commission a settlement which, if accepted, would dispose of the proceeding; or (2) issued an initial decision. The judge's report, if required, shall advise the Commission of the status of the investigation and provide an estimate of the expected date of certification of a settlement or issuance of an initial decision.

22. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>20</sup> If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise the Chief Judge will select a judge for this purpose.<sup>21</sup> The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) Startrans' proposed TRR is accepted for filing and suspended for a nominal period, to become effective January 1, 2013, subject to refund, as discussed in the body of this order.

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<sup>20</sup> 18 C.F.R. § 385.603 (2012).

<sup>21</sup> If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their backgrounds and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure, and the regulations under the Federal Power Act (18 C.F.R. Part I), a public hearing shall be held concerning Startrans' proposed TRR. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2012), the Chief Administrative Law Judge is directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and with the Chief Judge on the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Rules of Practice and Procedure.

(F) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of section 206 proceedings in Docket No. EL13-26-000.

(G) The refund effective date established pursuant to section 206(b) of the Federal Power Act will be the date of publication in the *Federal Register* of the notice discussed in Ordering Paragraph (F) above.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.