157 FERC ¶ 61,133
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Trans Bay Cable LLC Docket No. ER16-2632-000

ORDER ACCEPTING AND SUSPENDING PROPOSED TARIFF CHANGES AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued November 22, 2016)

1. On September 20, 2016, Trans Bay Cable LLC (Trans Bay) filed revisions to its transmission owner tariff (TO Tariff) seeking to increase its transmission revenue requirement (TRR) from $131,134,000 to $153,170,349. In this order, we accept for filing Trans Bay's proposed TRR, suspend it for five months to become effective April 23, 2017, subject to refund; establish hearing and settlement judge procedures to determine, among other things, the discounted cash flow (DCF) range of reasonable returns for Trans Bay's return on equity (ROE); and find that the resulting ROE should be set at the upper end of that range, not to exceed 13.5 percent, as discussed below.

I. Background

2. Trans Bay owns a 53-mile, 400 MW high-voltage, direct-current submarine transmission line buried beneath the San Francisco Bay, with converter stations at each end (Project). The Project provides direct electric transmission between Pacific Gas and Electric Company's (PG&E) Pittsburg and Potrero substations, both located in San Francisco, California. Trans Bay states that currently the Project delivers power to serve approximately 48 percent of San Francisco's peak load. As a participating transmission owner member of the California Independent System Operator Corporation (CAISO), Trans Bay recovers its high voltage TRR through CAISO's transmission access charge pursuant to CAISO's tariff.

3. On July 22, 2005, the Commission accepted a proposed operating memorandum which set forth the rate principles and operational responsibilities governing the development, financing, construction, and operation of the Project among Trans Bay, the

City of Pittsburg, California and Pittsburg Power Company.[1] Specifically, the Commission accepted certain rate principles for the Project including a post-tax, and 13.5 percent ROE. The Commission stated that Trans Bay, as a newly-formed, transmission-only company, faced unique and elevated risks that justified the "enhanced" 13.5 percent ROE, in light of the reliability and economic benefits the Project would provide in addressing the critical need for generation within the City of San Francisco.[2]

4. On October 23, 2009, Trans Bay filed its initial rate case, which the Commission accepted, subject to refund and the outcome of hearing and settlement judge procedures, and in so doing affirmed its previous acceptance of Trans Bay's rate principles, including the 13.5 percent ROE.[3] Thereafter, the parties reached a "black box" settlement which the Commission accepted on December 30, 2011; the settlement also required Trans Bay to file its next rate case by September 20, 2013.[4]

5. On September 20, 2013, Trans Bay submitted a revised tariff reflecting a proposed increase in the TRR. The Commission accepted Trans Bay's proposed TRR subject to refund, and set the matter for hearing and settlement judge procedures, and in so doing, directed the presiding judge to determine the appropriate range of reasonable returns and to set Trans Bay's ROE at the upper end of that range, not to exceed 13.5 percent.[5] On September 12, 2014, Trans Bay filed a "black box" settlement agreement with the intervenors. The settlement agreement established a TRR of $131.1 million and required Trans Bay to make an updated tariff filing by September 20, 2016. The settlement also

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[1] *Trans Bay Cable LLC*, 112 FERC ¶ 61,095 (2005) (Operating Memorandum Order).

[2] The Commission stated that these benefits include the potential to reduce congestion costs and the reliability must-run requirements in San Francisco, decrease local pollution, and increase system reliability. *See* Operating Memorandum Order, 112 FERC ¶ 61,095 at P 24.

[3] *Trans Bay Cable LLC*, 132 FERC ¶ 61,083 (2010).

[4] *Trans Bay Cable LLC*, 137 FERC ¶ 61,258 (2011) (2011 Settlement Order).

[5] *Trans Bay Cable LLC*, 145 FERC ¶ 61,151 (2013) (November 2013 Order).

stipulates that, Trans Bay would use calendar year 2017 as its Period II test year.[6] The Commission accepted this settlement agreement on October 29, 2014.[7]

II. Trans Bay's Filing

6. Trans Bay proposes to revise its TO Tariff to increase its annual TRR from $131,134,000 to $153,170,349. Trans Bay seeks a continuation of its previously accepted ROE of 13.5 percent and requests that the Commission summarily accept its proposed ROE, its cost-of-service and resulting TRR without refund, suspension, or hearing, to become effective November 23, 2016. Trans Bay states that, its proposed TRR and associated cost-of-service, reflect the use of Trans Bay's actual capital structure, proposed capital additions to the Project, and the allocation of its proposed TRR between high voltage and low voltage facilities.

7. In support of its proposed ROE of 13.5 percent, Trans Bay states that the ROE is within the range of reasonable rates of returns, and that the Project is consistent with the type of transmission infrastructure investment that Commission policy seeks to encourage. Trans Bay also states that its proposal is consistent with (1) the Commission's policy of granting incentive rate treatment for projects with significant benefits and risks, (2) prior Commission orders approving Trans Bay's request for an incentive ROE of 13.5 percent, and (3) similarly-situated capital-intensive network industries, and is supported by the Commission's traditional rate of return analysis, as discussed below.

8. Trans Bay states that it is unique among transmission providers as a single-asset company without revenue diversification common in the type of electric utilities serving as proxies under the Commission's *Coakley* analysis.[8] Trans Bay highlights that its risk profile differs significantly from other electric utility proxies because it was the first independent company building a major California transmission project, and because its sole asset that used "first-of-its-kind" voltage-source conversion technology, which heightened the business risk of the Project, compared to companies in a traditional Commission electric proxy group.[9] Trans Bay argues that a proxy group of electric only

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[6] Transmittal Letter at 7.

[7] *Cities of Anaheim v. Trans Bay Cable LLC*, 149 FERC ¶ 61,081 (2014) (2014 Settlement Order).

[8] *Coakley v. Bangor-Hydro Elec. Co.*, Opinion No. 531, 147 FERC ¶ 61,234, at P 150 (2014).

[9] Transmittal Letter at 8-10.

utilities would not accurately reflect its business model. Therefore, Trans Bay states that it proposes a proxy group composed of firms from other capital-intensive industries from which it calculated its ROE, using the Commission's established two-step DCF methodology. Trans Bay notes that the 13.5 percent ROE falls within the resulting range of reasonableness of 6.19 -17.70 percent.[10]

9. Trans Bay also asserts that a 13.5 percent ROE is consistent with the Commission's policies promoting transmission investment. Specifically, Trans Bay states that the Project provides approximately $252 million in benefits to California ratepayers and generators, in 2015.[11] Trans Bay states that the benefits exceed its proposed TRR, and also provide energy cost savings, voltage control, load cost reduction, increased reliability in San Francisco, reactive power absorption, and emergency restoration capability. Trans Bay states that its ROE should be commensurate with corresponding risks, to compensate for assuming the significant risks and to encourage future investment in such transmission infrastructure.[12]

10. Further, Trans Bay argues that, independent of the foregoing reasons, legal and equitable principles require affirmation of Trans Bay's proposed 13.5 percent ROE. Specifically, Trans Bay asserts that the Commission accepted a 13.5 percent ROE and 30-year depreciation period in the Operating Memorandum Order without a stated duration, finding that the Project's construction would expose Trans Bay to significant risk, therefore necessitating an enhanced rate treatment.[13] Trans Bay asserts that its reasonable reliance on the Operation Memorandum Order is entitled to constitutional protection consistent with the legal and equitable principles of fairness and justice underlying *Winstar*.[14] According to Trans Bay, these principles require the Commission to adhere to its commitment, and the Commission cannot now subject Trans Bay to

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[10] *Id*. at 10.

[11] *Id*. at 13.

[12] *Id*. at 14-15.

[13] *Id.* at 15 (citing Operating Memorandum Order, 112 FERC ¶ 61,095 at PP 24-25).

[14] *Id*. at 16 (citing *United States v. Winstar Corp*., 518 U.S. 839, 883 (1996) (*Winstar*)). In *Winstar*, the United States Supreme Court found that, in the event that a government has contracted with an entity, and a change in law invalidates those contracts, the government is still obligated to honor its contracts despite the change in governing regulations.

inequitable cost-shifting.[15] Additionally, Trans Bay argues that the Commission's decision in *City of New Martinsville* is also applicable in its situation and illustrative of the foregoing point.[16] Specifically, Trans Bay states that, considering the Commission's commitment to a 13.5 percent ROE in its prior orders, it would be unfair if it were withdrawn once the investment has been made. Trans Bay notes that if the Commission fails to support the Project's requirements, Trans Bay's investment in energy infrastructure would be jeopardized, and that its credibility and potential for future investment would be undercut.[17]

11. Trans Bay states that its cost of service supporting its TRR also reflects three additional revisions. First, Trans Bay proposes an actual capital structure reflecting 40 percent debt and 60 percent equity, based upon its capital structure at the time of filing. Second, Trans Bay proposes an updated cost-of-service that includes sixteen significant capital additions to rate base (expected to be in service during Period II), including operation and maintenance (O&M) expenses, and administrative and general (A&G) expenses based on the forecasted costs and estimated in-service dates of these

[15] Trans Bay notes that it is not making a formal *Winstar* claim to the Commission, but states that it intends to submit a formal *Winstar* claim to the Court of Federal Claims if the Commission discontinues the 13.5 percent ROE. *See* Transmittal Letter at 18-19.

[16] Transmittal Letter at 17 (citing *City of New Martinsville, W. Va.*, 35 FERC ¶ 61,322 (1986) (*New Martinsville*)). In *New Martinsville*, the Commission granted a waiver of its regulations governing Qualifying Facility status for a small power production facility. The Commission concluded that while the facility would not otherwise qualify for such status, equitable principles and "elementary fairness" required the Commission not to reject the application on a strict reading of the regulations or application of policy, as the Commission had not indicated in other orders involving the facility that there would be a question about its qualifying status. *New Martinsville*, 35 FERC ¶ 61,322 at 61,737.

[17] Transmittal Letter at 18.

capital additions. Last, Trans Bay proposes to allocate 7.1 percent of its TRR to low voltage transmission facilities, consistent with CAISO's tariff.[18]

12. Finally, Trans Bay requests waiver of section 35.13 of the Commission's regulations to the extent necessary, stating that several of the filing requirements are inapplicable to its proposal.[19] Trans Bay also requests confidential treatment of Exhibit Nos. TBC-100, TBC-200, TBC-300, TBC-400, TBC-500, and TBC-502, which it states contain commercially sensitive data that could have a debilitating effect on its business enterprise if released to the public.[20]

III. Notice of Filing and Responsive Pleadings

13. Notice of Trans Bay's filing was published in the *Federal Register*, 81 Fed. Reg. § 66,648 (2016) with interventions and comments due on or before October 11, 2016. Timely motions to intervene were filed by the City of Santa Clara, California and the M-S-R Public Power Agency; the Transmission Agency of Northern California; DATC Path 15, LLC; Modesto Irrigation District; and Startrans IO, LLC. Pacific Gas and Electric Company (PG&E) and the City and County of San Francisco (San Francisco) filed motions to intervene out of time. Timely motions to intervene and comments or protests were filed by Southern California Edison Company (SoCal Edison), the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (Six Cities), the Public Utilities Commission of California (CPUC), and the California Department of Water Resources State Water Project (SWP).

14. On October 26, 2016, Trans Bay filed an answer in response to protests and comments regarding the various aspects of its proposed TRR increase. On November 10, 2016, Six Cities filed an answer to Trans Bay's answer.

A. Protests

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[18] CAISO's requirements require separating the revenue requirement into a high-voltage TRR and a low-voltage TRR based on an assessment of facilities. (Transmittal Letter Ex. No. TBC-100 at 56).

[19] Specifically, Trans Bay requests waiver of the requirement to file cost-of-service statements AG, AR, AT, AU, AW, AX, BA through BF, BI, BL, and BM, stating that these documents are inapplicable. *Id.* at 23.

[20] *Id*.

15. Protestors generally assert that the Commission should set Trans Bay's entire filing for hearing and settlement judge procedures. CPUC, Six Cities, and SWP raise several concerns with Trans Bay's request for a continued 13.5 percent ROE and request that the Commission address Trans Bay's ROE and range of reasonableness during the hearing. Specifically, these parties argue that Trans Bay's DCF range of reasonableness does not follow Commission precedent because of Trans Bay's use of non-electric utility proxy companies. Six Cities, CPUC and SWP contend that Trans Bay's requested 13.5 percent ROE does not fall within their separate estimates of Trans Bay's range of reasonableness.[21] Further, SWP and Six Cities assert that it is not appropriate for Trans Bay to include non-electric utility capital intensive entities in its proxy group, noting that its risk profile has not changed since its prior rate filings.[22] Six Cities also protest certain growth rate estimates used by Trans Bay in its DCF analysis, and the inclusion of Avangrid, Inc. and MGE Energy in Trans Bay's proxy group.[23]

16. SWP and Six Cities also assert that Trans Bay's framing of its situation under the *Winstar* principles are not appropriate. SWP and Six Cities state that none of the Commission's prior orders implied a 13.5 percent ROE in perpetuity, but rather granted a three-year moratorium on the rate. Thus, upon the expiration of the moratorium, the rates might change. Six Cities also state that *Winstar* applies to a situation in which the government has a contract with an entity, and a change in law invalidates said contract; those facts do not apply in Trans Bay's situation.[24] Finally, Six Cities argue that a comparison to *New Martinsville* is inaccurate because of the unique and extremely narrow circumstances surrounding the case, which might not be an appropriate comparison to Trans Bay.[25]

17. Protestors also contest other elements of Trans Bay's filing, such as the proposed capital additions and increases in O&M expenses, A&G expenses, and depreciation rates. SWP, Six Cities, and SoCal Edison assert that Trans Bay's filing contains insufficient information to determine whether these aspects of the proposed TRR are just and reasonable.[26] Specifically, Six Cities also argue that it is not evident that all the proposed

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[21] Six Cities at 4, 5-6; SWP at 5-6.

[22] Six Cities at 5-7; SWP at 6-7.

[23] Six Cities at 7.

[24] *Id.* at 18-19.

[25] *Id.*at 20.

[26] Southern California Edison at 4-6.

capital additions merit incentive ROEs, and that a median-based ROE may be appropriate for such additions.[27] SWP states that Trans Bay's proposed capital structure is unsupported given prior data, and that further investigation is necessary to verify the details supporting the TRR increase.[28]

18. Six Cities request that, in addition to establishing a hearing, the Commission initiate an investigation under 206 of the Federal Power Act (FPA)[29] to determine whether Trans Bay's current rate (i.e., the rate established by the Settlement Order) remains just and reasonable. Six Cities explain that, in the Settlement Order, the Commission approved Trans Bay's request for a three-year rate moratorium during which its rates would not change until November 23, 2016.[30] Thus, Six Cities request that the Commission establish a refund effective date of November 23, 2016, in order to provide maximum protection to CAISO customers between the time Trans Bay's three-year rate moratorium ends and the date that the suspended rates proposed in the instant filing become effective.

B. Trans Bay Answer

19. Trans Bay asserts that the Commission should summarily accept its request for a continuation of its currently authorized 13.5 percent ROE because no party specifically rebutted Trans Bay's extensive and independent testimony that the ROE is just and reasonable when compared to companies with corresponding risk.[31] Trans Bay argues that the commenters fail to specifically rebut why its risk might not be comparable to capital-intensive, network industries, also noting that the Commission has reaffirmed its commitment to a case-by-case analysis in determining ROE and risk, and allows for alternative proxy groups in proposals.[32]

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[27] *Id.*at 23-24.

[28] SWP at 13.

[29] 16 U.S.C. § 824e (2012).

[30] *Trans Bay Cable LLC*, 149 FERC ¶ 61,081.

[31] Trans Bay Answer at 1-2.

[32] *Id*. at 5 (citing Opinion No. 531, 147 FERC ¶ 61,234 at P 150, and *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, at P 102 (2007)).

20. Trans Bay argues that the same legal and equitable principles based on *Winstar* and *New Martinsville* should inform the Commission's determination in Trans Bay's unique proceeding. Trans Bay argues that Six Cities' characterization of *Winstar* is misplaced and the Commission should consider *Winstar*'s underlying principles, especially because the decision was from the Supreme Court and is, thus, binding on the Commission.[33]

21. Trans Bay further argues that its characterization of cost-of-service, capital additions, capital structure, and accounting treatments are fully supported by testimony and work papers. Trans Bay states that a number of the fallacies alleged by the commenters are unfounded, refuting criticisms of its actual capital structure and certain of SWP's protests regarding Trans Bay's accounting.[34]

22. Finally, Trans Bay states that the Commission should reject Six Cities' request to initiate a section 206 proceeding, arguing that Six Cities' analysis of Trans Bay's TRR changes is a red herring comparison. Trans Bay asserts that, due to the inherent nature of "black box" settlements, the numbers thereof do not reflect precise, actual or anticipated costs; therefore, any comparison based upon such numbers are not valid, and should be rejected.

C. <u>Six Cities' Answer</u>

23. Six Cities object to Trans Bay's proposed rate methodology, stating that Six Cities have raised material issues of fact that warrant an evidentiary hearing, referring to the DCF analysis supplied by Six Cities in its protest.[35] Furthermore, Six Cities also assert that the Commission should disregard Trans Bay's proposal to use a weighted average growth rate in its DCF model, and argues that Trans Bay wrongfully interprets Commission precedent on DCF methodology, stating that this approach is not generally supported by Commission policy.[36]

24. Six Cities also reiterate that Trans Bay should not receive incentive ROE on non-incentive capital additions, stating that Trans Bay should collect a standard, median-based ROE on its investment in any new capital projects or additions to the project that

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[33] *Id*. at 14.

[34] *Id.* at 17.

[35] Six Cities Answer at 4.

[36] *Id.* at 9.

have not been shown to involve any unusual risk factors.[37] Finally, Six Cities re-assert that the Commission initiate a Section 206 investigation to determine whether Trans Bay's current rate is just and reasonable, stating that Trans Bay is over-recovering its revenue requirement.[38]

IV. Discussion

A. Procedural Matters

25. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2016), the timely, unopposed motions to intervene serve to make the entities who filed them parties to this proceeding.

26. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2016), the Commission will grant PG&E and San Francisco's motions to intervene out-of-time given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

27. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2016), prohibits answers to protests and answers unless otherwise ordered by the decisional authority. We will allow Trans Bay's answer and Six Cities' answer to Trans Bay's answer as they have assisted us in our decision-making process.

B. Commission Determination

28. Our preliminary analysis indicates that Trans Bay's proposed TRR has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Trans Bay's 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 Trans Bay's proposed TRR increase. Therefore, we will accept Trans Bay's proposed TRR, suspend it for the maximum five-month period, to become effective April 23, 2017, subject to refund, and set it for hearing and settlement judge procedures.

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[37] *Id.* at 10-11.

[38] *Id.* at 12.

29. In *West Texas Utilities Co.*,[39] the Commission explained that, when its preliminary examination indicates that proposed rates may be unjust and unreasonable and may be substantially excessive, as defined in *West Texas Utilities Co.*, it would generally impose a five-month suspension.[40] In this proceeding, we find that Trans Bay's proposed rates may yield substantially excessive revenues. Accordingly, we will suspend Trans Bay's proposed rates for five months and set them for hearing and settlement judge procedures, as ordered below.

30. We disagree with Trans Bay's argument that the Commission is barred by *Winstar* to allow a different ROE from the 13.5 percent ROE first established in 2005 when Trans Bay was a start-up entity and the Project was in the initial stage of development. It was never the Commission's intent to allow the 13.5 percent ROE to continue in perpetuity, and the Commission orders made it clear that the higher ROE was warranted by special circumstances. In the Operating Memorandum Order, the Commission granted Trans Bay's request for a 13.5 percent ROE on the basis that greater risks borne by a new and independent entity "*prior to commercial operation of the Project*" justified a higher ROE.[41] The Commission noted that at the time Trans Bay was not situated similarly to other investor-owned utilities because it could not rely on ratepayers and shareholders to share the prudent costs of a project that is later abandoned or cancelled.[42] In a subsequent order, the Commission reaffirmed the 13.5 percent ROE while construction of the Project was still underway, reasoning that Trans Bay, as a start-up, still faced elevated risks.[43] The Project has been in operation since November 23, 2010. According to Trans Bay, the Project currently delivers power to serve approximately 48 percent of San Francisco's peak load, and is now a participating transmission owner member of CAISO.[44] Given that Trans Bay can no longer be characterized as a start-up entity and the Project has been successfully operating for six years, it is not evident that the 13.5 percent ROE may be justified based on an older risk profile.

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[39] *W. Tex. Utils. Co.*, 18 FERC ¶ 61,189 (1982).

[40] *Id.* at 61,375.

[41] Operating Memorandum Order, 112 FERC ¶ 61,095 at P 26 (*emphasis added*).

[42] *Id.*

[43] *Trans Bay Cable LLC*, 129 FERC ¶ 61,225, at PP 7, 21 (2009) (Initial Rate Order).

[44] Transmittal Letter at 2.

31. We also disagree that *New Martinsville* is binding in the instant case. In that order, the Commission expressly pointed out that its decision applied only to the "extremely narrow circumstances" of that case.[45] The issue in *New Martinsville*, which involved Qualifying Facility status for a small power production facility, is not relevant to Trans Bay's filing in this proceeding.

32. Furthermore, the 13.5 percent incentive ROE was established prior to Order No. 679[46] and constitutes an overall ROE without specific incentive adders.[47] Historically, the Commission has allowed certain transmission companies qualifying for enhanced rate treatment to maintain an incentive ROE of 13.5 percent, so long as that level of return fell within the company's DCF range of reasonableness.[48] However, our preliminary analysis of Trans Bay's proposed ROE in the instant filing indicates that the 13.5 percent ROE may no longer fall within the zone of reasonable returns. While Trans Bay's proposed TRR, including the 13.5 percent ROE, has not been shown to be just and reasonable, and may be unjust and unreasonable, the rationale for granting an enhanced ROE to a project undertaken by a start-up entity that provides, and is expected to continue to provide, significant benefits remains, even if the zone of reasonable returns may have changed. Consistent with the Initial Rate Order, section 219 of the FPA,[49] the principles set forth in Order No. 679, and precedent regarding critically needed infrastructure projects,[50] we direct the presiding judge to consider the unique nature of this project when determining the appropriate range of reasonable returns and placement within the range. The ROE determined at hearing shall not exceed Trans Bay's filed 13.5 percent ROE.

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[45] *New Martinsville*, 35 FERC ¶ 61,322 at 61,737.

[46] *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007) (Order No. 679).

[47] The Commission rejected Trans Bay's request to include a 50 basis point adder for its participation in CAISO. Initial Rate Order, 129 FERC ¶ 61,225 at P 23.

[48] *Atlantic Path 15, LLC*, 122 FERC ¶ 61,135, at P 19 (2008); *Startrans IO, L.L.C.*, 122 FERC ¶ 61,306, at P 26 (2008); *Atlantic Path 15, LLC*, 135 FERC ¶ 61,037, at P 20 (2011); *Startrans IO, L.L.C.*, 141 FERC ¶ 61,271, at P 19 (2012).

[49] 16 U.S.C. 824s (2012).

[50] *Atlantic Path 15, LLC*, 122 FERC ¶ 61,135 at P 21; *Atlantic Path 15, LLC*, 135 FERC ¶ 61,037 at PP 19, 20.

33. We grant the requested waiver of the filing requirements under section 35.13 of the Commission's regulations with respect to the specific cost-of-service statements noted above; however, this finding does not preclude parties at the hearing from demonstrating the need for additional information to allow for a full evaluation of Trans Bay's proposed ROE and overall TRR. We also note that the parties will have the ability to request access to the privileged portions of Trans Bay's filing pursuant to the Commission's regulations.[51]

34. Finally, we reject Six Cities' request for the Commission to initiate an investigation under section 206 of the FPA to determine whether Trans Bay's current rates remain just and reasonable during the five-month suspension period from November 23, 2016, through April 22, 2017. Based upon the record of this case, we find that a further investigation into previously settled rates is unwarranted.

35. While we are setting this matter for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before the 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.[52] 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. Should the settlement judge ultimately determine that a hearing is warranted, Trans Bay shall file a full case in chief pursuant to the Commission's regulations to support its proposed rate structure at hearing.

The Commission orders:

(A) Trans Bay's proposed TRR is hereby accepted for filing and suspended for five months, to become effective on April 23, 2017, subject to refund, and subject to hearing and settlement judge procedures, as discussed in the body of this order.

(B) Trans Bay's request for waiver of specific cost-of-service statements in section 35.13 of the Commission's regulations is hereby granted, as discussed in the body of this order.

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[51] 18 C.F.R. § 388.112(b)(2) (2016).

[52] 18 C.F.R. § 385.603 (2016).

(C) 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. Chapter I), a public hearing shall be held in Docket No. ER16-2362-000 concerning the justness and reasonableness of Trans Bay's proposed TRR, as discussed in the body of this order. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (D), (E), and (F) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2013), the Chief Administrative Law Judge is hereby 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.

(E) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the 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.

(F) 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 Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.