

130 FERC ¶ 61,209  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Startrans IO, L.L.C

Docket No. ER08-413-002

ORDER DENYING REHEARING AND CLARIFICATION

(Issued March 18, 2010)

1. This order denies the request for rehearing and clarification filed by Startrans IO, L.L.C. (Startrans) regarding the Commission's March 31, 2008 order<sup>1</sup> in the above-captioned proceeding. Specifically, we uphold our determination to deny Startrans' request for an acquisition adjustment transmission rate incentive for its purchase of ownership interests from a municipal entity.<sup>2</sup>

**Background**

2. Startrans, a transmission-only limited liability company, entered into an agreement with the City of Vernon, California (Vernon), a non-jurisdictional municipality and a Participating Transmission Owner within the California Independent System Operator Corporation (CAISO), to acquire Vernon's ownership interests in two transmission line projects: (1) the Mead-Adelanto Project; and (2) the Mead-Phoenix Project (collectively, Mead Transmission Interests or Mead Facilities).

3. On January 4, 2008, as amended on February 27, 2008, Startrans filed, pursuant to section 205 of the Federal Power Act (FPA),<sup>3</sup> the proposed tariff and associated Transmission Revenue Requirement (TRR) to establish itself as a new Participating

---

<sup>1</sup> *Startrans IO, L.L.C.*, 122 FERC ¶ 61,306 (2008) (March 31 Order).

<sup>2</sup> Pacific Gas & Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company (California Utilities) filed a joint request for rehearing concerning the regional proxy group that Startrans used as a basis for proposing a base return on equity (ROE) of 13.5 percent. That rehearing request will be addressed in a future order.

<sup>3</sup> 16 U.S.C. § 824d (2006).

Transmission Owner within the CAISO. In addition, Startrans requested, pursuant to Order No. 679,<sup>4</sup> certain rate incentives, including an incentive ROE, an acquisition adjustment of approximately \$31.7 million, and 100 percent construction work in progress (CWIP). The March 31 Order accepted Startrans' proposed ROE, but rejected Startrans' request for an acquisition adjustment and for 100 percent CWIP.<sup>5</sup> Other issues were set for hearing and settlement judge procedures.

4. Startrans filed a request for rehearing and clarification of the March 31 Order, arguing that the Commission erred in denying Startrans its requested acquisition adjustment and its requested CWIP treatment. While Startrans' rehearing request was pending, Startrans filed an Offer of Settlement and Settlement Agreement (Settlement) on May 28, 2009 in Docket No. ER08-413-004 related to issues set for hearing and settlement judge procedures in the March 31 Order. The uncontested Settlement was approved by the Commission on July 31, 2009.<sup>6</sup> As a condition of the Settlement, Startrans withdrew its rehearing request with respect to CWIP,<sup>7</sup> although it has reserved its rehearing request with respect to the March 31 Order's rejection of its requested acquisition adjustment.<sup>8</sup>

5. On June 19, 2009, Startrans filed a motion (Settlement Motion) requesting that the Commission concurrently issue an order on the Settlement with the order on rehearing, arguing that if the Commission granted rehearing on the acquisition adjustment issue and the orders were issued at different times, then Startrans would have to re-size its debt twice, which would cause it to incur significant costs. Several of the settling parties and

---

<sup>4</sup> *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222 (2006), *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236, *order on reh'g*, 119 FERC ¶ 61,062 (2007).

<sup>5</sup> See March 31 Order, 122 FERC ¶ 61,306 at P 39-40, 50.

<sup>6</sup> *Startrans IO, L.L.C.*, 128 FERC ¶ 61,118 (2009) (*Settlement Order*).

<sup>7</sup> See *Notice of Withdrawal of Startrans IO, L.L.C.*, Docket No. ER08-413-002 (Sept. 29, 2009).

<sup>8</sup> See *Settlement Order*, 129 FERC ¶ 61,118, at P 6 (2009). The Settlement also provided for the withdrawal of a rehearing request filed by the California Public Utilities Commission (CPUC) regarding the ROE approved in the March 31 Order. However, the California Utilities retained the right to pursue their rehearing request regarding the use of a regional proxy group. As noted above, the California Utilities' rehearing request will be addressed in a future order.

Commission Trial Staff filed answers opposing Startrans' motion on June 29, 2009. In the *Settlement Order*, the Commission denied Startrans' motion.

6. On February 26, 2010, Startrans filed a letter with the Commission (February 26 Letter) requesting action on its pending rehearing request by March 18, 2010 in order for Startrans to have an answer on the matter prior to a scheduled March 31 debt call.

### **Request for Rehearing and Subsequent Filings**

7. Startrans argues that the Commission's rejection of its proposed acquisition adjustment was arbitrary and capricious. Startrans asserts that it had made a specific showing of ratepayer benefit, consistent with the requirements of Order No. 679. Specifically, Startrans points to its discussion in the January 4 Filing that its purchase of the Mead Transmission Interests from Vernon would be the "first-ever independent acquisition of municipally-owned transmission" that will "bring a different perspective to transmission ownership with the CAISO ...."<sup>9</sup>

8. Startrans also notes that testimony sponsored by two of its witnesses provided the following additional details of the benefits that would be provided by Startrans' ownership of the Mead Transmission Interests: Startrans' commitment to fund upgrades to bring new transmission capacity into California; the introduction of a new market entrant; the commitment to use the Mead Facilities to bring more renewable generation resources into California; the clear jurisdictional nature of Startrans; the cost savings associated with ending litigation regarding Vernon's TRR and jurisdictional status; and the resulting refunds to California ratepayers.<sup>10</sup>

9. Startrans contends that the Commission must consider additional evidence of specific ratepayer benefit. To that end, its request for rehearing advances new evidence of ratepayer benefit that Startrans has found since the submission of its section 205 filing. In particular, Startrans includes the affidavit of Mr. James H. Drzemiecki, which highlights these purported additional benefits (Supplemental Affidavit). The Supplemental Affidavit states that there are at least three categories of customer benefits for customers as a result of the transaction: (1) the addition of Startrans as a Participating Transmission Owner in the CAISO operated grid, which will increase the number of competitors investing in transmission infrastructure; (2) Startrans' willingness to invest in upgrades to the Mead Facilities; and (3) the resolution and settlement of contentious issues related to Vernon's TRR.<sup>11</sup> Mr. Drzemiecki estimates that the transaction and

---

<sup>9</sup> Startrans Rehearing Request at 4 (*quoting* Startrans' section 205 filing at 11).

<sup>10</sup> *Id.* at 5-6. *See also id.* at 7-16.

<sup>11</sup> Supplemental Affidavit at 2-3.

Startrans' membership in the CAISO will generate approximately \$18 million of benefits to customers in the first year, and approximately \$850,000 in benefits per year starting in the second year.<sup>12</sup> The Supplemental Affidavit also discusses other benefits, including the "major benefit of adding a new, aggressive and well-funded competitor for the construction of new transmission" and benefits associated with significant expansions of the Mead Facilities in the future. Mr. Drzemiecki states that he has not attempted to quantify these additional benefits, but could do so if a hearing were ordered.

10. Startrans argues that the quantified specific benefits more than offset the requested acquisition adjustment. Startrans also notes that the Accumulated Deferred Income Tax (ADIT) calculation it provided was a proxy to establish a reasonable number for the proposed adjustment and, if the Commission finds the ADIT calculation to be inappropriate, then it should provide guidance on what is appropriate or ignore the ADIT calculation and focus on the specified ratepayer benefits. Startrans further notes that its proposed acquisition adjustment is minor, and is less than one-seventh of the additional premium that Startrans is paying out of its own pocket to accomplish the transaction.

11. In the alternative, Startrans argues that the Commission should order a hearing to consider the specific benefits of Startrans' acquisition. Startrans also asks that the Commission clarify what is required for a "specific showing of ratepayer benefit" for this proceeding and future proceedings. Startrans contends that it believed it had followed the Commission's limited guidance and had made a specific showing of ratepayer benefits. Startrans argues that its acquisition of the Mead Facilities has real ratepayer benefits, as the Commission's order approving the transaction under FPA section 203 appeared to recognize. Startrans argues that, without guidance from the Commission of what constitutes an appropriate showing of specific ratepayer benefits, the goal of Congress and the Commission to spur transmission investment will be stifled. Therefore, Startrans asks that the Commission clarify what is needed to satisfy the standard and, to the extent that the Commission has changed its standard, it needs to so clarify and permit Startrans the opportunity to satisfy the new standard at hearing.

12. Startrans states that, to the extent the March 31 Order would require a showing of immediate cost savings or rate reductions attributable directly to the purchase of the Mead Facilities, then an acquisition adjustment would arguably never be approved for a start-up Transco. According to Startrans, an acquisition adjustment by definition provides an exception to the Commission's general rule that limits the rate base of the new entity to the depreciated book value of the assets being purchased. Thus, Startrans contends, for a start-up Transco such as itself, the Commission's benefits analysis should be focused on the qualitative and "philosophical" distinctions in asset ownership and the long-term benefits that will accrue to ratepayers in the form of Startrans' willingness to

---

<sup>12</sup> *Id.* at 3.

make investments in transmission system improvements and technological advances (improvements and advancements which Startrans argues would not have been financed by the previous owner).<sup>13</sup>

13. As noted above, in addition to its rehearing request on the acquisition adjustment issue, Startrans addresses this issue in its Settlement Motion. In that pleading, Startrans states that although the impact of the acquisition adjustment would be relatively small, it is critically important for Startrans' cash flow and its ability to operate as a viable utility. Startrans also emphasizes that the supplemental evidence it provided in its request for rehearing demonstrated that the quantifiable benefits pay for the requested acquisition adjustment by more than six-fold. Startrans further notes that its affiliate has developed new renewable energy resources in the vicinity of the transmission facilities, which Startrans noted would be the case in its section 205 filing.<sup>14</sup>

14. Several other entities submitted filings commenting on the acquisition adjustment. M-S-R Public Power Agency (M-S-R) and the CPUC each filed letters with the Commission urging it to grant rehearing on the March 31 Order's denying Startrans' request for an acquisition adjustment. Six Cities<sup>15</sup> filed an answer to the letters filed by M-S-R and the CPUC contending that Startrans had not made an adequate showing that it was entitled to the acquisition adjustment incentive.

## **Discussion**

### **A. Procedural Matters**

15. The Commission's Rules of Practice and Procedure prohibit answers to requests for rehearing unless otherwise ordered by the decisional authority.<sup>16</sup> We reject the filings submitted by M-S-R, the CPUC, and the Six Cities that support or oppose Startrans' request for rehearing concerning the acquisition adjustment incentive. We find that all of these pleadings are effectively "answers" to Startrans' rehearing request, even if they are not styled as such, because they all specifically respond to the arguments in favor of the

---

<sup>13</sup> Startrans Rehearing Request at 19.

<sup>14</sup> Startrans also raised the issue in the February 26 Letter, where it requested that the Commission grant its request for rehearing and noted that the CPUC was in favor of the requested acquisition adjustment.

<sup>15</sup> Six Cities are: City of Anaheim; City of Azusa; City of Banning; City of Colton; Pasadena Water and Power Department; and Riverside Public Utilities Department.

<sup>16</sup> 18 C.F.R. § 385.213(a)(2) (2009).

requested acquisition adjustment set forth in Startrans' rehearing request. We have not been persuaded that it is necessary for us to consider these filings and will thus reject them as unauthorized answers to Startrans' rehearing request.<sup>17</sup> For this reason, we also reject the answers to the February 26 Letter filed by Six Cities and Pacific Gas & Electric Company and San Diego Gas & Electric Company.

**B. Substantive Matters**

16. For the reasons set forth below, we deny Startrans' request for rehearing.

**1. Startrans Has Not Demonstrated that the Evidence it Provided in its Initial Filing Warrants the Requested Acquisition Adjustment**

17. The March 31 Order properly rejected Startrans' argument that it should be awarded an acquisition adjustment incentive because of the benefits its acquisition of the Mead Transmission Interests would provide. In the March 31 Order, we explained that Order No. 679 permits granting a requested acquisition adjustment incentive in two scenarios.<sup>18</sup> First, the Commission will consider proposals to adjust the book value of transmission assets being sold to a Transco to reflect the effect of accelerated depreciation on the federal capital gains tax liabilities faced by the seller.<sup>19</sup> Second, the Commission will consider granting an acquisition adjustment when an applicant can demonstrate that there are specific ratepayer benefits associated with the acquisition.<sup>20</sup> The March 31 Order found that neither situation was present in this proceeding.<sup>21</sup> Because Vernon is a tax-exempt municipality, the first scenario does not apply. Thus, in the March 31 Order, we examined whether the transaction qualified under the second scenario by providing a demonstration of specific ratepayer benefits, and we found that Startrans did not satisfy the requirements of Order No. 679 under the second scenario.

18. On rehearing, Startrans has not persuaded us to change our decision. While our policy is to encourage, through ratemaking incentives, Transco ownership of transmission facilities, we are not in a position to grant the acquisition adjustment incentive solely by

---

<sup>17</sup> 18 C.F.R. § 385.713(d) (2009) ("The Commission will not permit answers to requests for rehearing.").

<sup>18</sup> See March 31 Order, 122 FERC ¶ 61,306 at P 37.

<sup>19</sup> See Order No. 679 at P 247.

<sup>20</sup> *Id.* P 258.

<sup>21</sup> March 31 Order, 122 FERC ¶ 61,306 at P 39-40.

virtue of Transco ownership. In accordance with Order No. 679, the applicant must demonstrate that it meets the criteria for such an incentive. In this case, Startrans contends that its ownership interest in the Mead Facilities represents the first-ever independent acquisition of municipally owned transmission assets by an independent transmission company, which would bring a “different perspective” to transmission ownership in the CAISO.<sup>22</sup> Startrans also argues that this acquisition will end litigation surrounding Vernon’s TRR and will end questions about the jurisdictional status of the owner of the Mead Facilities. We agree with Startrans that these actions are preferred. The question, however, is whether the transaction results in *specific* ratepayer benefits. We find there is no showing of specific ratepayer benefits. Moreover, we note that Startrans was granted an incentive ROE because of its status as a Transco.<sup>23</sup>

19. Contrary to Startrans’ contentions, there is ample Commission precedent that addresses what showing an applicant needs to make to warrant an acquisition adjustment, and which we apply here. Our discussion in *Montana-Dakota Utilities Co.*<sup>24</sup> provides guidance on what showing needs to be made. While that proceeding involved a natural gas pipeline, its basic principles are applicable here. In *Montana-Dakota*, we stated:

The Commission has recognized that a purchaser may include the acquisition adjustment in its rate base upon a showing that the excess paid over the depreciated original cost results in specific dollar benefits to the pipeline’s customers. These benefits may include “decreases in rates, improved services or economies in operation which are clearly related and solely the result of the acquisitions.” Further, the benefits must be tangible and nonspeculative.<sup>25</sup>

20. In *Minnesota Power & Light Co.*,<sup>26</sup> we stated that “recovery of the acquisition costs will turn on an analysis of the benefits conferred on ratepayers and the overall

---

<sup>22</sup> Startrans Rehearing Request at 4 (*citing* Startrans’ section 205 filing at 11).

<sup>23</sup> *See* March 31 Order, 122 FERC ¶ 61,306 at P 17-19, 28.

<sup>24</sup> 23 FERC ¶ 61,151 (1983) (*Montana-Dakota*).

<sup>25</sup> *Montana-Dakota*, 23 FERC ¶ 61,151, at 61,335 (*quoting* *Mid-Louisiana Gas Co., et al.*, 7 FERC ¶ 61,316 (1979), *aff’d* *Transcontinental Gas Pipe Line Corp. v. FERC*, 652 F.2d 179 (D.C. Cir. 1981)).

<sup>26</sup> 43 FERC ¶ 61,104, *reh’g denied*, 43 FERC ¶ 61,502 (1988) (*Minnesota Power*).

prudence of its investment decision[.]”<sup>27</sup> In *Duke Energy Moss Landing LLC*,<sup>28</sup> we emphasized that “recovery of an acquisition adjustment is by no means guaranteed” and, therefore, the applicants “cannot assert that they detrimentally relied on our future approval of an acquisition adjustment when they offered to pay \$180 million more than the net book value of the facility in question.”<sup>29</sup> Further, as we explained in the March 31 Order, ratepayer benefits should be directly quantified because that “addresses concerns that might otherwise arise as to whether favorable rate treatments for premiums cause unwarranted increases in the sales price of transmission assets.”<sup>30</sup> In Order No. 679, we reiterated that we were not changing our historical policy of allowing acquisition adjustments in rates only upon a specific showing of ratepayer benefits.<sup>31</sup>

21. In this case, Startrans has not demonstrated that the acquisition results in the sort of tangible ratepayer benefits described in *Montana-Dakota*. As noted in the March 31 Order, the Mead Facilities were already under the functional control of the CAISO’s open access transmission tariff when they were owned by Vernon. Therefore, these facilities already were subject to open access transmission service, and thus no efficiencies are achieved by the transaction in this respect. Startrans did not present evidence that its acquisition of the facilities would result in lower rates for customers or that it would reduce congestion or improve reliability. Several of the benefits that it does discuss, e.g., the different perspective of independent ownership of transmission facilities and the jurisdictional problems associated with municipal ownership of transmission facilities, are not tangible, concrete or quantifiable benefits for which an acquisition adjustment should be granted. Regardless, as noted above, even if there are some associated

---

<sup>27</sup> *Minnesota Power*, 43 FERC ¶ 61,502, at 61,342 (1988). See also *Duquesne Light Holdings Inc.*, 117 FERC ¶ 61,326, at n.47 (2006) (“Under Commission policy, rate recovery of an acquisition adjustment in traditional cost-based requirements rates is allowed only if the acquisition is prudent and provides measurable, demonstrable benefits to ratepayers”).

<sup>28</sup> 83 FERC ¶ 61,318 (1998), *order on reh’g*, 86 FERC ¶ 61,227 (1999) (*Duke Moss II*).

<sup>29</sup> *Duke Moss II*, 86 FERC ¶ 61,227, at 61,816.

<sup>30</sup> March 31 Order, 122 FERC ¶ 61,306 at P 38 (*quoting Int’l Transmission Co.*, 92 FERC ¶ 61,276, at P 18 (2000)) (internal quotations omitted). See also *Duke Moss II*, 86 FERC ¶ 61,227 at P 61,816 (stating that benefits must be quantifiable in monetary terms) (*citing Northern Nat. Gas Co.*, 35 FERC ¶ 61,114, at 61,236 (1986)).

<sup>31</sup> Order No. 679 at P 258.

intangible benefits, they have already been covered by the Commission granting Startrans an incentive ROE because of its status as a Transco.<sup>32</sup>

**2. Startrans' Introduction of New Evidence at the Rehearing Stage is Procedurally Barred**

22. We reject Startrans' attempts to use its rehearing request and Settlement Motion to introduce additional evidence of ratepayer benefits into the record. As stated above, answers to rehearing requests are prohibited under our rules,<sup>33</sup> because the introduction of new evidence at the rehearing stage is not subject to challenge by interested parties.<sup>34</sup> Moreover, our policy has been to reject supplements to rehearing requests,<sup>35</sup> and we therefore reject what is effectively a supplement contained in the Settlement Motion to Startrans' rehearing request. It is not appropriate to introduce such evidence at the rehearing stage.<sup>36</sup>

**3. Startrans Has Not Demonstrated that the Evidence it Introduced on Rehearing Warrants the Requested Acquisition Adjustment**

23. Even if we were to consider Startrans' new evidence on the merits, we would deny rehearing. Startrans' rehearing request discusses what it believes to be several additional

---

<sup>32</sup> See March 31 Order, 122 FERC ¶ 61,306 at P 28 (“We find that an incentive ROE is appropriate here because of Startrans' status as a Transco”).

<sup>33</sup> See 18 C.F.R. § 385.213(a)(2) (2009).

<sup>34</sup> See, e.g., *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,030, at P 15 and n.10 (2009) (“[t]he Commission has held that raising issues for the first time on rehearing is disruptive to the administrative process and denies parties the opportunity to respond”).

<sup>35</sup> See, e.g., *Mich. Elec. Transmission Co., LLC, et al.*, 116 FERC ¶ 61,164, at P 6 (2006) (“the Commission does not permit supplements or amendments to requests for rehearing filed more than 30 days after the date of the order”).

<sup>36</sup> We reject Startrans' position that “[i]n light of evidence of additional ratepayer benefits that have been discovered since the Section 205 filing was made, the Commission must permit Startrans the opportunity to supplement the record with additional evidence of specific ratepayer benefits.” Startrans Rehearing Request at 5-6. Even if it were permissible to supplement the record at the rehearing stage, which it is not, it appears that at least some of the benefits described in the rehearing request could have been addressed in the section 205 filing or in an amendment to that filing prior to the Commission's disposition of this issue in the March 31 Order.

benefits of the transaction, such as the introduction of a new market entrant, commitments to expand the Mead Facilities and to use them to import renewable generation resources into California, the clear jurisdictional nature of Startrans, the resolution of litigation surrounding Vernon's TRR and jurisdictional status, and the resulting refunds to ratepayers.<sup>37</sup> However, we find that none of these items warrants granting an acquisition adjustment.

24. First, Startrans argues that its acquisition of the Mead Transmission Interests introduces a new market entrant, thereby increasing competition to the benefit of consumers. We agree in general that the introduction of a new entrant benefits the market; however, here the market entrant is merely taking over ownership of facilities that already exist and were under CAISO control and subject to its open access transmission tariff. Thus, Startrans' statement that it is a new entrant overstates the value it brings as such; rather, as an existing market participant, Startrans will now own the facilities formerly owned by Vernon that already are serving the market. Therefore, it does not follow that there are specific ratepayer benefits associated with Startrans' entry into the market. As discussed in *Montana-Dakota*, some examples of specific ratepayer benefits include decreases in rates, improved services, or economies in operation that are clearly related and solely the result of the acquisition.<sup>38</sup> Startrans' rehearing request does not show any benefits other than its potential commitment to expand infrastructure, as well as its status as an independent company with knowledgeable investors.<sup>39</sup> We have already considered and rejected Startrans' claim that its status as a Transco warrants the adjustment.<sup>40</sup> We also note that the March 31 Order granted Startrans an incentive ROE in connection with its status as a Transco.<sup>41</sup> Further, as discussed in the following paragraph, Startrans' commitments were speculative and are thus not tangible, specific benefits for ratepayers.

25. Second, Startrans states that it commits to expanding the Mead Facilities, converting the Mead Facilities to direct current lines, and using the Mead Facilities to bring additional renewable generation resources into California.<sup>42</sup> If Startrans follows

---

<sup>37</sup> Startrans estimates these benefits to be approximately \$18 million in the first year and approximately \$850,000 per year thereafter. Startrans Rehearing Request at 6.

<sup>38</sup> See P 19, *supra*.

<sup>39</sup> See Startrans Rehearing Request at 7-8.

<sup>40</sup> See P 17-21, *supra*.

<sup>41</sup> See March 31 Order, 122 FERC ¶ 61,306 at P 28.

<sup>42</sup> Startrans Rehearing Request at 8-12.

through on these commitments, then ratepayers may benefit from these actions. However, the mere assertion that Startrans is committed to taking these actions is not sufficient to establish the sort of tangible, concrete benefits that would allow us to grant the requested adjustment. *Montana-Dakota* is clear in stating that in order to warrant an acquisition adjustment, the applicant must provide non-speculative benefits.<sup>43</sup>

26. Third, Startrans raises arguments concerning the resolution of litigation surrounding Vernon's TRR. For instance, Startrans asserts that the acquisition of the Mead Transmission Interests and Startrans' agreement to be responsible for \$15 million of Vernon's TRR obligations helped end this litigation. Startrans contends that this undertaking resulted in a Commission-approved settlement agreement under which Vernon paid refunds to California ratepayers (Vernon Settlement).<sup>44</sup> We understand that litigation surrounding Vernon's TRR has been resolved, and that Vernon's settlement agreement resulted in the payment of refunds that otherwise may not have been paid given Vernon's status as a non-jurisdictional municipality. However, we cannot conclude that the resolution of litigation, and the consequent savings in legal costs, would not have occurred but for the transaction. In *Montana-Dakota*, we stated that tangible ratepayer benefits must clearly be related and solely the result of the acquisition.<sup>45</sup> The Vernon Settlement involved the resolution of a number of issues, not just issues concerning Vernon's TRR, and we have found no evidence in the record that the sale of the ownership interests in the Mead Facilities to Startrans was the clear impetus for settling the TRR-related issues.<sup>46</sup> Vernon may have wished to settle on a broad range of matters in order to avoid further litigation and may have been independent of the transaction. In any event, Vernon's motives for entering into the settlement are a matter of speculation and cannot be used to support claims of ratepayer benefits.

27. Fourth, Startrans notes that uncertainty over the jurisdictional status of the Mead Facilities will not be an issue because Startrans is a public utility subject to the Commission's FPA jurisdiction, while Vernon was not subject to such jurisdiction. That

---

<sup>43</sup> See *Montana-Dakota*, 23 FERC ¶ 61,151 at 61,335.

<sup>44</sup> See *San Diego Gas & Elec. Co.*, 125 FERC ¶ 61,085 (2008) (approving Vernon Settlement).

<sup>45</sup> *Montana-Dakota*, 23 FERC ¶ 61,151 at 61,335.

<sup>46</sup> The Vernon Settlement does address Vernon's petition for declaratory order in Docket No. EL08-54-000. In that proceeding, Vernon asked for approval of its "interim" and "final" TRRs, so termed because Vernon was in the process of selling its interests in the Mead Facilities to Startrans. However, the Vernon Settlement does not indicate that the reason for settling TRR-related issues was solely the result of the transaction.

is true; however, the facilities were being operated by the CAISO, a jurisdictional independent system operator, and even if the resolution of questions surrounding the jurisdictional status of the Mead Facilities benefits ratepayers, it does not provide any concrete, tangible benefits to ratepayers. Further, as noted above, because the Mead Facilities were under the CAISO's operational control prior to the transaction, it is unclear how the transaction could have resulted in any additional benefits to ratepayers. The Commission also rejects Startrans' argument that the elimination of jurisdictional uncertainty of the Mead Facilities also eliminates any question as to the Commission's jurisdictional authority to order refunds, and that this benefit is not hypothetical but is "very real."<sup>47</sup> We find that even if this did constitute a benefit to ratepayers, it is not a quantified benefit, as required under our precedent.<sup>48</sup> For these reasons, we reject Startrans' assertion that certainty regarding the Commission's jurisdiction over the Mead Facilities warrants an acquisition adjustment.

28. We need not address Startrans' arguments regarding its proxy ADIT and the arguably "minor" adjustment it was seeking, which it argued was far outweighed by the quantified benefits flowing from the acquisition. Regardless of how it calculated the proposed adjustment, and regardless of the size of the requested adjustment, Startrans is still required to show specific ratepayer benefits, which it has not, as discussed herein.<sup>49</sup>

#### **4. Startrans' Request for Clarification**

29. Startrans asks us to clarify what is required to make a showing of specific rate benefit for purposes of obtaining the acquisition adjustment incentive. As noted above, Order No. 679 set forth the two general criteria under which an applicant can obtain this incentive.<sup>50</sup> The Commission will determine whether a particular applicant meets these

---

<sup>47</sup> Startrans Rehearing Request at 13.

<sup>48</sup> For example, setting a TRR for hearing and subjecting it to refund is speculative because it does not provide ratepayers with an immediate tangible benefit and it does not necessarily follow that the TRR will ultimately be reduced.

<sup>49</sup> Alternatively, Startrans asks us to order a hearing to consider these benefits of the transaction. As noted above, we find that Startrans' introduction of new evidence is procedurally barred. However, even if we were to entertain this proposal, we do not believe that ordering a hearing will provide Startrans with the certainty it needs prior to its scheduled call with its lenders, as it explained in the February 26 Letter. Moreover, the Commission need not hold a hearing where we can resolve the issues based on written submissions. *See, e.g., Nevada Power Co., et al. v. Enron Power Marketing, Inc., et al.*, 125 FERC ¶ 61,312, at P 29 and n.67 (2008).

<sup>50</sup> *See* P 17, *supra*.

criteria on a case-specific basis, because that determination will be based on the specific facts before it in individual proceedings. We decline to establish a bright-line rule, beyond the criteria established in Order No. 679, in what is necessarily a fact-specific analysis. Moreover, the Commission has longstanding precedent regarding acquisition adjustments for ratemaking purposes, some of which is cited in this order. Accordingly, we decline to provide further clarification other than to encourage Startrans and other applicants to consider carefully whether the benefits that are purported to accrue to ratepayers as a result of a particular transaction are consistent with *Montana-Dakota* and other relevant precedent. For the reasons set forth in the March 31 Order and herein, we find that the various benefits suggested by Startrans fail to justify an acquisition adjustment incentive in this particular case.

30. In seeking clarification, Startrans suggests that there is an inconsistency between the March 31 Order and the order authorizing Startrans' acquisition of the Mead Facilities under section 203 of the FPA.<sup>51</sup> However, we find no inconsistency between these orders. When the Commission evaluates a transaction under section 203, it must consider, among other things, the effect of the transaction on rates. In finding no adverse impact on rates, the *Section 203 Order* stated that while "there will be a rate effect...any increase in rates will be offset by an increase in benefits."<sup>52</sup> However, a finding under the "effect on rates" prong of the Commission's FPA section 203 analysis is distinct from a finding that an acquisition warrants an adjustment under FPA section 205. In particular, the section 203 analysis does not mandate a specific showing of ratepayer benefits. The *Section 203 Order's* conclusion that the transaction would not result in an adverse impact on rates was grounded in the general benefits that the acquisition provided, such as Startrans' "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."<sup>53</sup> In addition, the *Section 203 Order* discussed the general benefits that Transcos provide, such as the elimination of competition for capital between generation and transmission functions, the ability to more quickly respond to market signals, enhanced asset management, and access to capital markets.<sup>54</sup> We continue to find that

---

<sup>51</sup> *Startrans IO, L.L.C.*, 122 FERC ¶ 61,307 (2009) (*Section 203 Order*). In particular, Startrans argues that "[t]his Transaction has real ratepayer benefits, as the Commission itself appears to have acknowledged in the Section 203 Order." Startrans Request for Rehearing at 18.

<sup>52</sup> *Section 203 Order*, 122 FERC ¶ 61,307 at P 26.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* P 27.

these are important benefits.<sup>55</sup> However, they do not constitute a “specific showing of ratepayer benefits” as required under Order No. 679 and other precedent.

The Commission orders:

Startrans’ request for rehearing and clarification is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

---

<sup>55</sup> Indeed, as discussed above, Startrans has been compensated for the Transco benefits via an incentive ROE we granted in connection with its Transco status.