

135 FERC ¶ 61,215
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Trans Bay Cable LLC

Docket Nos. ER10-116-002
ER11-3262-000
ER11-3262-001

ORDER ACCEPTING TARIFF REVISIONS, SUBJECT TO REFUND AND THE
OUTCOME OF SETTLEMENT AND HEARING PROCEDURES, AND ORDERING
REFUNDS

(Issued June 7, 2011)

1. On April 1, 2011, as amended on April 8, 2011, Trans Bay Cable LLC (Trans Bay) filed a revision to Appendix I of its Transmission Owner Tariff (Tariff) to reduce its Transmission Revenue Requirement (TRR) from approximately \$149.3 million to \$140.4 million.¹ Trans Bay's initial TRR was submitted prior to finalizing the construction of its new project, and was thus based on estimated costs.² In light of the completion of Trans Bay's project, Trans Bay is revising its TRR to reflect the actual costs of constructing its project. As discussed below, we accept Trans Bay's revised Tariff, subject to refund and subject to the outcome of the hearing procedures previously established in Docket No. ER10-116-000. Additionally, on January 11, 2011, Trans Bay filed updated cost-of-service information with support in order to supplement the record in the ongoing proceeding in Docket No. ER10-116-000.³ Accordingly, we also direct

¹ Trans Bay states that it is submitting its entire Tariff to comply with the requirements of Order No. 714. *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).

² The Commission accepted Trans Bay's initial TRR on December 17, 2009, subject to settlement and hearing procedures. *Trans Bay Cable LLC*, 129 FERC ¶ 61,225 (2009), *reh'g denied*, 132 FERC ¶ 61,083 (2010) (TRR Order). The Commission's order denying rehearing instituted a proceeding under section 206 of the Federal Power Act (FPA). *Trans Bay Cable LLC*, 132 FERC ¶ 61,083, at P 27 (Rehearing Order).

³ Trans Bay's cost information update was assigned Docket No. ER10-116-002.

the updated actual cost information to be an addendum to the record and considered in the hearing process.

I. Background

2. Trans Bay is the developer of a 53-mile submarine transmission line underneath San Francisco Bay that transmits approximately 400 megawatts of electricity. On October 23, 2009, Trans Bay submitted an application seeking a 13.5 percent return on equity, an additional 50 basis point adder for Trans Bay's participation in the California Independent System Operator Corporation (CAISO), and an estimated \$149.3 million TRR, among other things. In addition, Trans Bay committed to update its filing with actual cost data after it completed constructing its project.

3. On December 17, 2009, the Commission issued the TRR Order, accepting and suspending Trans Bay's TRR, to be effective on the date the project commenced operation. The Commission rejected Trans Bay's request to include a 50 basis point adder, and reaffirmed Trans Bay's previously approved rate principles, including a 13.5 percent return on equity. In addition, the Commission established hearing and settlement judge procedures to ensure that Trans Bay's TRR will be just and reasonable. Finally, the Commission accepted Trans Bay's commitment to submit an update with actual cost data following the completion of the project.⁴ The Commission subsequently accepted Trans Bay's Tariff on January 14, 2010.⁵

II. Trans Bay's Filing

4. On January 11, 2011, pursuant to the TRR Order, Trans Bay submitted a compliance filing that shows the updated actual costs of its project.⁶ Trans Bay states that based on the updated costs its TRR is approximately \$140.4 million,⁷ roughly \$9 million less than Trans Bay initially estimated. Trans Bay explains that the actual project costs are lower than estimated because, among other things, (1) certain damages incurred during the construction of the project were paid by Siemens, the engineering contractor hired by Trans Bay, (2) a settlement with the City of Pittsburg produced cost savings, and (3) the cost of funds is lower than originally projected.

⁴ TRR Order, 129 FERC ¶ 61,083 at Ordering Paragraph (B).

⁵ *Trans Bay Cable LLC*, 130 FERC ¶ 61,028 (2010).

⁶ This filing was assigned Docket No. ER10-116-002.

⁷ Trans Bay declares that its actual TRR is \$140,420,052.50.

5. Subsequently, on April 1, 2011, as amended on April 8, 2011,⁸ Trans Bay submitted a revision to Appendix I of its Tariff to set forth a reduction in its stated TRR from approximately \$149.3 million to \$140.4 million, consistent with the actual project costs data submitted on January 11, 2011. Trans Bay acknowledges that its proposed TRR is currently the subject of the established hearing procedures in the Docket No. ER10-116-000 proceeding, and thus requests the Commission to accept its TRR subject to refund and subject to the outcome of the hearing process. Trans Bay also requests waiver of section 35.11⁹ of the Commission's regulations to allow the changes to become effective November 23, 2010, the date the project entered commercial operation.¹⁰ In addition, Trans Bay commits to refund to its customers, via CAISO, revenues collected since the project commenced operation.¹¹ Finally, Trans Bay also filed the entire Tariff electronically, pursuant to requirements of Order No. 714.¹²

III. Notice and Responsive Pleadings

6. Notice of Trans Bay's Docket No. ER10-116-002 filing was published the *Federal Register*, 76 Fed. Reg. 5576 (2011), with interventions and comments due on or before February 11, 2011. Notice of Trans Bay's Docket No. ER11-3262-000 and ER11-3262-001 filings was published the *Federal Register*, 76 Fed. Reg. 19,986 (2011) and 76 Fed. Reg. 21,723 (2011), with interventions and comments due on or before April 29, 2011.

7. In Docket No. ER10-116-002, a timely motion to intervene was filed by the Transmission Agency of Northern California (TANC). The California Public Utilities Commission, the California Department of Water Resources State Water Project (State Water Project), and the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (collectively, Six Cities) submitted a motion to intervene and comments. Southern California Edison Company (SoCal Edison) and Pacific Gas and Electric Company each filed a motion to intervene and protest. San Diego Gas & Electric

⁸ These submittals were assigned Docket No. ER11-3262-000 and ER11-3262-001, respectively.

⁹ 18 C.F.R. § 35.11 (2011).

¹⁰ Although Trans Bay requests an effective date of November 23, 2010, in its transmittal letter, the metadata with the filing contains a proposed effective date of April 8, 2011. This is addressed further below at note 18.

¹¹ Trans Bay ER11-3262-001 Application at note 4.

¹² Order No. 714, FERC Stats. & Regs. ¶ 31,276.

Company filed a motion to intervene, request for hearing and protest. Trans Bay filed a motion for leave to answer and answer.

8. In Docket Nos. ER11-3262-000 and ER11-3262-001, TANC, SoCal Edison and State Water Project each filed a motion to intervene. In addition, Modesto Irrigation District filed a motion to intervene and the City of Santa Clara, California, and the M-S-R Public Power Agency filed a joint motion to intervene. Finally, Six Cities filed a motion to intervene and comments.

9. Regarding Trans Bay's cost update the intervening parties generally state that Trans Bay's filing does not contain sufficient information to determine whether Trans Bay's TRR is just and reasonable. Generally, parties highlight the same areas of concern previously identified in the TRR Order, among others.¹³

10. Six Cities supports Trans Bay's proposal to reduce the TRR. Six Cities states that accepting the reduced TRR will decrease the rates paid by CAISO customers by \$8.9 million a year. Six Cities also states that prompt Commission action to accept the revised Tariff will ensure that ratepayers are not subjected to excessive rates while issues related to Trans Bay's TRR are resolved through the settlement and hearing processes. Accordingly, Six Cities requests the Commission to accept the revised Tariff effective November 23, 2010, subject to refund and subject to the outcome of the established hearing procedures, and to direct Trans Bay to provide refunds of the amounts already over-collected since the project commenced operation.

IV. Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commissions Rules of Practice and Procedure,¹⁴ the timely unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

12. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,¹⁵ prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not

¹³ Parties protested Trans Bay's debt cost rate, Operating and Maintenance expenses, Administrative and General expenses, prepayments, and certain land lease payments, among others.

¹⁴ 18 C.F.R. § 385.214 (2011).

¹⁵ *Id.* § 213(a)(2) (2010).

persuaded to accept Trans Bay's answer in Docket No. ER10-116-002 and will, therefore, reject it.

B. Substantive Matters

13. We will accept Trans Bay's revised Tariff, effective November 23, 2010, the in-service date of the project, subject to refund and to the outcome of the hearing procedures established in the Docket No. ER10-116-000 proceeding.¹⁶ While the underlying rate principles of Trans Bay's proposed TRR are still under examination in the hearing proceeding in Docket No. ER10-116-000, allowing the TRR to decrease by approximately \$9 million now will benefit ratepayers and Trans Bay by reducing both the customer's immediate charges and Trans Bay's eventual refund obligation. Accordingly, for good cause shown we will grant waiver of the prior notice requirements pursuant to section 35.11 of the Commission's regulations¹⁷ in order to allow the proposed effective date of November 23, 2010, as requested by Trans Bay.¹⁸

14. However, while we are accepting Trans Bay's lower TRR, we previously determined that Trans Bay's TRR contains several elements that need to be evaluated in the hearing process.¹⁹ As a result, the reduced TRR accepted here does not preempt the ongoing hearing examining the elements in Trans Bay's final TRR, and a final just and

¹⁶ The Tariff filed under Docket No. ER11-3262-001 complies with the electronic tariff filing requirements of Order No. 714. However, Trans Bay is directed to submit a compliance filing, within 30 days of the date of this order, that fixes the sections of Trans Bay's Tariff in eTariff that are not numbered correctly (*e.g.*, section 5, *Access Charges and Transmission Rates*, is shown as section 6).

¹⁷ *Central Hudson Gas & Electric Corporation*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992) (*Central Hudson*); and *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, *clarified*, 65 FERC ¶ 61,081 (1993). In *Central Hudson*, the Commission stated that it would grant waivers of the 60-day prior notice requirement for filings that decrease rates.

¹⁸ Trans Bay requests a November 23, 2010 effective date. However, the electronic record's metadata contains a proposed effective date of April 8, 2011. Electronic records submitted in a baseline filing supersede the currently effective tariff. Accordingly, the revised Tariff is deemed accepted effective November 23, 2010, and the superseding electronic record for the Tariff is accepted effective April 8, 2011.

¹⁹ TRR Order, 129 FERC ¶ 61,083 at P 24.

reasonable TRR for Trans Bay will be determined in the hearing process and be made effective November 23, 2010.²⁰

15. Further, in light of the fact that Trans Bay's project was completed and that Trans Bay has now filed the updated cost data with the Commission, we will direct the updated actual cost information to be an addendum to the record in the Docket No. ER10-116-000 proceeding and considered in the ongoing hearing process.²¹ Finally, Trans Bay commits to refund to CAISO, on behalf of its transmission customers, the difference between the TRR set forth in the TRR Order and the updated TRR established by the instant filing. Trans Bay states that it will pay the refund within 30 days of the date on which CAISO provides Trans Bay with the calculation of the amount of refund due.²² We agree that Trans Bay is required to refund the difference. Trans Bay is therefore directed to pay the refunds, as discussed above.

The Commission orders:

(A) Trans Bay's revised Tariff is hereby accepted, effective November 23, 2010, subject to refund and to the outcome of the settlement and hearing procedures established in the Docket No. ER10-116-000 proceeding.

(B) Trans Bay is directed to submit a compliance filing, within 30 days of the date of this order, as discussed above.

(C) Trans Bay is hereby directed to refund to CAISO, on behalf of Trans Bay's transmission customers, the difference of any revenues over-collected, with such refund to be paid within 30 days of the date on which the CAISO provides Trans Bay with its calculation of the amount of refund due.

²⁰ Trans Bay is hereby put on notice that the Commission's conditional acceptance of the new lower TRR does not provide a provision for surcharge protection. Thus, Trans Bay is at risk for any under-collection should the ultimate TRR developed in the hearing process result higher than the new TRR submitted here. *See New England Pwr. Co. and Northeast Utilities Serv. Co.*, 69 FERC ¶ 61,376 (1994); *cf. Central Maine Pwr. Co.*, 59 FERC ¶ 61,348, at 62,273 (1992).

²¹ Trans Bay's cost update submitted in Docket No. ER10-116-002 complies with the TRR Order.

²² ER11-3262-001 Application at note 4.

(D) Trans Bay is hereby directed to file a refund report with the Commission within 30 days after making the refunds.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.