

172 FERC ¶ 61,022
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick, Bernard L. McNamee,
and James P. Danly.

DATC Path 15, LLC

Docket Nos. ER17-998-001
EL17-61-001

ORDER DIRECTING BRIEFS

(Issued July 16, 2020)

1. This case is before the Commission on exceptions to the November 15, 2019 Initial Decision issued in the above-captioned proceeding.¹ Following the issuance of the Initial Decision, the Commission revised its methodology for calculating return on common equity (ROE) in Opinion Nos. 569 and 569-A.² Accordingly, to supplement the record in this proceeding, we direct further briefing regarding DATC Path 15, LLC's (DATC Path 15) ROE, as discussed below.

I. Background

A. Path 15 Upgrade

2. DATC Path 15 is a Delaware limited liability company (LLC) that holds and manages the transmission service rights associated with its sole asset, the DATC Path 15 Upgrade (Path 15 Upgrade). DATC Path 15 is the successor-in-interest to 72% of transmission service rights associated with the Path 15 Upgrade. DATC Path 15 acquired the transmission service rights in 2013 from Atlantic Path 15, LLC, which acquired the transmission service rights from Trans-Elect, Inc., in 2006.³

3. The Path 15 Upgrade is an 84-mile, 500-kilovolt (kV) transmission path built to relieve congestion along the existing Path 15 transmission corridor between northern and

¹ *DATC Path 15, LLC*, 169 FERC ¶ 63,021 (2019) (Initial Decision).

² *Ass'n of Bus. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, Opinion No. 569, 169 FERC ¶ 61,129 (2019), *order on reh'g*, Opinion No. 569-A, 171 FERC ¶ 61,154 (2020).

³ Initial Decision, 169 FERC ¶ 63,021 at P 3.

southern California. The Path 15 Upgrade added roughly 1,500 megawatts (MW) to the existing 5,400 MW of transmission capacity from southern to northern California, and increased transmission capacity from north to south by about 1,100 MW.⁴

4. DATC Path 15 is a Participating Transmission Owner (Participating TO) in the California Independent System Operator Corporation (CAISO). CAISO reimburses DATC Path 15 for its TRR through collection of a Transmission Access Charge (TAC) from all users of the CAISO grid. The TAC rate is a formula rate based on the TRRs of all Participating TOs. Rate changes that impact the CAISO TAC require a Federal Power Act (FPA) section 205 filing. Pursuant to a settlement agreement, DATC Path 15 must file with the Commission a cost-of-service rate methodology supporting its requested TRR not more than three years apart.⁵

B. 2017 Hearing Order

5. On February 17, 2017, DATC Path 15 submitted, under FPA section 205, a revised Appendix I to its Transmission Owner Tariff reflecting a proposed rate reduction to its transmission revenue requirement (TRR) from \$25,925,000 to \$25,571,090. DATC Path 15 sought a continuation of its previously accepted ROE of 13.5%, capped at the upper end of the zone of reasonableness. DATC Path 15 also asserted that an upward adjustment to the zone of reasonableness was warranted to ensure a just and reasonable ROE.⁶

6. On April 17, 2017, pursuant to delegated authority,⁷ the Director, Division of Electric Power Regulation – West, Office of Energy Market Regulation accepted DATC Path 15's proposed Path 15 Tariff revisions for filing, to become effective April 20, 2017, subject to further Commission order. This letter order also instituted an investigation under FPA section 206 into the justness and reasonableness of DATC Path 15's proposed rate reduction, held the proceeding in abeyance pending further Commission order, and established a refund effective date of April 20, 2017.⁸

7. On October 19, 2017, the Commission issued a further order denying DATC Path 15's request that the Commission make an upward adjustment to the zone of reasonable

⁴ *DATC Path 15, LLC*, 161 FERC ¶ 61,063, at P 4 (2017) (2017 Hearing Order).

⁵ *Id.* P 4.

⁶ *Id.* PP 8, 12.

⁷ *Agency Operations in the Absence of a Quorum*, 158 FERC ¶ 61,135 (2017).

⁸ *DATC Path 15, LLC*, 159 FERC ¶ 62,062 (2017) (errata issued Apr. 25, 2017).

returns in determining its ROE for the Path 15 Upgrade. In addition, the Commission set for hearing and settlement judge procedures all other issues associated with DATC Path 15's TRR reduction, including the discounted cash flow (DCF) zone of reasonableness for DATC Path 15's ROE, and directed the presiding judge to set the ROE at the upper end of that zone, not to exceed 13.5%.⁹ Subsequently, an evidentiary hearing was held before a presiding Administrative Law Judge (Presiding Judge).

C. Initial Decision

8. On November 15, 2019, the Presiding Judge issued an Initial Decision making determinations regarding, among other things, whether DATC Path 15's ROE remains just and reasonable. Specifically, although the case originated under FPA section 205, the Presiding Judge explained that the issue of whether DATC Path 15's current effective rate continues to be just and reasonable arises under FPA section 206. Under section 206, the participants who sought a further rate decrease—Commission Trial Staff (Trial Staff) and the cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (collectively, Six Cities)—had the burden of proof to demonstrate that DATC Path 15's existing rate is unlawful. The Presiding Judge found that Trial Staff and Six Cities failed to satisfy this burden.

9. As relevant here, the Presiding Judge found that the composite zone of reasonableness should be based on analysis of a two-step DCF, capital asset pricing model (CAPM), and Expected Earnings methodologies. The Presiding Judge found that, pursuant to this analysis, the composite zone of reasonableness included a range of 7.50-13.69%. As DATC Path 15's current ROE was 13.5%, the Presiding Judge found that the record supported a finding that DATC Path 15's current ROE falls within the composite zone of reasonableness.¹⁰

II. Opinion Nos. 569 and 569-A

10. On November 21, 2019, the Commission issued Opinion No. 569,¹¹ which adopted in part and rejected in part a new approach for evaluating base ROEs that the Commission had previously proposed¹² in response to the United States Court of Appeals

⁹ 2017 Hearing Order, 161 FERC ¶ 61,063 at P 27.

¹⁰ Initial Decision, 169 FERC ¶ 63,021 at P 149.

¹¹ Opinion No. 569, 169 FERC ¶ 61,129.

¹² *Martha Coakley v. Bangor Hydro-Elec. Co.*, 165 FERC ¶ 61,030 (2018).

for the District of Columbia Circuit's 2017 decision in *Emera Maine v. FERC*.¹³ In Opinion No. 569, the Commission applied a revised methodology for analyzing the base ROE component of public utility rates under FPA section 206 that used the DCF model and CAPM, instead of only the DCF model, and established a range of presumptively just and reasonable ROEs based on the quartiles of the zone of reasonableness.¹⁴ On May 21, 2020, the Commission issued Opinion No. 569-A to grant rehearing on certain issues.¹⁵

III. Discussion

11. We will reopen the record here and establish paper hearing procedures for the limited purpose of allowing the participants to this proceeding an opportunity to present written evidence applying the Commission's revised ROE methodology adopted in Opinion Nos. 569 and 569-A, and addressing how that revised methodology should apply to the facts of this proceeding. We expect participants' briefs to include an analysis of the Risk Premium model specified in Opinion No. 569-A. In addition, this will provide participants the opportunity to include an amended DCF analysis using the revised growth rate weighting adopted in Opinion No. 569-A and an amended CAPM analysis reflecting *Value Line* short-term growth rates. Initial briefs shall be due 60 days from the date of this order. Responses to those initial briefs shall be due 30 days later. No additional answers or briefs will be permitted.

¹³ 854 F.3d 9 (D.C. Cir. 2017).

¹⁴ Opinion No. 569, 169 FERC ¶ 61,129 at P 1.

¹⁵ Opinion No. 569-A granted rehearing to: (1) allow the use of the Risk Premium model; (2) give the short-term growth rate 80% weighting and the long-term growth rate 20% weighting in the two-step DCF model; (3) modify the high-end outlier test; (4) consider the use of *Value Line* short-term earnings growth estimates in the CAPM in future proceedings; and (5) calculate the ranges of presumptively just and reasonable base ROEs by dividing the overall composite zone of reasonableness into equal thirds. Opinion No. 569-A, 171 FERC ¶ 61,154.

The Commission orders:

Briefing procedures are hereby established, as discussed in the body of this order. Initial briefs are due 60 days from the date of this order and reply briefs are due 30 days thereafter.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.