

153 FERC ¶ 61,360
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Startrans IO, LLC

Docket Nos. ER16-194-000
EL16-25-000

ORDER ACCEPTING AND SUSPENDING PROPOSED TRANSMISSION
REVENUE REQUIREMENT, INSTITUTING SECTION 206 PROCEEDING, AND
ESTABLISHING HEARING AND
SETTLEMENT JUDGE PROCEDURES

(Issued December 30, 2015)

1. On November 1, 2015, pursuant to section 205 of the Federal Power Act (FPA),¹ 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, 2016. In this order, the Commission accepts Startrans' proposed TRR, suspends it for a nominal period, to be effective January 1, 2016, subject to refund, and establishes hearing and settlement judge procedures. Because Startrans is proposing a TRR reduction and a further decrease may be warranted, we also institute an investigation pursuant to section 206 of the FPA² in Docket No. EL16-25-000 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 in March 2008. The MAP is a 1,296 megawatt (MW) transmission line

¹ 16 U.S.C. § 824d (2012).

² 16 U.S.C. § 824e (2012).

extending 202 miles from the Marketplace Switching Station in Southern Nevada to the Adelanto Switching Station in Southern California, in which Startrans owns a 6.25 percent interest. 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 a proposed Transmission Owner Tariff (TO Tariff) and its initial TRR associated with its acquisition of the Mead Transmission Interests. On March 31, 2008, the Commission accepted the filing, subject to refund, and established hearing and settlement judge proceedings.³ 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."⁴ 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. On May 28, 2009, Startrans filed an Offer of Settlement and Settlement Agreement (2008 Settlement) resolving all issues set for hearing. The Commission approved the 2008 Settlement on July 31, 2009.⁵ The 2008 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, 2013.⁶

5. On November 1, 2012, Startrans submitted a TRR filing in compliance with the 2008 Settlement. Startrans renewed its request for a 13.5 percent ROE, requested that the Commission approve its proposed reduced TRR, and accept revised TO Tariff provisions. On December 31, 2012, the Commission accepted Startrans' proposed TRR, subject to

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

⁴ *Id.* P 26.

⁵ *Startrans IO, LLC*, 128 FERC ¶ 61,118 (2009).

⁶ *See* Section 8.1 of the 2008 Settlement.

refund, suspended it for a nominal period, and established hearing and settlement judge procedures.⁷ In the December 2012 Order, the Commission also instituted an investigation pursuant to section 206 of the FPA in Docket No. EL13-26-000 to determine whether Startrans' proposed TRR reduction was just and reasonable. On July 31, 2013, Startrans filed an Offer of Settlement resolving all issues set for hearing. The Commission approved the 2012 Settlement on October 7, 2013 and terminated the section 206 investigation.⁸ The 2012 Settlement required Startrans to file a new TRR rate case no later than November 1, 2015, with an effective date no later than January 1, 2016.⁹

6. Startrans states that it has submitted the instant filing in compliance with the 2012 Settlement. Startrans has renewed its request for a 13.5 percent ROE, and requested that the Commission approve its proposed TRR and accept its revised TO Tariff provisions, effective January 1, 2016.

II. Startrans' Filing

7. Startrans proposes to reduce its TRR from \$3,695,000 to \$3,658,708 annually, effective January 1, 2016, associated with Startrans' interests in the Mead Transmission Interests.¹⁰ This amounts to a \$36,292 annual TRR reduction, or one percent below the existing TRR.¹¹

8. Startrans states that it based its proposed TRR on the twelve months of data ending December 31, 2014.¹² Consistent with section 35.13(a)(2)(i)(A) of the Commission's regulations, 18 C.F.R. § 35.13(a)(2)(i)(A) (2015), Startrans states it has elected to use a "Period I" Test Year comprised of the most recent calendar year for which actual financial data is available. In this respect, Startrans explains, the proposed TRR was developed consistent with the Commission's regulations and is based on a test year consisting of the 12-months ended December 31, 2014 (Test Year).¹³ Startrans states

⁷ *Startrans IO, LLC*, 141 FERC ¶ 61,271 (2012) (December 2012 Order).

⁸ *Startrans IO, LLC*, 145 FERC ¶ 61,020 (2013).

⁹ See Section 4.1 of the 2012 Settlement.

¹⁰ Startrans Filing at 1, 3.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 3.

that, consistent with the requirements of the Commission's regulations, Startrans is submitting Statements AA through BM using Period I data.

9. Startrans asserts that, in accordance with section 35.13(d)(1)(ii) of the Commission's regulations, 18 C.F.R. § 35.13(d)(1)(ii) (2015), it adjusted the Period I data only to reflect: (1) recovery of rate case expenses, which expenses are based upon the expenses Startrans expects to incur in prosecuting the current rate case based on experiences in the last two rate cases; and (2) the removal of all rate impacts from the acquisition adjustments previously rejected by the Commission.¹⁴ Startrans proposes no other adjustments.

10. Startrans also requests a continuation of a 13.5 percent ROE without refund, suspension, or hearing.¹⁵ Startrans asserts that the ROE of 13.5 percent is: (1) just and reasonable based on a modified two-step Discounted Cash Flow (DCF) rate of return analysis;¹⁶ (2) consistent with the Commission's policy, precedent, and prior orders approving Startrans' rates;¹⁷ (3) appropriate in light of the continuing and future benefits the Mead Transmission Interests provide to the broader Western Interconnection transmission system;¹⁸ and that (4) it meets investor expectations and conforms with the Commission's goals of promoting new transmission investment by Transcos.¹⁹

III. Notice of Filing and Responsive Pleadings

11. Notice of Startrans' filing was published in the *Federal Register*, 80 Fed. Reg. 68,528 (2015), with interventions and comments due on or before November 20, 2015. Timely motions to intervene were filed by the Modesto Irrigation District, the City of Santa Clara, California and the M-S-R Public Power Agency, and Trans Bay Cable LLC. Timely motions to intervene and comments or protests were filed by Pacific Gas and Electric Company (PG&E), the California Department of Water Resources State Water

¹⁴ *Id.* at 3-4 (citing Prepared Direct Testimony of Mr. Royal Lefere, Jr. at 6-7, 18).

¹⁵ *Id.* at 4.

¹⁶ *Id.* at 4-5 (citing Prepared Direct Testimony and Exhibits of James M. Coyne, Exhibit Nos. ST-3 through ST-12, and Mr. Ali Amirali, Exhibit No. ST-13).

¹⁷ *Id.* at 5-6 (citing December 2012 Order, 141 FERC ¶ 61,271, at P 19 (2012)).

¹⁸ *Id.* at 6-7 (citing March 2008 Order, 122 FERC ¶ 61,306, at P 30 (2008) and December 2012 Order, 141 FERC ¶ 61,271, at P 19 (2012)).

¹⁹ *Id.* at 7 (citing March 2008 Order, 122 FERC ¶ 61,306, at P 28 (2008)).

Project (SWP), the Transmission Agency of Northern California (TANC), Southern California Edison Company (SoCal Edison), and the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (collectively, Six Cities). Startrans filed an answer to the protests.

12. Intervenors argue that Startrans' proposed TRR is not just and reasonable, and should not be approved by the Commission as filed.²⁰ Intervenors request that the 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.²¹ Intervenors also request 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, and establish the earliest possible refund effective date in order to determine just and reasonable rates for Startrans.²²

13. Intervenors also argue that Startrans' requested ROE of 13.5 percent is unjust and unreasonable, overstated or excessive,²³ and that Startrans is not entitled to a 13.5 percent ROE in perpetuity.²⁴ Intervenors submit that a 13.5 percent ROE is higher than Startrans' submitted range of reasonable returns of 6.75 percent to 11.65 percent that it calculated using the Commission's two-stage DCF analysis established in Opinion No. 531.²⁵ In addition, Six Cities and TANC submit that considering a median ROE is 8.8 percent, a 13.5 percent ROE is excessive.²⁶ SWP, in turn, suggests that at minimum,

²⁰ NCPA did not submit specific comments, but indicated support for the protests submitted by Six Cities and SWP.

²¹ *E.g.* Six Cities Protest at 1-2; PG&E Protest at 3; SoCal Edison Protest at 5; SWP Protest at 1, 9; TANC Protest at 15.

²² *E.g.*, SoCal Edison Protest at 5.

²³ *See e.g.*, Six Cities Protest at 2; TANC Protest at 7.

²⁴ *See* Six Cities Protest at 8.

²⁵ *Id.* at 4.

²⁶ Six Cities Protest at 4; TANC Protest at 8.

Startrans' requested ROE is excessive by nearly 200 basis points.²⁷ TANC suggests a 13.5 percent ROE reflects an unwarranted upward adjustment of 463 basis points.²⁸

14. Intervenors also argue that Startrans' DCF analyses do not conform to Commission policy.²⁹ Intervenors aver that Startrans altered its methodology in a way that would produce a range to include the 13.5 percent ROE Startrans seeks,³⁰ in contradiction of the Commission's finding in Opinion No. 531.³¹ Thus, Intervenors assert Startrans' proposed modification is unjustified.³²

15. Furthermore, Six Cities argue that awarding ROE incentives based on promised new infrastructure investment is premature because the Mead-Adelanto Project is still in the preliminary stages of evaluation,³³ because upgrades to the Mead-Adelanto and Mead-Phoenix Projects are as yet under consideration only,³⁴ and because CAISO has not approved these proposed upgrades.³⁵ Also, Six Cities argue that preliminary studies to evaluate the viability of the proposed upgrades do not justify Startrans' proposed ROE.³⁶

16. Intervenors argue that Startrans' requested rate case expense in this proceeding is excessive. For example, SoCal Edison notes that Startrans is requesting rate case expenses totaling \$1.026 million, amortized over a three-year period which results in an

²⁷ SWP Protest at 6.

²⁸ TANC Protest at 10.

²⁹ *E.g.*, Six Cities Protest at 4-5; TANC at 7.

³⁰ *E.g.*, Six Cities Protest at 9; TANC at 6.

³¹ *E.g.*, Six Cities Protest at 4-5 (citing *Martha Coakley, Massachusetts Attorney General, et al. v. Bangor Hydro-Electric Company, et al.*, Opinion No. 531, 147 FERC ¶ 61,234 (2014), *order on paper hearing*, Opinion No. 531-A, 149 FERC ¶ 61,032 (2014), *reh'g denied*, Opinion No. 531-B, 150 FERC ¶ 61,165 (2015)).

³² Six Cities Protest at 4.

³³ *Id.* at 10.

³⁴ *Id.* at 11

³⁵ *Id.*

³⁶ *Id.*

annual rate case expense of \$342,000. SoCal Edison argues that with a total proposed TRR of approximately \$3.7 million, Startrans' proposed rate case expense is excessive on its face, and patently unreasonable.³⁷

17. In addition, Intervenors, such as PG&E and SoCal Edison, highlight that Startrans' administrative and general expenses may be excessive and redundant with its projected rate case expenses,³⁸ that Startrans' overstated its rate base, and that Startrans' use of Period I test year data may not be appropriate.

18. Finally, PG&E points out that Startrans' parent company, Startrans IH, defaulted on a credit agreement with its lender, Portigon AG, and that Startrans has no explanation why the default occurred or how it will be resolved.³⁹

IV. Discussion

A. Procedural Matters

19. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

20. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), 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

21. 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. Therefore, we will accept Startrans' proposed TRR, suspend it for a nominal period, make it effective January 1, 2016, subject to refund, and set it for hearing and settlement judge procedures.

³⁷ SoCal Edison Protest at 3.

³⁸ *Id.*

³⁹ PG&E Protest at 3.

22. 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. EL16-25-000 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 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 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. EL16-25-000 is published in the *Federal Register*.

23. 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 approved, 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.

24. 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.⁴⁰ 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.⁴¹ 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

⁴⁰ 18 C.F.R. § 385.603 (2015).

⁴¹ 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>).

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, 2016, subject to refund, as discussed in the body of this order.

(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 (2015), 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. EL16-25-000.

(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.