

100 FERC ¶ 61, 331
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William A. Massey, Linda Breathitt,
and Nora Mead Brownell.

Western Area Power Administration

Docket No. ER02-1672-001

ORDER DENYING REHEARING

(Issued September 25, 2002)

1. In this order, we deny two requests for rehearing of our earlier order issued in this proceeding on June 12, 2002,¹ where we accepted for filing a letter agreement that governs the construction of transmission facilities along California's Path 15 (Letter Agreement).

Background

2. The Letter Agreement was filed on April 30, 2002 by Western Area Power Administration (WAPA), on behalf of itself, Trans-Elect, Inc. (Trans-Elect) and Pacific Gas & Electric Company (PG&E) (collectively, Path 15 Participants). Among other matters, the June 12 Order approved certain rate principles prescribed in the Letter Agreement for the treatment of costs associated with transmission upgrades, to promote the prompt construction of much needed transmission upgrades to Path 15. The June 12 Order expressly preserved the rights of parties to challenge all other ratemaking issues in future proceedings.

3. Timely requests for rehearing were filed by the Public Utilities Commission of California (California Commission) and by San Diego Gas & Electric Company (SDG&E). In addition, Northern California Power Agency (NCPA) filed a response to SDG&E's rehearing request.

¹Western Area Power Administration, 99 FERC ¶ 61,306 (2002) (June 12 Order).

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Discussion

A. The California Commission's Rehearing Request

4. The California Commission argues generally that the incentives approved by the Commission's Removing Obstacles Orders,² which were cited in the introductory paragraph of the June 12 Order,³ have elapsed and that the Commission erred in giving these same kinds of incentives to the Path 15 participants for a project that falls outside the timetable prescribed in the Removing Obstacles Orders. The California Commission further argues that the Removing Obstacles Orders guaranteed that these incentives would not be available for projects not meeting the timetable prescribed in the Removing Obstacles Orders.

5. In addition, the California Commission specifically challenges five findings that it alleges were made in the June 12 Order. First, it argues that the Commission erred in giving Trans-Elect a 13.5 return on equity (ROE). Second, it argues that the Commission erred in allowing Trans-Elect to use a "hypothetical" 50/50 capital structure. Third, it argues that the Commission erred in allowing Trans-Elect's rates to remain in effect for the first 36 months that the project is in operation. Fourth, it argues that the Commission erred in giving PG&E a 200 basis point increase in ROE and allowing it the use of accelerated depreciation for facilities constructed as part of the project. Fifth, it argues that the Commission erred in finding that the Path 15 project is needed.

6. The California Commission also seeks clarification as to whether its rights to challenge project entitlements are in any way compromised by the June 12 Order. To the extent that the June 12 Order rejected the California Commission's concerns regarding project entitlements, the California Commission seeks rehearing.

Commission Finding

7. We will deny the California Commission's request for rehearing. We continue to find the rate principles approved for Trans-Elect and PG&E to be reasonable for the Path

²Removing Obstacles to Increased Electric Generation and Natural Gas Supply in the Western United States, 94 FERC ¶ 61,225, order on requests for reh'g and clarification, 96 FERC ¶ 61,155, further order on requests for reh'g and clarification, 97 FERC ¶ 61,024 (2001) (Removing Obstacles Orders).

³99 FERC at 62,277.

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15 project. Although the rate principles approved in the June 12 Order were consistent with those enunciated in the Removing Obstacles Orders, the June 12 Order stands independent of those orders and did not extend the timetable prescribed in those orders. The rate principles we approved in the June 12 Order represented incentives that were designed to alleviate transmission constraints along Path 15. While such incentives are not normally included in traditional cost-based rates, the proposal before us is not a traditional cost-based rate proposal. Path 15 is a uniquely critical path, with transmission limitations that have had serious impacts on the ability to move power over the system.⁴ The proposal before us to upgrade Path 15 and address existing transmission limitations was the result of a request for proposals intended to achieve the most favorable terms

⁴See June 12 Order, 99 FERC at 62,227, where we stated "[t]he need for additional transmission facilities in California, particularly along Path 15, has not abated since issuance of the Removing Obstacles Orders." We also stated, *id.*, that "Path 15 transmission lines are often constrained because of the need for significant north-to-south transmission to accommodate the movement of hydro power from the Pacific Northwest to Southern California and also to permit the movement of energy from generators in Southern California to Northern California." Accord, *id.* at 62,280, where we stated, "[i]t generally is recognized that serious transmission congestion plagues the California energy markets, particularly along Path 15, and that the upgrades will provide much needed transmission capacity to Northern California."

Path 15 is also addressed in the United States Department of Energy's National Transmission Grid Study (May 2002). The study listed Path 15 as a major western transmission bottleneck, at p. 15. The study also stated that constraints on Path 15 have resulted in congestion costs to California energy customers estimated at \$222 million over just the 16 months prior to December 2000, at pp. 17, 22. By contrast, the entire cost of the proposed Path 15 upgrades that would relieve this congestion is estimated at \$306 million. See June 12 Order, 99 FERC at 62,278.

In addition, the Commission has previously recognized Path 15 as a constrained path in California Independent System Operator Corporation, 99 FERC ¶ 61,212 at 61,890 (2002). In addition, Path 15 has been described by parties in other cases as "[t]he most constrained and likely most important path over which FTRs could be auctioned." California Independent System Operator Corporation, 87 FERC ¶ 61,143 at 61,576 (1999). Cf. *San Diego Gas & Electric Company v. Energy Sellers*, 99 FERC ¶ 63,004 at P21 (2002) and *Sierra Pacific Power Company*, 94 FERC ¶ 63,019 at 65,115 & n.296, 65,146 (2001) (which identified Path 15 as a constrained path).

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possible. Although a proposal for upgrades to Path 15 with lesser or no incentives would have been welcomed, no such proposal materialized. What did materialize was the project before us, which represented the best option available. Accordingly, the incentives are warranted under these circumstances. Moreover, as noted in note 4 supra, the reasonableness of the incentives allowed in the June 12 Order is highlighted by a comparison of the costs of the project to the congestion costs associated with continued reliance on the existing, constrained system.

8. Although the Commission prescribed a specific timetable for projects to obtain the incentives provided in the Removing Obstacles Orders, we disagree with the California Commission's assertion that this constituted a guarantee that we would never provide incentives, where appropriate and justified, for any future projects. Once the timetable prescribed in the Removing Obstacles Orders expired, any future projects would not automatically qualify for such incentives, but nowhere in those orders did we ban the use of incentives in future cases, where warranted. In the instant case, for the reasons explained in the June 12 Order and here, the incentives are warranted.

9. Moreover, specifically with regard to the "hypothetical" 50/50 capital structure, a guide to evaluating a particular company's capital structure is to evaluate the structure chosen by comparable risk companies acting independently in the financial markets, as the capital structure of such companies would reflect the risks associated with their particular type of operations. However, Trans-Elect is the first independent transco. No comparable independent firms are currently engaged in such activities. Further, as discussed in the June 12 Order, we are persuaded that the use of a 50/50 target capital structure is necessary for Trans-Elect to obtain financing for its portion of the project. In addition, Trans-Elect acknowledges that its capital structure is atypical and also that it may vary over time. Accordingly, our approval of the use of a 50/50 target capital structure is appropriate.⁵

10. As to the California Commission's concern regarding project entitlements, we note that final allocation of project entitlements will be specified in the forthcoming Participation Agreement among the Path 15 Participants, which will be filed with the Commission. Thus, the California Commission's concern is premature.

⁵We add that we are permitting the use of the 50/50 target capital structure for use in Trans-Elect's rates only for the first 36 months of operation. At the end of that period, Trans-Elect will be required to file with the Commission information reflecting its actual capital structure.

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11. Finally, our findings in the June 12 Order on the record before us merely allowed the project to go forward to the next stage and do not prevent the California Commission or other appropriate state or local authorities from making whatever evaluation of need they are legally authorized to make, and taking whatever action they are legally authorized to take, if they find that the facilities are not needed.

B. SDG&E's Rehearing Request

12. SDG&E does not challenge the rate incentives that the Commission granted to Trans-Elect and PG&E. SDG&E's request for rehearing is limited to the issue of which ratepayers are responsible for the costs of the Path 15 upgrade (i.e., Trans-Elect's revenue requirement). SDG&E requests that the Commission find that "Trans-Elect stands in PG&E's shoes with respect to the identity of ratepayers responsible to pay the costs of the Path 15 upgrade."⁶ SDG&E argues that the costs of the Path 15 upgrade thus should be borne by the ratepayers who would have paid the costs of the upgrade had PG&E been solvent.⁷ SDG&E acknowledges that the Commission chose not to decide this issue in the June 12 Order. Nevertheless, SDG&E argues that this issue should be decided now.

13. SDG&E also states that the Letter Agreement provides that Trans-Elect will recover its revenue requirement from the CAISO, and that PG&E has informed the California Commission that Trans-Elect intends to recover its revenue requirement from all CAISO ratepayers. Accordingly, SDG&E asks the Commission to determine now which CAISO ratepayers will be responsible for Trans-Elect's revenue requirement. SDG&E further requests that, since PG&E is responsible for the Path 15 upgrades under the CAISO Tariff, the costs associated with the upgrades should be subject to the outcome of the Transmission Access Charge (TAC) proceeding.⁸

⁶SDG&E Rehearing Request at 4.

⁷SDG&E states that PG&E is meeting its obligation as a Participating Transmission Owner under the California Independent System Operator (CAISO) Tariff to construct the Path 15 upgrade through Trans-Elect, its surrogate, while PG&E is in bankruptcy.

⁸The TAC is pending in Docket No. ER00-2019-000.

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Commission Finding

14. We will deny SDG&E's request for rehearing. We find that it would be premature to decide those issues at this time because the project has not been built, and no rate case has been filed seeking recovery of specific costs and proposing the allocation of those costs to various customer classes. In any event, our action accepting the Letter Agreement for filing represented only a preliminary step with regard to the Path 15 upgrade. We will address SDG&E's concerns in the CAISO tariff filings that the Path 15 Participants will make.

15. Given our finding on this issue, we need not address NCPA's response, which is moot. They may renew their arguments on this issue when this matter is appropriately before us.⁹

The Commission orders:

The requests for rehearing are hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,
Deputy Secretary.

⁹In any event, NCPA's response is an impermissible answer to a request for rehearing. See 18 C.F.R. § 385.713(d) (2002).