

138 FERC ¶ 61,129
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Citizens Sunrise Transmission LLC

Docket Nos. ER12-686-000

Citizens Energy Corporation

EL10-3-001

ORDER CONDITIONALLY ACCEPTING INITIAL TRANSMISSION OWNER
TARIFF, TRANSMISSION REVENUE REQUIREMENT, TARIFF CAPABILITY
LEASE AND INSTITUTING SECTION 206 PROCEEDING

(Issued February 21, 2012)

1. On December 23, 2011, Citizens Energy Corporation (Citizens Energy), in conjunction with its wholly-owned subsidiary, Citizens Sunrise Transmission LLC (Citizens Sunrise) submitted a proposed transmission owner tariff (TO Tariff),¹ pursuant to section 205 of the Federal Power Act (FPA)² and section 35.12 of the Commission's rules and regulations.³ Citizens Sunrise's proposed TO Tariff sets forth estimated rates, terms, and conditions associated with Citizens Sunrise's leasehold interest in the Border East Line portion of the Sunrise Powerlink Project (Border East Line) currently being constructed by San Diego Gas & Electric Company (SDG&E). This order accepts Citizens Sunrise's TO Tariff filed in Docket No. ER12-686-000 and suspends it for a nominal period, to be effective on the date of commercial operation.⁴ This order also accepts Citizens Sunrise's Transmission Revenue Requirement (TRR) formula and

¹ Citizens Sunrise designated its transmission owner tariff as FERC Electric Tariff, Original Volume No. 1.

² 16 U.S.C. § 824d (2006).

³ 18 C.F.R. § 35.12 (2011).

⁴ Citizens Energy states that upon commercial operation of the Border East Line, which Citizens Energy expects to occur in June 2012, Citizens Sunrise will turn over the operational control of the Border East Line to the California Independent System Operator Corporation (CAISO). *See* Citizens Energy Transmittal Letter at 2.

estimated rates and suspends the TRR for a nominal period to become effective on the date when the Border East Line commences commercial operation, as discussed below. This order also institutes a Federal Power Act (FPA) section 206 proceeding⁵ in Docket No. ER12-686-000 to provide refunds in the event that Citizens Sunrise's actual rates are lower than the estimated rates provided in its initial filing. The order grants Citizens Energy's motion for clarification filed in Docket No. EL10-3-001. Finally, the order grants certain waivers of our regulations as requested by Citizens Energy.

I. Background

2. Citizens Energy is a FERC-jurisdictional public utility⁶ whose commercial subsidiaries support an array of social and charitable programs in the United States and abroad. Citizens Energy owns 100 percent of Citizens Enterprises (a for-profit holding company), which in turn wholly owns several for-profit subsidiaries, including Citizens Sunrise.⁷

3. The Sunrise Powerlink Project is comprised of a new electric transmission line between the existing Imperial Valley and Sycamore Canyon Substations, a proposed new Suncrest Substation, and other system modifications designed to reliably operate the new line. The segment from Imperial Valley Substation to the new Suncrest Substation in San Diego County will be a 500 kV line and the segment from Suncrest Substation to Sycamore Canyon Substation will be a double circuit 230 kV line. Citizens Energy describes the Sunrise Powerlink Project in three separate segments according to geographical location: (1) the Imperial County 500 kV link (which Citizens Energy refers to as the Border-East Line and to which its filing pertains); (2) the San Diego 500 kV Link; and (3) the San Diego County 230 kV link. In addition, three system upgrades will be required.⁸

4. The Sunrise Powerlink Project will provide up to 1,000 MW of new transfer capacity into the San Diego area under contingency conditions which the CAISO uses to establish local reliability requirements. Under normal operating conditions, the Sunrise Powerlink Project will increase import capability into the San Diego area by as much as

⁵ 16 U.S.C. § 824e (2006).

⁶ *Citizens Energy Corp.*, 35 FERC ¶ 61,198 (1986). Citizens Energy is a non-profit Massachusetts corporation.

⁷ Transmittal Letter at 4.

⁸ *Id.* at 5.

1,350 MW.⁹ According to Citizens Energy, the Sunrise Powerlink Project will significantly enhance the reliability of electric systems in Southern California. Currently, the San Diego area is served by only two 500 kV lines, the Sunrise Powerlink Project will add a third 500 kV connection between the San Diego load center and the Imperial Valley.¹⁰

5. In 2005, Citizens Energy entered into discussions with the Imperial Irrigation District (IID) and SDG&E regarding the Sunrise Powerlink Project. These discussions led to a March 2006 Memorandum of Understanding between Citizens Energy, IID, and SDG&E.¹¹ The relationship between Citizens Energy and SDG&E was formalized in a Development and Coordination Agreement on May 11, 2009.¹² The Development and Coordination Agreement provides that Citizens Energy will engage in the development of the Border East Line of the Sunrise Powerlink Project through a Transfer Capability Lease.¹³ On or before commercial operation date of the Border East Line, Citizens Energy, through Citizens Sunrise, will exercise its option under the Development and Coordination Agreement and finance its share of the Border East Line. If Citizens Energy fails to exercise its option by the commercial operation date, the unexercised option shall expire.¹⁴

6. Citizens Energy's lease for the Border East Line will extend for a period of 30 years. Title to the facilities will remain with SDG&E and the transfer capability will revert to SDG&E upon expiration of the lease term. The prepaid leasehold rent, which is Citizens Sunrise's capital contribution to the Border East Line, will be the proportionate share (50 percent) of the actual cost incurred by SDG&E to develop, design, permit, engineer and construct the Border East Line.¹⁵ The rent will be paid in a lump sum at the closing of the transaction after Citizens Sunrise exercises the option and shall be

⁹ *Id.*

¹⁰ *Id.* at 6.

¹¹ IID subsequently withdrew from participation in the project.

¹² Transmittal Letter at 7. The Development and Coordination Agreement was amended on December 21, 2011.

¹³ *Id.* See Appendix II to the TO Tariff in Exhibit CST-8.

¹⁴ *Id.* at 8.

¹⁵ *Id.* These costs include overheads and Allowance for Funds Used During Construction (AFUDC) and payments still due under pending construction contracts for work to be completed after closing of Citizens Sunrise's option.

allocated over the lease term. Citizens Sunrise intends to securitize the financing of its participation cost with a pledge of the revenues it will receive through the CAISO. Citizens Sunrise will use all debt financing.¹⁶

7. SDG&E is responsible for the development, design, permitting, engineering, procurement and construction of the Sunrise Powerlink Project. SDG&E will bear its costs for development and construction of the Border East Line until Citizens Energy has exercised and closed its option under the Development and Coordination Agreement. SDG&E's activities and responsibilities for the Border East Line include the acquisition of permits and land rights necessary to construct the Border East Line, which shall be done at SDG&E's expense. SDG&E will be solely entitled to own, operate, design, engineer, procure, construct, maintain and finance any upgrades to the Border East Line after the commercial operation date for purposes of increasing the transfer capability of the Border East Line. SDG&E will be solely responsible for the costs of such upgrades and will be entitled to all increases in transfer capability resulting from any such upgrades. If additional capital investment is needed for replacement or renewal of facilities comprising the Border East Line, SDG&E will be responsible for all costs of such replacements or renewals.

8. At its August 3, 2006 meeting, the CAISO Board unanimously approved the Border East Line. In authorizing Citizens Energy's participation in the development of the Border East Line, the CAISO Board specifically determined that the Border East Line is a necessary and cost effective upgrade to the CAISO Controlled Grid that will also facilitate compliance with California renewable energy purchase requirements.¹⁷ On December 18, 2008, the California Public Utilities Commission (CPUC) granted SDG&E's application for a Certificate of Public Convenience and Necessity to construct Sunrise Powerlink Project.¹⁸

9. On October 9, 2009, Citizens Energy filed a petition for a declaratory order seeking approval of two rate treatments in connection with the Border East Line. On December 17, 2009, the Commission issued a Declaratory Order granting Citizens Energy's request to recover prudently incurred abandonment costs if the Border East Line

¹⁶ Transmittal Letter at 8.

¹⁷ *Id.* at 10.

¹⁸ *In the Matter of the Application of San Diego Gas & Electric Company Application for Certificate of Public Convenience and Necessity for the Sunrise Powerlink Transmission Project*, (D.) 08-12-058, 2008 Cal. PUC LEXIS 534 (Dec. 18, 2008).

is abandoned for reasons beyond Citizens Energy's control.¹⁹ The Commission also found that Citizens Energy's capital cost recovery methodology, which includes a hypothetical capital structure of 50 percent debt and 50 percent equity and a 30-year levelized capital recovery approach, will produce just and reasonable results.²⁰

10. On December 16, 2011, the CAISO Board of Governors accepted Citizens Sunrise's application to become a Participating Transmission Owner (PTO). Citizens Sunrise's PTO status is conditional, subject to the Border East Line entering commercial operation.²¹

II. Description of Filing

11. Citizens Energy and Citizens Sunrise request Commission approval of Citizen Sunrise's proposed TO Tariff and TRR, under FPA section 205, to be effective upon the date of commercial operation. Citizens Energy's Filing addresses only the proposed cost recovery by Citizens Sunrise of its share (50 percent) of the cost of development, construction and operation of the Border East Line. The total estimated cost of development and construction of the Border East Line is approximately \$166 million, of which Citizens Sunrise's share is estimated to be approximately \$83 million.²²

12. Citizens Sunrise's TO Tariff sets forth the estimated rates, terms and conditions for providing service pursuant to Citizens Sunrise's transfer capability on the Border East Line, to become effective upon commercial operation of the Border East Line. Citizens Sunrise requests that the Commission accept the TO Tariff to become effective on the date on which the Border East Line commences commercial operation and the facilities are turned over to CAISO, which is expected to be June 2012.

13. Citizens Sunrise's TO Tariff sets forth its TRR and other terms and conditions associated with its transmission system rights in the Border East Line. To summarize, Section 1 states that Citizens Sunrise is a non-load-serving PTO and has no end-use customers; Section 2 provides that the TO Tariff is effective on the date on which the Border East Line is placed into service under the operational control of the CAISO and shall continue to be effective so long as Citizens Sunrise is a party to the transmission control agreement; Section 5 describes the charges and rates, and states that the

¹⁹*Citizens Energy Corporation*, 129 FERC ¶ 61,242, at P13-19 (2009) (Citizens Energy Declaratory Order).

²⁰ *Id.* P22-23.

²¹ Transmittal Letter at 11.

²² *Id.* at 6-7.

applicable access charges are provided in the CAISO tariff; Section 5.3 states that the TRR of all CAISO PTOs will be used to develop the access charges set forth in the CAISO tariff and will be used to calculate the disbursement of wheeling revenues among PTOs; Section 5.4 states that Citizens Sunrise owns the transmission system rights with respect to its share of the Border East Line; Section 5.5 requires Citizens Sunrise to maintain a transmission revenue balancing account with an annual transmission revenue balancing account adjustment that will ensure that all transmission revenue credits and adjustments for any over or under recovery of its TRR flow through to transmission customers; Section 6 states that if any ancillary services are required, Citizens Energy will not provide such services directly to the transmission customer and the transmission customer will be required to meet any such requirement in accordance with the CAISO tariff. The remaining terms and conditions of the TO Tariff set forth billing and payment obligations, obligations to interconnect and construct facilities and other provisions typically found in transmission tariffs.

14. Appendix III of the TO Tariff sets forth Citizen Sunrise's TRR and other terms and conditions. Citizens Sunrise estimates that its annual TRR will be \$13,481,855. Citizens Sunrise based its TRR on estimates because the Border East Line is still under construction. Citizens Energy proposes to make a compliance filing at the time of commercial operation of the Border East Line, and such compliance filing would set forth the TRR incorporating actual cost data.

15. Citizens Sunrise's annual revenue requirement will be the sum of its capital costs and operating costs. The operating costs include those operating costs billed to Citizens Sunrise by SDG&E, the operator of the overall Sunrise Powerlink Project, as well as those operating costs incurred directly by Citizens Sunrise in managing and administering its transfer capability.

16. Citizens Energy requests Commission approval of Citizens Sunrise's TRR incorporating the previously-approved capital cost recovery methodology i.e., a hypothetical capital structure of 50 percent debt and 50 percent equity and 30-year levelized capital recovery). The annual capital cost revenue requirement will be fixed and levelized for the 30-year term of the lease arrangement with SDG&E for Citizens Sunrise's participation in the Border East Line. With respect to capital requirements, the Development and Coordination Agreement provides that Citizens Sunrise shall recover all costs other than operating costs associated with its transfer capability on the Border East Line at a fixed rate, including a fixed equity return over the 30-year term, and the sum of that fixed rate plus Citizens Sunrise's share of property taxes can be no higher than the rate SDG&E could recover at the time of commercial operation of the Border East Line if SDG&E held Citizens Sunrise's transfer capability. For purposes of

determining this rate, SDG&E and Citizens Energy agreed to use a model specified in the Development and Coordination Agreement as the SDG&E Representative Rate Model.²³

17. Citizens Energy states that the SDG&E Representative Rate Model calculates a proxy return on equity (for a 58-year depreciable life) that SDG&E could recover at the time of commercial operation if SDG&E held Citizens Sunrise's transfer capability and then amortized that rate over a 30 year period on a level basis each year.²⁴ Thus, according to Citizens Energy, the annual capital cost revenue requirement incorporating a hypothetical capital structure of 50 percent equity and 50 percent debt would have resulted in an 11.35 percent proxy return on equity; however, as a result of the application of the SDG&E Representative Rate Model, the actual return on equity to be earned by Citizens Sunrise will be 9.45 percent for the life of its interest in the Border East Line.

18. Under the proposed hypothetical capital structure, Citizens Energy states that its annual revenue requirement for its interest in the Border East Line includes an annual capital cost revenue requirement of \$10,938,413 and annual operating cost revenue requirement of \$3,788,855, for a total annual revenue requirement \$14,727,268. However, according to Citizen's Energy, application of the SDG&E Representative Rate Model reduces the annual capital cost revenue requirement to \$9,693,000, thus reducing the total annual revenue requirement to \$13,481,855.

19. Citizens Energy and Citizens Sunrise are requesting the following approvals: (1) approval of Citizens Sunrise's TO Tariff as an initial rate under section 205 of the FPA, to be placed into effect to coincide with the commercial operation date of the

²³ *Id.* Under the Development and Coordination Agreement, the SDG&E Representative Rate Model constitutes a ceiling or cap on the capital cost rate that Citizens may charge.

²⁴ *Id.* at 12. The variable parameters entered into the model are (1) five-day average Moody's Aa 30-year Utility Bond Index as set forth in the Bloomberg LLC system, mnemonic MOODUAA, (2) the actual costs of transfer capability, and (3) the portion of the actual costs of transfer capability that is SDG&E's actual AFUDC. Costs of transfer capability mean 101 percent of the sum of the prepaid rent of Citizens Sunrise's transfer capability as determined in the Development and Coordination Agreement plus all reasonably incurred project costs, development costs dating back to 2005, regulatory costs, transactional costs, sales costs, use or excise tax costs, and financing costs incurred by Citizens Sunrise allocated to its transfer capability. According to Citizens Energy, the additional one percent is intended to account for, among other costs, the ordinary and customary lenders' fees that SDG&E would have incurred if it held Citizens Sunrise's transfer capability.

Border East Line; (2) approval of Citizens Sunrise's TRR as an initial rate under section 205 of the FPA, to be placed into effect to coincide with the commercial operation date of the Border East Line; and (3) approval of the Transfer Capability Lease as the means to accomplish the transaction envisioned in this filing.

20. Citizens Energy and Citizens Sunrise request waiver of any requirement to file the Period I cost of service data because Citizens Sunrise does not have any actual Period I data at this time. Citizens Energy and Citizens Sunrise also request waiver of the requirement to provide certain of the Period II Statement information that is not applicable to Citizens Sunrise's situation.

III. Request for Clarification

21. On December 23, 2011, Citizens Energy filed a motion for clarification, in Docket No. EL10-3-001, asking that the Commission clarify that its wholly-owned subsidiary, Citizens Sunrise, will be entitled to the rights and privileges granted to Citizens Energy under the Declaratory Order issued in that docket.²⁵

22. In the Citizens Energy Declaratory Order, the Commission granted Citizens Energy's request for Citizens Energy to recover prudently incurred abandonment costs if the Border East Line is abandoned for reasons beyond Citizens Energy's control.²⁶ As described above, the Commission also found that Citizens Energy's capital cost recovery methodology, which includes a hypothetical capital structure of 50 percent debt and 50 percent equity and a 30-year levelized capital recovery approach, would produce just and reasonable results.²⁷ However, the Commission found that the inputs to or components of its proposed formula rate, are subject to a future filing under section 205 of the FPA.²⁸

23. In its motion, Citizens Energy contends that while it noted in the petition for declaratory order that it would participate in the Border East Line through a to be formed wholly-owned subsidiary company,²⁹ the Commission did not acknowledge or address the fact that Citizens Energy would be consummating the transaction with SDG&E

²⁵ See *Citizens Energy Corporation*, 129 FERC ¶ 61,242 (2009).

²⁶ *Id.* at P13-19.

²⁷ *Id.* P22-23.

²⁸ 16 U.S.C. § 824d (2006).

²⁹ See Citizens Energy Petition for Declaratory Order, Docket No. EL10-3-000 at 5, 15, and 23 (October 9, 2009).

through a wholly-owned subsidiary.³⁰ Citizens Energy requests that the Commission clarify that Citizens Sunrise will be permitted to “step into the shoes” of Citizens Energy and, therefore, would be entitled to the rights and privileges granted to Citizens Energy under the Citizens Energy Declaratory Order.³¹

IV. Notice of Filing and Responsive Pleadings

24. Notice of Citizens Energy’s and Citizens Sunrise’s Filing in Docket No. ER12-686-000 was published in the *Federal Register*, 77 FR 276 (Jan. 4, 2012) with interventions and protests due on or before January 13, 2012. Timely motions to intervene were filed by Northern California Power Agency, Pacific Gas and Electric Company, Trans Bay Cable, LLC, and the Imperial Irrigation District. The California Public Utilities Commission filed a notice of intervention. The City of Santa Clara, California and M-S-R Public Power Agency (M-S-R Power) jointly filed a motion to intervene and comments. The Modesto Irrigation District (MID), the California Department of Water Resources State Water Project (State Water Project) and Southern California Edison Company (SoCal Edison) filed motions to intervene and comments. The Cities of Anaheim, Azusa, Banning, Colton, Pasadena and Riverside, California (Six Cities) filed a motion to intervene and comments. The Imperial County Board of Supervisors filed a letter in support of the Citizens Sunrise Filing. On January 20, 2012, Citizens Sunrise filed a motion for leave to answer and answer.

25. M-S-R Power and MID argue that because Citizens Sunrise’s proposed TRR is based on estimates, the Commission cannot assess whether the rate is just and reasonable.³² Similarly, Six Cities requests that the TRR be accepted subject to refund and that the Commission clearly state that approval of the TRR does not constitute final approval of the rates.³³

26. In response, Citizens Sunrise clarifies that it is only seeking approval of a formula rate at this time, the cost data is not being submitted for Commission approval, and actual cost data will be set forth in and available for full scrutiny by intervenors and the Commission when Citizens Sunrise makes its compliance filing. Citizens Sunrise states that it does not object to the Commission expressly reserving such rights of intervenors.³⁴

³⁰ Citizens Energy Request for Clarification at 1-2.

³¹ *Id.* at 3.

³² *See* MID Comments at 6-7; M-S-R Power Comments at 6-7.

³³ Six Cities Comments at 2-3.

³⁴ Citizen Sunrise Answer at 3-4.

27. Six Cities and MID request a reservation of rights to review and challenge, if appropriate, Citizens Sunrise's annual updates.³⁵ In its answer, Citizens Sunrise states that it does not object to the request that the Commission explicitly reserve the rights of stakeholders to address the actual inputs that Citizens Sunrise ultimately provides when it makes its compliance filing upon the commercial operation of the Border East Line and yearly thereafter.³⁶

28. SoCal Edison contends it cannot confirm Citizens Sunrise's "assumed Moody's index of 4.5%." SoCal Edison asserts that it is unable to verify the estimated Moody's Aa Utility Bond Index that is an input to the SDG&E Representative Rate Model. SoCal Edison requests that the Commission require Citizens Sunrise to "recalculate the TRR cap" using the latest available data from Moody's at the time Citizens Sunrise Transmission makes its compliance filing. SoCal Edison also requests that the Commission require Citizens Sunrise to make "the data, and the source from which it is obtained, available to all parties at that time."³⁷

29. In response, Citizens Sunrise explains that the inputs used for both the SDG&E Representative Rate Model and Citizens Sunrise's cost of service analysis will be based on actual costs as of the time of commercial operation of the Border East Line. Citizens agrees to recalculate the SDG&E Representative Rate Model cap using actual Moody's Bond Index values, and include the source from which they are obtained, in the compliance filing made at the time of commercial operation.³⁸

30. State Water Project contends that Citizens Sunrise has not provided sufficient detail on the \$600,000 in annual operating costs or the \$6 million of development costs, and avers that Citizens Sunrise may have included additional costs unrelated to its participation in the development of the Border East Line.³⁹ In its answer, Citizens Sunrise states that the \$6 million amount of development costs was based on estimated amounts and that the actual cost data will be included in a compliance filing, which will be reviewed by the Commission. Citizens Sunrise further avers that Citizens Energy has been incurring costs for the Border East Line for more than six years and its development

³⁵ See Six Cities Comments at 3 and MID Comments at 7.

³⁶ Citizens Sunrise Answer at 4-5.

³⁷ SoCal Edison Comments at 2.

³⁸ Citizens Sunrise Answer at 6-7.

³⁹ State Water Project Comments at 7.

costs only include costs pertaining to its participation in the development of the Border East Line.⁴⁰

31. State Water Project also contends that there are questions concerning Citizens Sunrise's treatment of its property taxes.⁴¹ Citizens Sunrise contends that SWP may have misunderstood the tax treatment. According to Citizens Sunrise, it proposes to collect property taxes on an annual cost basis. Citizens Sunrise offered the following explanation of the property tax calculation:

The property taxes will be initially billed on an estimated basis, and then trued up to actual cost.⁴² The initial year estimate for property taxes is \$1,088,855. The cap on capital costs, excluding property taxes is \$9,693,000, and that cap is determined from the SDG&E Representative Rate Model, which includes property taxes. Since the SDG&E Representative Rate Model includes property taxes, an adjustment must be made to exclude property taxes when determining the cap on capital costs. However, the amount of property taxes included in the SDG&E Representative Rate Model is \$805,958, not the \$1,088,855 assumed by [State Water Project].⁴³ The difference is that the \$805,958 is the levelized present value of property taxes over a 30 year period because the SDG&E Representative Rate Model is a calculation of the levelized present value of all costs calculated over a 30 year period.⁴⁴ In order to properly apply the SDG&E Representative Rate Model cap to capital costs excluding property taxes, the \$805,958 of levelized present value of property taxes must be subtracted from the \$10,498,975 SDG&E Representative Rate Model cap including the levelized present value property taxes.⁴⁵

⁴⁰ Citizens Sunrise Answer at 7-10.

⁴¹ State Water Project Comments at 5.

⁴² Citizens Sunrise Answer at 10-11 (citing Helsby, Exhibit CST-7, pages 14-15).

⁴³ *Id.* at 11 (citing Helsby, Exhibit CST- 7 at 16 and 17).

⁴⁴ The determination of the \$805,958 is shown on Exhibit CST-12.

⁴⁵ Citizens Sunrise Answer at 11 (citing Helsby Exhibit CST-7 at 17).

V. Discussion

A. Procedural Matters

32. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011) the notice of intervention and the timely, unopposed motions to intervene serve to make those parties who filed them parties to this proceeding.

33. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Citizens Sunrise's answer because it provided information that assisted us in our decision-making process.

B. Commission Determination

1. Citizens Sunrise's Section 205 Filing

34. We shall conditionally accept Citizens Sunrise's proposed TO Tariff, to be effective on the date Citizens Sunrise's Border East Line commences commercial operation and is turned over to the operational control of the CAISO. We note that the Citizens Sunrise TO Tariff is similar to the tariffs of other similarly-situated CAISO participating transmission owners.⁴⁶

35. With regard to Citizens Sunrise's proposed TRR, we note that Citizens Sunrise asserts that it is only seeking approval to charge a formula rate, using estimated costs, subject to a compliance filing providing the actual costs.⁴⁷ Citizens Sunrise thus states that actual cost data is not being submitted to the Commission for approval.⁴⁸ Thus, we conditionally accept Citizens Sunrise's TRR, in order to provide Citizens Sunrise with the regulatory certainty necessary to proceed with the financing and construction of the Border-East Line. Our acceptance of Citizens Sunrise's tariff is subject to our review of Citizens Sunrise's compliance filing which will, as noted, provide actual cost data.

36. To ensure that parties are protected from the possibility that Citizens Sunrise's initial estimated rates may be excessive and to clarify that refunds will accrue should we ultimately find that the estimated proposed rate is indeed excessive, we will institute, in

⁴⁶ See, e.g., *Trans Bay Cable LLC*, 130 FERC ¶ 61,028 (2010).

⁴⁷ We note that Citizens Sunrise has expressly committed to making this filing. See Citizens Sunrise Answer at 3.

⁴⁸ *Id.*

Docket No. ER12-686-000, a proceeding under section 206 of the FPA to investigate whether Citizens Sunrise's proposed rates are just and reasonable.

37. In cases where, as here, the Commission institutes a section 206 investigation on its own motion, section 206(b) of the FPA requires that the Commission establish a refund effective date that is no earlier than publication of notice of the Commission's initiation of its investigation in the Federal Register, and no later than five months subsequent to that date.

38. In order to give maximum protection to customers, and consistent with our precedent,⁴⁹ we will establish a refund date at the earliest possible date. This date will be the date on which the Border East Line commences commercial operation, but no later than 5 months from the date of this order. The Commission is also required by section 206 to indicate when it expects to issue a final order. In this case, the Commission expects that it will be able to issue a final order within one year of the date Citizens Sunrise files its compliance filing.

39. In light of the limited nature of our determination, we find that the parties' contentions regarding the justness and reasonableness of the rates are premature. Moreover, we note that Citizens Sunrise's actual costs will be subject to challenge by interested parties.⁵⁰ Thus, the concerns raised by the parties, if they are not resolved by Citizens Sunrise's compliance filing, can be raised in response to that filing.

40. Additionally, some of Citizens Sunrise's proposed accounting does not conform to the general requirements of the Commission's Uniform System of Accounts.⁵¹ Citizens Sunrise represents that it will make a one-time lease payment of approximately \$83 million to SDG&E in exchange for an entitlement in the transfer capability of the Border East Line for a period of 30 years. Citizens Sunrise proposes to account for the one-time lease payment as prepaid leasehold rent which it will include in Account 165, Prepayments.⁵² Also, Citizens Sunrise intends to amortize the prepayment for accounting purposes over the 30-year term of the agreement as rent expense by debiting Account

⁴⁹ See, e.g., *PJM Interconnection, L.L.C.*, 90 FERC ¶ 61,137 (2000); *Cambridge Elec. Light Co.*, 75 FERC ¶ 61,177, *clarified*, 76 FERC ¶ 61,020 (1996); *Canal Elec. Co.*, 46 FERC ¶ 61,153, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

⁵⁰ The subsequent annual updates to be filed by Citizens Sunrise also will be subject to challenge and review.

⁵¹ 18 C.F.R. Part 101 (2011).

⁵² Exhibit CST-15, page 6.

567, Rents, and crediting Account 165. In addition, Citizens Sunrise represents that it will make a one-time payment of approximately \$6 million to Citizens Energy for the costs it incurred in developing and planning for Citizens Sunrise's involvement in the project. Citizens Sunrise proposes to record the one-time payment to Citizens Energy for development costs in Account 303, Miscellaneous Intangible Plant. Citizens Sunrise proposes to amortize the capitalized development costs on a monthly basis over the 30-year term of the lease agreement by debiting Account 405, Amortization of Other Electric Plant, and crediting Account 303.

41. Citizens Sunrise's proposed accounting for the amortization of the capitalized development costs is not consistent with the requirements of the Commission's Uniform System of Accounts. Under the requirements of the Uniform System of Accounts, Account 405 includes charges for amortization of intangible or other electric utility plant which does not have a definite or terminable life. However, the development costs have a definite life equal to the lease term. It is more appropriate to amortize the capitalized development costs by debiting Account 404, Amortization of Limited-Term Electric Plant. Further, the Uniform System of Accounts requires Account 111, Accumulated Provision for Amortization of Electric Utility Plant, to be credited with the amounts debited to Account 404. Therefore, Citizens Sunrise is directed to revise its proposed accounting for the amortization of the capitalized development costs to use Account 404 and Account 111 consistent with the requirements of the Uniform System of Accounts.

42. Citizens Sunrise also requests that we approve the Transfer Capability Lease. The Transfer Capability Lease provides for interconnection, operation and maintenance of the Border East Line. The Transfer Capability Lease is designed to implement Citizens Sunrises participation in the development of the Border East Line. Among other things, the Transfer Capability Lease also sets forth that Citizens Sunrise's rate for capital cost recovery will be a fixed rate and can be no higher than the rate SDG&E would have charged. We note that no party objected to the Transfer Capability Lease. We accept the Transfer Capability Lease as just and reasonable.

43. Finally, we grant Citizens Sunrise's request for waiver of the requirement to file Period I cost of service data and Period II Statement information under section 35.12, because the cost data provided in Citizens Sunrise's Filing is necessarily the product of estimates since construction of the Border East Line will not be completed until approximately June 0f 2012.

2. Citizens Energy's Motion For Clarification

44. In its motion for clarification, Citizens Energy requests that we clarify that its wholly-owned subsidiary, Citizens Sunrise, will be entitled to the rights and privileges granted to Citizens Energy under the Citizens Energy Declaratory Order. The Commission has granted a transmission owner's request to transfer rate incentives to an affiliate in the event that affiliate is assigned construction and/or ownership of the project,

subject to the requirement that the affiliate make a section 205 filing to incorporate into its rates any such incentives.⁵³

45. However, in those previous cases, the transmission owner formally requested authority to assign its incentives authorizations to an affiliate. In this instance, while Citizens Energy did not formally apply for authority to transfer the incentives, it did make all parties to the proceeding aware of its intent to designate a subsidiary as being responsible for the project, both through its initial petition for declaratory order and through the motion currently before us. Therefore, we shall treat Citizens Energy's motion for clarification as a request for authority to assign its project incentives authorizations to Citizens Sunrise and grant the authorization requested. Since Citizens Sunrise has made the necessary section 205 filing and also intends to file a compliance filing, we find that the incentives granted to Citizens Energy in the Citizens Energy Declaratory Order should apply to Citizens Sunrise's interest in the Border East Line.

The Commission orders:

(A) Citizens Sunrise's TO tariff and Transfer Capability Lease is hereby conditionally accepted, to be effective on the date the Border East Line achieves commercial operation and is turned over to the operational control of the CAISO, as discussed in the body of this order.

(B) Citizens Sunrise is directed to make a compliance filing which incorporates the accounting changes directed in this order and the actual cost data for Border East Line 60 days after the Border East Line becomes commercially operational, as discussed in the body of this order.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred on the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly section 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), an investigation is hereby instituted, in Docket No. ER12-686-000, concerning the justness and reasonableness of the rates proposed by Citizens Sunrise in Docket No. ER12-686-000.

(D) The Secretary shall promptly publish in the Federal Register a notice of the

⁵³ *PJM Interconnection, L.L.C. and Pub. Serv. Elec. and Gas Co.*, 135 FERC ¶ 61,229, at P 81 (2011); *Public Service Elec. & Gas Co.*, 126 FERC ¶ 61,219, at P 70 (2009); *PPL Elec. Utils. Corp.*, 123 FERC ¶ 61,068, at P 51-52 (2008), *reh'g denied*, 124 FERC ¶ 61,229 (2008).

Commission's initiation of the investigation ordered in Ordering Paragraph (C) above, under section 206 of the FPA.

(E) The refund effective date established in Docket No. ER12-686-000 is the date on which the Border East Line commences commercial operation but no later than 5 months from the date of this order.

(F) Citizens Energy's motion for clarification is granted, as discussed in the body of this order.

(G) Citizens Sunrise's request for waiver of certain provisions of section 35.12 of the Commission's Rules and Regulations is granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.