122 FERC ¶ 61,307
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Startrans IO, L.L.C. Docket Nos. EC08-33-000
EC08-33-001

ORDER AUTHORIZING THE ACQUISITION OF JURISDICTIONAL FACILITIES

(Issued March 31, 2008)

1. On January 4, 2008, as amended on February 27, 2008, Startrans IO, L.L.C. (Startrans) (Applicant) filed an application seeking authorization under section 203 of the Federal Power Act (FPA)[1] for the acquisition of transmission interests through assignment of certain agreements and related books and records (Transaction). The assets are now owned by the City of Vernon, California (Vernon).[2]

2. The Commission has reviewed the Transaction under the Commission's Merger Policy Statement.[3] As discussed below, we authorize the Transaction as consistent with

[1] 16 U.S.C. § 824b (2000), *amended by* Energy Policy Act of 2005, Pub. L. No. 109-58, § 1289, 119 Stat. 594, 982-83 (2005) (EPAct 2005).

[2] Concurrently with this filing, Startrans filed applications under FPA sections 204 and 205 in Docket Nos. ES08-24 and ER08-413, respectively. The Commission has issued an order in Docket No. ES08-24, 122 FERC ¶ 61,253 and is issuing an order in Docket No. ER08-413 simultaneously with this order.

[3] *See Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997) (Merger Policy Statement). *See also FPA Section 203 Supplemental Policy Statement*, 72 Fed. Reg. 42,277 (Aug. 2, 2007), FERC Stats. & Regs. ¶ 31,253 (2007) (Supplemental Policy Statement), *order on clarification and reconsideration*, 122 FERC ¶ 61,157 (2008). *See also Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, FERC Stats. & Regs. ¶ 31,111 (2000), *order on reh'g*, Order No. 642-A, 94 FERC ¶ 61,289 (2001). *See also Transactions Subject to FPA Section 203*, Order No.

the public interest. Although the Transaction may lead to some increase in transmission rates, it is also likely to result in benefits related to the ownership of the transmission facilities by a stand-alone transmission company (Transco). We note that this Transaction will result in the creation of a Transco in the California Independent System Operator Corporation (CAISO).

I. Background

A. Description of the Parties

1. Startrans

3. Startrans is a transmission-only limited liability company that does not currently own any jurisdictional assets. Startrans is indirectly owned by Starwood Energy Infrastructure Fund (SEI Fund), which is owned by SEI Management L.P. (SEI Management) as a general partner, and by various passive investors as limited partners. SEI Management is owned by SEI Management Holdings (SEI Holdings) as a general partner, and by SEI Investors, L.P., as its sole limited partner. SEI Holdings is wholly owned by Starwood Energy Group Global, L.L.C. (SEG), which is owned by various private investors. SEG is primarily involved in developing, acquiring, and investing in energy infrastructure assets. SEG through its affiliates also owns passive minority interests in another transmission system and has made development loans related to transmission projects.[4]

2. Vernon

4. Vernon is a California municipal utility that is not subject to the Commission's section 205 jurisdiction. Vernon owns interests in the Mead-Adelanto Project (MAP) and the Mead-Phoenix Project (MPP) (collectively, Mead Facilities or Mead Transmission Interests). The Mead Facilities consist of two jointly-owned transmission lines in which Vernon has ownership interests through certain agreements.[5] The MAP is a 1,296 megawatt (MW) transmission line extending 202 miles from the Marketplace Switching Station in Southern Nevada to the Adelanto Switching Station in Southern California. MAP is operated by the Los Angeles Department of Water and Power (LADWP). Vernon owns a 6.25 percent interest in MAP. The MPP is a 1,300 MW transmission line

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669, FERC Stats. & Regs. ¶ 31,200 (2005), *order on reh'g*, Order No. 669-A, FERC Stats. & Regs. ¶ 31,214, *order on reh'g*, Order No. 669-B, FERC Stats. & Regs. ¶ 31,225 (2006).

[4] Application at 3-6.

[5] Application at 6, n. 5.

extending 256 miles from the Perkins Switchyard near Sun City, Arizona to the Marketplace Switching Station. The MPP is operated by the Salt River Project and the Western Area Power Administration. It consists of three primary components, in which Vernon holds approximate interests of 2.15 percent, 3.79 percent, and 4.05 percent, respectively. Vernon is a Participating Transmission Owner (PTO) within the CAISO.

B. Description of the Transaction

5. Under the Purchase and Sale Agreement (Purchase Agreement), Startrans will acquire the Mead Transmission Interests from Vernon through the assignment by Vernon of certain agreements and other related books and records.[6] Upon completion of the Transaction, Startrans will own and manage the Mead Transmission Interests.[7]

C. Related Agreements and Tariff

6. Startrans states that it has made a separate filing with the CAISO to become a PTO and execute the Transmission Control Agreement Among Independent System Operator and Transmission Owners (TCA). Startrans states that it will also execute an Agreement on Assumption of Liabilities Under the Transmission Control Agreement (Assumption Agreement) related to the Mead Facilities with Vernon and the CAISO.[8]

II. Notice of Filing and Responsive Pleadings

7. Notice of the application was published in the *Federal Register*, 73 Fed. Reg. 2,905 (2008), with interventions and protests due on or before January 25, 2008. Pacific Gas & Electric Company (PG&E) and Southern California Edison Company (SoCal Edison) (collectively, California PTOs) filed a timely motion to intervene and protest, motion for consolidation, and a request for hearing. The Public Utilities Commission of the State of California (California Commission) filed a notice of intervention and motion for additional time to file comments and protest. The California Department of Water Resources State Water Project, the CAISO, and the cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (Six Cities) filed timely motions to intervene. San Diego Gas & Electric Company (SDG&E) filed a timely motion to intervene and consolidate.

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[6] Application at 8.

[7] Application at 1.

[8] Application at 8-9. The Assumption Agreement relates to Vernon's potential refund liability associated with alleged past overcollections of its Transmission Revenue Requirement (TRR) through the CAISO's Transmission Access Charge (TAC).

8. SoCal Edison, PG&E, and SDG&E (collectively, California Parties) filed a motion to intervene and protest,[9] motion to consolidate, and a request for a hearing. The CAISO filed a motion to intervene and comments. Vernon filed a motion to intervene and a partial answer to the California PTOs' protest (Vernon Response). The Transmission Agency of Northern California (TANC) filed a motion to intervene.

9. Startrans filed a response supporting the California Commission's and the CAISO's request for an extension. Startrans filed an answer to the California PTOs' protest, the California Parties' and Six Cities' comments, and SDG&E's request for consolidation (Startrans February 8 Answer).

10. The California Commission filed a protest (California Commission Protest). Startrans filed a response (Startrans February 19 Answer).

11. On February 22, 2008, the Director, Division of Tariffs and Market Development – West, acting under delegated authority, issued a letter seeking additional information relating to Startrans' application (Deficiency Letter). On February 27, 2008, Startrans filed a response to the Deficiency Letter (Supplemental Filing). Notice of Startrans' Supplemental Filing was published in the *Federal Register*, 73 Fed. Reg. 12,403 (2008), with interventions and comments due on or before March 10, 2008. PG&E, SDG&E, and SoCal Edison filed comments on March 10, 2008, and on March 14, 2008, Startrans filed an answer (Startrans March 14 Answer).

III. Discussion

A. Procedural Issues

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[10] the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

13. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure[11] prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Startrans' answers because they have provided information that assisted us in our decision-making process.

[9] The protest applies to Docket No. ES08-24.

[10] 18 C.F.R. § 385.214 (2007).

[11] 18 C.F.R. § 385.213(a)(2) (2007).

B. Standard of Review under Section 203

14. Section 203(a)(4) requires the Commission to approve a transaction if it determines that the transaction will be consistent with the public interest. The Commission's analysis of whether a transaction will be consistent with the public interest generally involves consideration of three factors: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation.[12] Section 203 also requires the Commission to find that the Transaction "will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless the Commission determines that the cross-subsidization, pledge, or encumbrance will be consistent with the public interest."[13] The Commission's regulations establish verification and informational requirements for applicants that seek a determination that a transaction will not result in inappropriate cross-subsidization or pledge or encumbrance of utility assets.[14]

C. Analysis under Section 203

1. Effect on Competition

a. Applicant's Analysis

15. Startrans states that the proposed Transaction will not have an adverse effect on competition and does not require a horizontal or vertical market power analysis. It states that because the Transaction only involves the purchase and sale of the Mead Transmission Interests and not a combination of generation assets, a horizontal market power analysis is not required. The Transaction will not result in a single corporate entity having ownership or control over entities that provide inputs to electricity products and entities that provide generation products. Thus, there are no vertical market power concerns.[15]

16. Startrans states that the proposed Transaction will enhance competition because its acquisition of the Mead Transmission Interests will result in a greater percentage of the transmission system within the CAISO being independently owned and managed. Further, Startrans maintains that its planned expansion of the Mead Facilities and other

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[12] *See* Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,111.

[13] 16 U.S.C. § 824b(a)(4) (2000).

[14] 18 C.F.R. § 33.2(j) (2007).

[15] Application at 13-14.

related acquisitions will increase the robustness of the transmission grid, which in turn will promote the continued development of competitive wholesale power markets.[16]

b. <u>Commission Determination</u>

17. We find that the proposed Transaction will not adversely affect competition. In analyzing whether a transaction will adversely affect competition, the Commission first examines its effects on concentration in generation markets or whether the transaction otherwise creates an incentive to engage in behavior harmful to competition, such as the withholding of generation (horizontal concerns). Second, the Commission considers the vertical combination of upstream inputs, such as transmission or natural gas, with downstream generating capacity.

18. Applicants have shown that the Transaction will not have an adverse effect on competition in either respect. First, the Transaction does not involve a combination of generating assets. Although it is affiliated with generation companies that sell power within the CAISO control area, Startrans states that all of the output from these facilities is committed under long-term contracts. Startrans also notes that the total amount of generation associated with these generating companies is approximately 365 MWs, which is *de minimis* compared to the approximately 58,000 MW of installed capacity and 5,576 MWs of net uncommitted capacity in the CAISO footprint.[17] Second, the proposed Transaction creates no new vertical combinations of assets, and the transmission facilities that will be transferred in the Transaction will continue to be under the operational control of the CAISO. Thus, there will be no increased incentive or ability to harm competition. Moreover, we note that no party has raised concerns about competition.

2. <u>Effect on Rates</u>

a. <u>Applicant's Analysis</u>

19. Startrans states that the proposed Transaction will not have an adverse effect on rates, and that any rate impact will be *de minimis*.[18] Startrans states that it will not charge any customers for service, noting that its TRR will be recovered through the system-wide High-Voltage Access Charge (HVAC) assessed under the CAISO Open Access Transmission Tariff (CAISO Tariff). Because the TRR associated with the Mead Transmission Interests is only a very small fraction of the CAISO's total PTO costs, Startrans argues that there will be virtually no effect on the CAISO's HVAC—an

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[16] Application at 14.

[17] Application at n. 4, Exhibit F.

[18] *Id.*

increase of approximately $0.01 per megawatt hour (MWh).[19] Thus, Startrans contends that a hold harmless requirement is not needed due to the *de minimis* rate effect, which is offset by the benefits of independent transmission.[20]

20. Startrans states that the proposed Transaction will result in the formation of the first independent transmission company within the CAISO. It has significant plans to pursue both new-build transmission and acquiring existing transmission. It notes that the Commission has recognized the benefits that stand-alone ownership of transmission can bring to the market: elimination of competition for capital between generation and transmission functions; a focus on transmission investment which allows more rapid and precise response to market signals indicating when and where transmission investment is needed; a lack of incentive to maintain congestion in order to protect generation market share; an enhanced ability to manage assets and access to capital markets; and increase competitive options for customers. In addition, Startrans states that because stand-alone transmission companies lack the incentive to favor a particular market participant's generation, they can attract a variety of new generators, such as renewables.[21]

21. Startrans contends that it will bring focused transmission investment and increased access to competitive wholesale power options for customers. It intends to pursue expansion of the Mead Facilities through the CAISO's planning process and to help fund this expansion if the other joint owners decline to participate. It argues that such activities and increased investment can help increase reliability by relieving congestion, which in turn should lower the cost of delivered power. Startrans anticipates making additional investments to develop renewable resources. Startrans notes that the Commission has recognized that these are the types of benefits that result from Transcos.[22]

22. Further, Startrans notes that as part of its section 205 application, it has proposed to cap its initial ROE at 13.5 percent, even though a higher ROE is justified, to help further mitigate the impact of any rate change. Startrans argues that any rate effect will be the result of a TRR that the Commission has found to be just and reasonable under

[19] Application at 15.

[20] *Id.*

[21] Application at 10.

[22] Application at 16.

section 205; therefore, any effect on rates under section 203 should not be considered "adverse."[23]

b. Protests

23. California PTOs state that the proposed TRR represents what Startrans purports to be an increase of 79 percent over the Base TRR for Vernon's Mead Entitlements that is being assessed by the CAISO today. They argue, however, that that the Transaction actually would result in a 148 percent increase. Further, they argue that there is no basis to conclude that the Transaction will result in any new transmission capacity that would not have otherwise been constructed. They state that Startrans will be a small minority holder, like Vernon, and will have little or no say in how the facilities are operated or maintained. The Transaction will not contribute to an increase in the capacity or reliability of the CAISO grid. Further, they state that the Mead Transmission Interests are already under the control of the CAISO and that Startrans' status as a Transco will not result in a greater use of the facilities by market participants. Finally, California PTOs state that Startrans' potential plans for developing solar generation in California are, at best, uncertain.[24]

c. Applicant's Answer

24. Startrans reiterates that the proposed Transaction will not adversely affect rates because the increase in rates is *de minimis* at approximately $0.01 per MWh. Startrans repeats that parties will have the opportunity raise all rate issues in the section 205 proceeding, and that it will only be able to recover just and reasonable rates.

d. Commission Determination

25. Our analysis of rate effects under section 203 of the FPA differs from the analysis of whether rates are just and reasonable, which we are considering separately in our order on Startrans' section 205 filing. Our focus here is on the effect that the Transaction itself will have on rates, whether that effect is adverse, and whether any adverse effect will be offset or mitigated by benefits that are likely to result from the Transaction.

26. Startrans' acquisition of the Mead Transmission Interests will result in a stand-alone transmission company, or Transco, within the CAISO.[25] Further, Startrans has

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[23] Application at 15.

[24] California PTOs Protest at 3.

[25] We note that, for purposes of incentive-based rate treatments for transmission infrastructure investment, Order No. 679 defined a Transco as "a stand-alone transmission company that has been approved by the Commission and that sells

demonstrated its willingness to invest in new transmission, including investment in new transmission that the current owner of these facilities has said it would not invest in. We also note that in its Supplemental Filing, Startrans provides an affidavit from Vernon confirming that Vernon does not intend to invest in the East of River upgrade or any other future projects designed to improve the Mead Transmission Interests.[26] Startrans has acknowledged that there will be a rate effect, but that any increase in rates will be offset by an increase in benefits. We agree.

27. Even though this transaction may result in some rate increase (up to $0.01 per MWh), this Transaction will produce offsetting benefits.[27] As noted earlier, this Transaction will result in the formation of a Transco in CAISO. The Commission has long recognized the benefits this business structure can provide. By eliminating competition for capital between generation and transmission functions and thereby focusing only on transmission investment, the Transco model responds more rapidly and precisely to market signals indicating when and where transmission investment is needed.[28] Moreover, Transcos' for-profit nature, combined with a transmission-only

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transmission services at wholesale and/or on an unbundled retail basis, regardless of whether it is affiliated with another public utility." Order No. 679 also stated that eligibility for such rates would be "based on a showing of how the specific characteristics of a proposed Transco affect its ability and propensity to increase transmission investment and lead to increased transmission investment similar to the Transcos we have already approved." (*See Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222 (2006) (Order No. 679), *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006) (Order No. 679-A), *order on reh'g*, 119 FERC ¶ 61,062 (2007). We address Startrans' application for such rate treatments in a companion order in Docket No. ER08-413.

[26] Supplemental Filing Exhibit ST-11.

[27] While the protestors claim that the Transaction would cause a 148 percent increase compared to Vernon's revenue requirement, Startrans represents that it is a 79 percent increase. This is because Startrans' number is based on the base TRR being charged today, while the protestors' number uses a different basis. However, we are modifying Startrans' proposal, including denying Startrans' request for an acquisition adjustment, and are setting aspects of it for hearing in Docket No. ER08-413. More importantly, the overall change in charges to customers (the CAISO access charge) is approximately up to $0.01 per MWh. *See* Testimony of James H. Drzemiecki, Exhibit ST-6.

[28] As we note in our order in Docket No. ER08-413, Startrans has met our

business model, enhances asset management and access to capital markets and provides greater incentives to develop innovative services.

28. We find that, although the Transaction may lead to some increase in transmission rates, it is also likely to result in additional investment in transmission infrastructure stemming from Startrans' business model as a Transco.

3. Effect on Regulation

29. Startrans states that the proposed Transaction will not have an adverse effect on regulation by the Commission or any state. Rather, Startrans contends that the Transaction will benefit regulation by creating a new transmission-owning utility that will be subject to the Commission's jurisdiction and refund authority. In addition, Startrans notes that the Transaction benefits regulation because it results in the transfer of assets from a non-jurisdictional entity to a public utility that is subject to Commission jurisdiction. Startrans states that the Transaction does not raise any state regulatory concerns because California does not have authority to act on the Transaction and does not have authority over Vernon's utility operations.[29]

30. We find that the proposed Transaction will not adversely affect Commission regulation. We note that although the California Commission seeks resolution of various issues related to the Transaction, [30] it does not oppose the transfer of Vernon's assets to Startrans, nor does it allege any adverse effects on regulation.[31] We will address those issues below.

4. Cross-subsidization

31. Startrans affirms that the proposed Transaction will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company. Startrans states that no captive customers are involved in the Transaction because neither Startrans, its affiliates nor its parent companies are affiliated with a load-serving entity. Although SEG is an indirect owner of several generation projects, Startrans states that each of these projects sells or will sell

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definition of a Transco under Order No. 679. We made no finding as to whether Startrans is independent.

[29] Application at 16.

[30] *See, e.g.,* California Commission Protest at 3-4 (noting concerns about the TRR Adjustment and the refund liability, discussed below).

[31] California Commission Protest at 3-4.

power at market-based rates and does not serve retail load or captive customers. Thus, Startrans contends that the Transaction does not present the cross-subsidy concerns typically associated with transactions involving vertically integrated utilities or other utilities with generation assets.[32] Further, Startrans asserts that because the Transaction involves the transfer of assets between non-affiliates, it qualifies for a "safe harbor" as provided in the Supplemental Policy Statement.[33]

32. Startrans verifies that based on known or reasonably foreseeable information, the Transaction will not result in, at the time of the Transaction or in the future: (1) transfers of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company; (2) any new issuances of securities by a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company;[34] (3) any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; or (4) any new affiliate contracts between a non-utility associate company and a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and services agreements subject to review under sections 205 and 206 of the FPA.

33. We find that the proposed Transaction will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company. Startrans qualifies for a "safe harbor" because there is no franchised public utility with captive customers involved.[35] Startrans also addresses the four-part test for evaluating cross-subsidization concerns. Thus, as demonstrated by the verifications made, the Transaction does not raise any concern with respect to cross-subsidization. We further note that no protests regarding cross-subsidization were filed.

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[32] Application at 17.

[33] Application at 20.

[34] Startrans states that it will file separately for authorization under FPA section 204 to issue securities and that these securities will be issued for Startrans' benefit. Application at 19.

[35] Supplemental Policy Statement at P 17.

D. Other Issues

1. TRR Adjustment

a. Protests and Comments

34. California PTOs and the California Commission state that Vernon has not submitted a filing with the Commission to reduce its TRR by the amount of the revenue requirement attributable to the assets being sold to Startrans (*i.e.*, the Mead Transmission Interests).[36] Because Startrans will be seeking recovery of the same costs associated with the Mead Transmission Interests, they state that there is significant risk of double rate recovery by Vernon and Startrans unless the Commission has assurances that all of the costs of the Mead Transmission Assets have been removed from Vernon's TRR. The California Commission maintains that the Commission should not approve the Transaction until Vernon makes the appropriate filing with the Commission.

35. Vernon made a later filing in which it states that it will file an amended TRR and TO Tariff with both the CAISO and the Commission, effective as of the closing date of the Transaction, that will remove the costs associated with the Mead Transmission Interests from its TRR.[37] Vernon states that at no point will both Vernon and Startrans be entitled to recovery related to the Mead Transmission Interests.[38]

b. Applicant's Answers

36. Startrans states that Vernon's commitment described above should be sufficient to remove any concerns about customers being charged twice for the Mead Transmission Interests.[39]

37. As further discussed below, Startrans argues that the California Commission's concerns have been addressed in the existing record. Specifically: (1) Vernon will reduce its TRR to remove the costs of the Mead Transmission Interest effective as of the closing date of the Transaction; (2) the CAISO, Vernon, and Startrans have agreed upon the terms of the Assumption Agreement, which will protect California ratepayers by ensuring payment of liabilities related to the TRR if Vernon is required to make a refund; and (3) Vernon has no intention of terminating an existing contract with LADWP (LA

[36] California PTOs Protest at 7-8; California Commission Protest at 3.

[37] Vernon Response at 5.

[38] *Id.*

[39] Startrans February 8 Answer at 10.

Contract), and the CAISO has alternative transmission paths available in the event of termination. Thus, Startrans argues that there is no reason to delay action on this application.[40]

d. Commission Determination

38. We deny protestors' requests to delay action on this application. Vernon commits to filing an amended TRR and TO Tariff with both the CAISO and the Commission, effective as of the closing date of the Transaction, which will remove the costs associated with the Mead Transmission Interests from its TRR. This will address any concerns about double rate recovery. Further, we note that to the extent protesters' argument bears on Startrans' proposed TRR that are being set for hearing in Docket No. ER08-413, the protesters will have an opportunity to raise this issue in that proceeding.

2. Vernon Refund Liability

a. Protests and Comments

39. California PTOs and the California Commission seek resolution of Vernon's overpayment issue with CAISO before the Transaction is approved.[41] California PTOs state that Vernon owes the CAISO approximately $12 million in connection with the overpayments it received from California ratepayers for the use of its transmission entitlements, including the Mead Facilities. The California PTOs note that the CAISO has recently filed a motion with the Commission for authorization to invoice Vernon for the over-collection amount. The California PTOs argue that the proposed transfer of the Mead Facilities cannot be allowed to delay or impede that relief. The California PTOs also note that Section 9.3(a) of the Purchase Agreement appears to address this issue by stating that Startrans may need to assume Vernon's obligations with respect to the over-collections.[42] They add that the Purchase Agreement also provides that if Startrans is required to assume Vernon's obligations, Vernon would reimburse Startrans.[43] California PTOs maintain that while they are indifferent to specific arrangements between Startrans and Vernon, they believe that the Commission should condition

[40] Startrans February 19 Answer at 4-6.

[41] The California Commission also asks that the Commission not approve Startrans' proposed issuance of securities in Docket No. ES08-24-000 until the overpayment issue is resolved. The CAISO Protest at 4.

[42] California PTOs Protest at 4-5.

[43] California PTOs Protest at 6.

approval of the Transaction on a resolution of the overpayment issue.[44] The California PTOs say that this condition is needed because Startrans could pay the refunds associated with the Vernon overcollection, but then seek to collect such refunds through a rate adjustment.[45] The California Parties add that Startrans has not promised that it has not and will not include any such refund or offset obligations that it might assume on Vernon's behalf in its revenue requirement.[46]

40. The CAISO states that it expects to resolve outstanding issues relating to the Assumption Agreement between Vernon and Startrans in the near future.[47]

41. Vernon states that it has reached an agreement with Startrans and the CAISO that provides assurances that any refund liability owed by Vernon will be paid by Startrans. Vernon states that it expects a revised Assumption Agreement addressing the refund obligation to be filed by Startrans either in its response to various protests or in a compliance filing.[48]

b. Applicant's Answers

42. Startrans argues that the Commission should not condition approval of the Transaction pending resolution of the overpayment issue referred to above. Startrans asserts that the California PTOs have not demonstrated that a dispute between parties in an unrelated proceeding provides the Commission with grounds to delay, condition, or reject a section 203 application filed by an unrelated party, such as Startrans. Moreover, Startrans states that the Purchase Agreement specifically provides that California ratepayers will be protected if Vernon is required to provide a refund and that Vernon will reimburse Startrans for assumption of that obligation. Further, Startrans states that it has filed a revised version of the Assumption Agreement among Startrans, Vernon, and the CAISO that will ensure the CAISO's ability to collect any refunds or repayments owed by Vernon related to the overpayment issue.[49] Startrans states that it will submit a revised copy of the Assumption Agreement as soon as it is executed rather than waiting

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[44] California PTOs Protest at 7; *see also,* California Parties Comments on Startrans Supplemental Filing at 3.

[45] California PTOs Protest at 6, n.10.

[46] California Parties Comments on Startrans Supplemental Filing at 2.

[47] CAISO Comments at 2.

[48] Vernon Response at 5.

[49] Startrans February 8 Answer at 8; Startrans February 19 Answer at 6.

for a compliance filing. Startrans also commits that it has not attempted, and will not attempt, to include any such refund or offset obligation that it might assume on Vernon's behalf in its revenue requirement.[50] Startrans argues that if the California PTOs and the California Commission are successful in delaying the Transaction, the Mead Transmission Interests will continue to be held by a non-jurisdictional entity, and the CAISO and California ratepayers will lose the protection of the Assumption Agreement.[51]

c. Commission Determination

43. We deny protestors' requests to delay action on this application pending resolution of the refund issue with Vernon. Startrans has submitted an Assumption Agreement to resolve the disagreement concerning Vernon's overpayment, which is pending before this Commission in another proceeding. In this agreement, which was recently revised to address the California PTOs' concerns, Startrans agrees to assume any liability Vernon may have, which Startrans will then recover from Vernon.[52] Startrans has also committed that it has not attempted, and will not attempt, to include any such refund or offset obligation that it might assume on Vernon's behalf in its revenue requirement, and, in its rates to Commission-jurisdictional customers. We find that Startrans' commitment that it shall not pass through any costs it incurs under the Assumption Agreement, or costs otherwise associated with Vernon's overpayment liability, adequately addresses the California PTOs' and the California Commission's concerns. Accordingly, we conclude that Startrans and Vernon have adequately addressed the protests concerning Vernon's overpayment.

3. CAISO Consent

a. Protests and Comments

44. California PTOs state that Startrans has not provided evidence that the CAISO has consented to the Transaction. Moreover, they state that the CAISO has not ruled on Startrans' application to become a PTO or to begin collecting its TRR, requested for March 31, 2008. Thus, California PTOs urge the Commission to delay action on the application.[53]

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[50] Startrans March 14 Answer at 4.

[51] Startrans February 8 Answer at 9.

[52] Vernon also notes in its comment that the Assumption Agreement settles its overpayment liability pertaining to the Mead Facilities.

[53] California PTOs Protest at 7.

45. The CAISO states that any transfer of the Mead Transmission Interests requires prior written consent from the CAISO. The CAISO states that it has not yet agreed to provide the consent and urges the Commission to take that into consideration before authorizing the proposed Transaction.[54]

46. Vernon states that the CAISO has indicated that in light of the revised Assumption Agreement and resolution of other issues, it will approve the transfer of the Mead Transmission Interests. Vernon states that it expects the CAISO to notify the Commission of its approval in the near future.[55]

b. Applicant's Answers

47. Startrans states that it is in the process of obtaining the necessary CAISO consents to become a PTO with the CAISO. Startrans also acknowledges that negotiating an Assumption Agreement with CAISO concerning the Vernon overpayment issue discussed above will be one issue involved in obtaining CAISO consent. Startrans states that it has reached an agreement with the CAISO and Vernon on a revised Assumption Agreement that will ensure payment of liabilities related to the overpayment issue. If the final CAISO consents have not been obtained by the time the Commission acts on the application, Startrans urges the Commission to issue an order approving the Transaction conditioned upon Startrans obtaining these consents.[56]

c. Commission Determination

48. The Commission hereby takes official notice of the fact that on March 27, 2008, the CAISO Board of Directors conditionally approved Startrans' request to become a PTO within CAISO. The California PTOs' request to delay action on the Transaction until Startrans receives the necessary CAISO approvals is now moot in light of this approval by the CAISO Board.

4. LA Contract

a. Protests and Comments

49. The California PTOs and the California Commission are concerned that one of Vernon's existing contracts may no longer be available to CAISO customers after the proposed transfer. They argue that the Mead Transmission Interests are part of a larger

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[54] CAISO Comments at 3.

[55] Vernon Response at 5.

[56] Startrans February 8 Answer at 13.

network of transmission entitlements and contracts owned by Vernon that serve CAISO customers. They state that an existing contract with the LADWP grants Vernon an entitlement to 81 MWs of transmission capacity (LA Contract), which provides for bidirectional service to Vernon between Adelanto and the Victorville-Lugo Midpoint.[57] They state that historically, Vernon has used this contract to serve its load. Without the LA Contract, they argue that the Mead Transmission Interests cannot be fully utilized by CAISO customers, since the connection between Vernon's share of MAP and the CAISO grid would be severed. They contend that the failure to retain the LA Contract effectively eliminates any value to CAISO ratepayers of the Mead Transmission Interests. Moreover, they are concerned that the proposed transfer of the Mead Transmission Interests to Startrans, which does not include the LA Contract, will eliminate the value of the LA Contract to Vernon, and that Vernon may terminate the contract. Thus, they urge the Commission to condition the proposed transfer on a showing that the LA Contract will remain in place.[58]

50. Vernon states that it has no plans to terminate the LA Contact, which requires a four-year prior written notice by either party to terminate. Moreover, Vernon disagrees with the California PTOs that without the LA Contract, the Mead Transmission Interests are useless to the CAISO grid. The Mead Transmission Interests have been part of the CAISO grid since January 1, 2001. Vernon contends that the Mead Facilities are not merely tie lines but provide vital transmission capacity, and MAP will continue as an entry point to the CAISO and an interface between the LADWP system and CAISO. Further, Vernon states that the CAISO would have ample opportunity to assess the impact of the termination of the LA Contract.[59]

b. <u>Applicant's Answers</u>

51. Startrans states that the status of the LA Contract provides no basis for conditioning Commission approval of the Transaction. Startrans notes that the LA Contract can only be terminated upon the permanent removal of MAP or upon four years written notice. Because no notice has been given and the parties have no plans to take the MAP Facilities permanently out of service, Startrans states that the LA Contract will

[57] The Victorville-Lugo Midpoint is a point of interconnection between the respective transmission systems of LADWP and SoCal Edison.

[58] California PTOs Protest at 9. The California Commission Protest at 4-5 also urging the Commission to not approve the issuance of securities in Docket No. ES08-24-000 until Startrans can demonstrate that the LA Contract will remain in place.

[59] Vernon Response at 6-7.

remain in service for at least four more years.[60] Further, Vernon states it has no present intention of terminating the LA Contract, thus the California PTOs' claims are purely speculative. Moreover, the parties have the right to file a complaint under FPA section 206 if they believe that the TRR includes costs for facilities that are not used and useful to California ratepayers.[61]

52. Startrans states that the California PTOs and the California Commission are mistaken in their claim that the Mead Transmission Interests will have no value to California ratepayers if the LA Contract is terminated. Startrans asserts that the Mead Facilities provide vital transmission capacity, and MAP will continue as an entry point to the CAISO and an interface between the LADWP system and CAISO even if the LA Contract is terminated.[62]

c. Commission Determination

53. Whether the LA Contract is terminated does not affect our determination of whether the proposed Transaction is consistent with the public interest. Startrans has demonstrated that the Transaction will not have an adverse effect on competition, rates, or regulation. Startrans has also shown that the Transaction will not result in the cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company. Therefore, we deny protestors' request to condition approval of the Transaction on a showing that the LA Contract will remain in place. Further, we note that to the extent this issue is related to Startrans' proposed TRR, which is being set for hearing in Docket No. ER08-413, the protesters will have an opportunity to raise this issue in that proceeding.

5. Accounting Deficiency

a. Protest

54. California PTOs argue that the application is deficient because it does not include the proposed accounting entries related to the Transaction, as required under Commission regulations.[63] They urge the Commission to either reject the application or issue a deficiency letter to obtain the accounting information. For example, they state that the purchase price of $39.5 million is not explained in the application, so it is impossible for

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[60] Startrans February 8 Answer at 11; Startrans February 19 Response at 5-6.

[61] *Id.*

[62] *Id.* at 12.

[63] 18 C.F.R. § 33.5 (2007).

the Commission or others to determine whether the price, and its inclusion in rates, is just and reasonable. California PTOs argue that the Commission should not approve the Transaction without a full explanation of the purchase price, including why Startrans agreed to pay more than double the book value of the Mead Transmission Interests, any other value it obtained from Vernon that has not been disclosed, and whether and how Startrans plans to include the full purchase price in CAISO rates.[64]

55. California PTOs state that the impact of the purchase price on CAISO rates is important because Startrans' filing under section 205 would result in a 148 percent increase in the TRR associated with the Mead Transmission Interests compared to the TRR authorized by the Commission. They challenge Startrans' argument that the TRR increase is *de minimis*, asserting that an increase of 148 percent is not just and reasonable.[65]

b. <u>Applicant's Response</u>

56. In its February 8 Answer, Startrans argues that the application is not deficient and should not be rejected. Startrans states that it specifically sought waiver of the requirement in section 33.5 to provide proposed accounting entries and stated that it would supply the information in a compliance filing.[66] Startrans argues that the California PTOs' concerns about the purchase price are misplaced because it was the result of arms-length negotiations between unaffiliated parties. Startrans asserts that any recovery of the purchase price through its revenue requirement will be subject to review in the section 205 proceeding, which will protect ratepayers against any improper cost recovery.[67]

57. On February 27, 2008, Startrans submitted its response to the Deficiency Letter, which included information on the proposed accounting entries for the Transaction. Startrans proposes to record its initial capitalization by crediting long-term debt to Account 224, Other Long-term Debt, and common stock issuances to Account 207, Premium on Capital Stock, and debiting debt financing and stock issuance expenses to Account 181, Unamortized Debt Expense.

58. Startrans proposes to account for the purchase by recording the original cost of the assets in Account 101, Electric Plant in Service, and a calculated amount of accumulated

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[64] Application at 12-13.

[65] California PTOs Protest at 13.

[66] Startrans February 8 Answer at 14.

[67] *Id.* at 15.

depreciation in Account 108, Accumulated Provision for Depreciation of Electric Utility Plant.[68] In addition, Startrans will pay a premium for the Mead Transmission Interests above their depreciated original cost, which it will record as an acquisition adjustment of $3.2 million in Account 114, Electric Plant Acquisition Adjustments, and goodwill of $18.3 million in Account 186, Miscellaneous Deferred Debits.[69] Startrans states that it will amortize amounts recorded in Account 114 to Account 406, Amortization of Electric Plant Acquisition Adjustments, consistent with recovery in rates.[70]

c. Commission Determination

59. Startrans' accounting entries recording its initial capitalization are not consistent with the requirements of the Uniform System of Accounts (USofA).[71] Startrans states that some of its debt will be incurred by its parent rather than by Startrans itself. Proceeds Startrans receives from its parent's issuance of long-term debt that it must repay to its parent must be recorded as an advance from its parent in Account 223, Advances from Associated Companies, consistent with the instructions for the account. Next, Startrans proposes to record issuances of common stock in Account 207; however, the USofA requires that capital originating from actual issuances of common stock be charged to Account 201, Common Stock Issued, rather than Account 207. Finally, Startrans' proposal to record stock issuance expenses related to its initial capitalization in Account 181 is not appropriate. Only expenses related to the issuance or assumption of debt are recordable in Account 181. Expenses related to the issuance of capital stock must be recorded in Account 214, Capital Stock Expense.

[68] Startrans states that it calculated accumulated depreciation on the assets using a depreciation rate of 2.08 percent, and that Vernon previously recorded accumulated depreciation on the assets using a depreciation rate of approximately 3.1 percent.

[69] Startrans states that amounts recorded in Account 186 qualify as goodwill under generally accepted accounting principles (GAAP) and will be classified as such in any financial statement prepared in accordance with GAAP for issuance to the public, investors or others.

[70] Startrans filed a request for approval to recover amounts recorded in Account 114 in its rates under section 205 of the FPA in Docket No. ER08-413. If Startrans does not receive approval to recover amounts recorded in Account 114 in rates, the disapproved amounts must be amortized to Account 425, Miscellaneous Amortization, over a period not longer than the estimated remaining life of the properties to which the amounts relate.

[71] 18 C.F.R. Part 101 (2007).

60. Startrans' proposed journal entries recording the purchase are not consistent with the requirements of the USofA. First, Startrans omitted certain journal entries that are required by Electric Plant Instruction (EPI) No. 5, Electric Plant Purchased or Sold, and Account 102, Electric Plant Purchased or Sold, of the USofA. Startrans must use Account 102 as an interim control account to record all aspects of the purchase Transaction. The USofA requires Account 102 to be debited with the cost of electric plant acquired from others pending distribution to the appropriate accounts.[72] Further, EPI No. 5 requires the original cost and related accumulated depreciation to be recorded on the purchaser's books through Account 102. The difference between the net amount of debits and credits and the consideration paid for the property are to be included in Account 114. In addition, Startrans did not include amounts recorded in Account 107, Construction Work in Progress - Electric, and Account 301, Organization, in its calculation of the acquisition adjustment recorded in Account 114.

61. Startrans' recording of portions of the purchase premium as goodwill in Account 186 is appropriate. The Commission has held that any portion of acquisition adjustment amounts that are considered goodwill in accordance with the provisions of the Financial Accounting Standards Board's (FASB) Statement of Financial Accounting Standard No. 144, *Goodwill and Other Intangible Assets*, may be recorded in Account 186, Miscellaneous Deferred Debits.[73]

62. Finally, Startrans did not adequately support the amounts it proposes to record as accumulated depreciation in Account 108. Startrans states that Vernon recorded accumulated depreciation expenses based upon a comprehensive settlement; and therefore, that the amounts are inappropriate because they do not reflect the product of a Commission-approved depreciation study.[74] Startrans indicates that it performed a depreciation study and applied the resulting decreased depreciation rate to the accruals in Account 108.[75] Startrans' accounting decreases accumulated depreciation below amounts previously accrued, and therefore, is not consistent with the Commission's policy regarding depreciation. Because of estimates inherent in depreciation accounting, Commission policy generally requires that over-or under-accrued provisions for depreciation be corrected prospectively by an upward or downward adjustment in the

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[72] Text to Account 102; 18 C.F.R. Part 101 (2007).

[73] *See, e.g., Great Plains Energy Incorporated*, 121 FERC ¶ 61,069 (2007), *reh'g denied*, 122 FERC ¶ 61,177 (2008); and *Michigan Electric Transmission Company, LLC*, Docket No. AC03-9-000 (February 5, 2004) (unpublished letter order).

[74] *See* Docket No. ER08-413, P 14 E. *Depreciation Rate*.

[75] *Id*., Drzemiecki's Testimony at 18.

depreciation rate.[76] However, the Commission may adjust the balance of accumulated provisions for depreciation other than through a prospective change in depreciation rates if an entity establishes the following: (1) the balance was over-or under-accrued; (2) the over-or under-accrual resulted from an accounting error rather than the use of estimates in setting depreciation rates; and (3) any amounts of over-accrued depreciation resulting from an accounting error were not in fact recovered in utility rates.[77] Startrans has not provided any evidence to support revision of the depreciation previously accrued consistent with this policy and must record depreciation consistent with amounts previously recognized by Vernon.

63. We will, therefore, require Startrans to revise its accounting to record accumulated depreciation in Account 108 at the amount accrued by Vernon. In addition, Startrans must record the purchase Transaction consistent with the instructions of EPI No. 5 and the text of Account 102, and Startrans must include amounts recorded in Accounts 107 and 301 in its calculation of the acquisition adjustment. Finally, Startrans must record investors' capital in Account 201, long-term debt payable to its parent in Account 223, and expenses incurred on stock issuances in Account 214, consistent with the Commission's accounting regulations. Startrans must make its final accounting entries for the acquisition of the Mead Transmission Interests consistent with the Commission's accounting policies, as discussed above and outlined in the ordering paragraph below.

6. Requests for Consolidation and a Hearing

64. Protestors seek to consolidate the proceedings in sections 203, 204, and 205 and to convene a hearing on the consolidated dockets arguing that these dockets are linked by common issues of law and facts.[78]

65. Startrans argues against consolidating the dockets, asserting that they do not involve common issues of law and fact. Startrans states that it does not seek approval of any rates as part of the section 203 filing or seek authorization to issue securities.

[76] *See Carnegie Natural Gas Company*, 60 FERC ¶ 61,166, at 61,608 (1992) (affirming ALJ's initial decision issued on May 13, 1991) (*Carnegie*); *Equitable Gas Company*, 56 FPC 1655 (1976) (affirming ALJ's initial decision issued on June 7, 1976), *reh'g denied*, 56 FPC 3109 (1976); *see also Bruder, Gentile & Marcoux*, Docket No. AC91-96-000 (November 22, 1991) (unpublished letter order); *and Miller, Balis & O'Neil*, Docket No. AC91-99-000 (November 22, 1991) (unpublished letter order).

[77] *Carnegie*, 60 FERC ¶ 61,166, at n. 17 (1992).

[78] California PTOs Protest at 21-22; California Parties' Protest at 5-6; SDG&E Protest at 3.

Startrans states that the protestors' major concern is about the impact of the Transaction on rates, but argues that the evidence provided in the section 203 proceeding shows the rate impact will be minimal. Startrans states that protestors' other claims relating to the section 203 filing are either incorrect or speculative and provide no basis for setting the 203 filing for hearing. Further, Startrans states that different legal standards are applicable to each filing. Startrans asserts that consolidating these three proceedings will delay the Commission's approvals and could result in a termination of the Transaction.[79]

66. We deny the protestors' requests to consolidate the proceeding in this docket with the proceedings under sections 204 and 205 of the FPA. In general, the Commission consolidates matters only if a hearing is required to resolve common issues of law and fact and consolidation will ultimately result in greater administrative efficiency. In this case, however, we find nothing in the section 203 proceeding that needs to be set for hearing.

67. Intervenors also raise a number of other issues relating to the transfer of the Mead Transmission Interests. They state that Startrans' requested TRR is not just and reasonable, the requested ROE of 13.5 percent is excessive, and the draft TO Tariff should be revised. They also question whether the East of River upgrade project qualifies for Construction Work in Progress and seek additional information related to depreciation methodologies and capital structure.[80] We note that intervenors filed identical protests in this docket and Docket No. ER08-413. Since we are denying their request to consolidate, we are separately addressing the arguments related to Startrans' filing under FPA section 203 in this docket and the arguments related to Startrans' filing under FPA section 205 in Docket ER08-413. The arguments mentioned above are addressed in a contemporaneous order in Docket No. ER08-413.

<u>The Commission orders</u>:

(A) The proposed Transaction is hereby authorized under FPA section 203, as discussed in the body of this order.

(B) Startrans must inform the Commission of any change in circumstances that would reflect a departure from the facts the Commission relied upon in authorizing the Transaction.

(C) The foregoing authorization is without prejudice to the authority of the

[79] Startrans Feb 8 Answer at 16-18.

[80] PG&E and SDG&E March 10 Comments.

Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of costs, or any other matter whatsoever now pending or which may come before the Commission.

(D) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted.

(E) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate.

(F) Startrans shall make any appropriate filings under section 205 of the FPA, as necessary, to implement the proposed Transaction.

(G) Startrans shall modify its final accounting as discussed in the body of this order. Startrans shall account for the Transaction in accordance with Electric Plant Instruction No. 5 and Account 102, Electric Plant Purchased or Sold, of the Uniform System of Accounts. Startrans shall submit its final accounting entries within six months of the date that the Transaction is consummated, and the accounting submissions shall provide all the accounting entries and amounts related to the Transaction along with narrative explanations describing the basis for the entries.

(H) Startrans shall notify the Commission within 10 days of the date that the acquisition of jurisdictional facilities has been consummated.

By the Commission. Commissioner Kelly concurring with a separate statement attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Startrans IO, L.L.C. Docket Nos. EC08-33-000
EC08-33-001

(Issued March 31, 2008)

KELLY, Commissioner, *concurring*:

I wish to write separately regarding the proposed Transaction's effect on rates. The nature of our inquiry under Federal Power Act section 203[1] is whether the effect of the Transaction on rates will be adverse. Startrans IO L.L.C. (Startrans) proposed a significant increase in its transmission revenue requirement (TRR) compared to what the City of Vernon's (Vernon) TRR has previously been. Startrans has characterized the rate impact of an increased TRR as "de minimis" because the TRR associated with the Mead Transmission Interests is only a very small fraction of the California Independent System Operator Corporation's (CAISO) total participating transmission owner (PTO) costs. California PTOs[2] dispute the de minimis characterization by pointing out that the proposed TRR is a 148 percent increase over the TRR associated with Vernon's Mead Transmission interests that the Commission has authorized for collection through CAISO rates.[3]

Rather than decide this issue by choosing one or the other characterization (e.g., a de minimis increase is acceptable, or a 148 percent increase is unacceptable), I think it is important to point out that issues decided in this order and the companion order issued today in Docket No. ER08-413-000 (Startrans FPA section 205 filing) have significantly reduced Startrans' proposed TRR. For example, in this order the Commission rejects Startrans' proposal for the amount it proposes to record as accumulated depreciation, which would have added as much as $2.6 million to Vernon's rate base.[4] In the companion order, the Commission

[1] 16 U.S.C. § 824b (2000 & Supp. V 2005).

[2] California PTOs include Pacific Gas & Electric Company and Southern California Edison Company.

[3] California PTOs Jan. 25, 2008 Motion to Intervene and Protest and Request for Hearing and Consolidation of Proceedings, Docket No. EC08-33, at 3 (California PTOs' Protest).

[4] *See id.* at 16.

rejects Startrans' proposed acquisition adjustment of approximately $3.17 million, which Startrans proposed to add to Vernon's rate base. Also, in this decision the Commission orders Startrans to redo numerous accounting and journal entries to be consistent with the Uniform System of Accounts, which should have the effect of further lowering the proposed TRR. Finally, the Commission sends the FPA section 205[5] filing to hearing to examine the reasonableness of all other components of the TRR. In short, given the Commission's actions in these two orders, it appears that the resulting impact of this acquisition on rates will be primarily limited to those related to changes in the cost of capital and tax obligations applying to Startrans versus those that applied to Vernon. These changes would be legitimately based on the business structure of Startrans, thus, not an adverse impact on rates. I believe this analysis of the Transaction's impact on rates more clearly elucidates the facts and has the added benefit of eliminating the need to consider the decidedly less clear issue of whether this acquisition will bring significant benefits to transmission users.

For these reasons, I concur with this order.

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Suedeen G. Kelly

[5] 16 U.S.C. § 824d (2000 & Supp. V 2005).