

121 FERC ¶ 61,009
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeem G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Trans-Allegheny Interstate Line Company

Docket Nos. ER07-562-002
ER07-562-003

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued October 2, 2007)

1. In this order, we deny a request for rehearing of the Commission's May 31, 2007 order conditionally accepting and suspending, subject to refund, the transmission cost of service formula rate proposed by Trans-Allegheny Interstate Line Company (TrAILCo) and establishing hearing and settlement judge procedures.¹ We also accept for filing the revised tariff sheets submitted by TrAILCo in compliance with the May 31 Order.

I. Background

2. On February 21, 2007, as amended on March 30, 2007, TrAILCo filed with the Commission, pursuant to section 205 of the Federal Power Act (FPA)² tariff sheets for inclusion within the Open Access Transmission Tariff (OATT) administered by PJM Interconnection, L.L.C. (PJM) to implement a transmission cost of service formula rate for TrAILCo. The proposed tariff sheets proposed a rate for all jurisdictional facilities to be held by TrAILCo and also proposed to implement incentive rate authorization for a previously-qualified facility, the Trans-Allegheny Interstate Line Project (TrAIL

¹ *Trans-Allegheny Interstate Line Company*, 119 FERC ¶ 61,219 (2007) (May 31 Order).

² 16 U.S.C. § 824d (2000).

Project).³ TrAILCo also sought approval for an incentive ROE for a static VAR compensator (SVC) to be installed at the existing Black Oak Substation (Black Oak SVC), in accordance with Order Nos. 679 and 679-A.⁴

3. In the May 31 Order, the Commission accepted TrAILCo's proposed formula rate, subject to conditions, and suspended it for a nominal period, to become effective on June 1, 2007, as requested, subject to refund. In addition, the Commission established hearing and settlement judge procedures. The Commission also granted TrAILCo's request for incentive rate treatment for the Black Oak SVC. On July 2, 2007, TrAILCo filed a request for rehearing of the May 31 Order, requesting that the Commission explicitly limit the formula rate issues set for hearing and settlement judge procedures.

4. The May 31 Order also directed TrAILCo to file a compliance filing within 30 days. The Commission directed TrAILCo to file additional information and to make several changes to the proposed formula rate and corresponding tariff sheets, including: (i) a narrative describing TrAILCo's internal accounting procedures and controls relating to CWIP, pre-commercial costs and independent auditor attestation; (ii) revisions to its proposed tariff sheets to be consistent with Commission policy on Post-Employment Benefits Other Than Pensions (PBOP) expense; (iii) revisions to its proposed tariff sheets to be consistent with Commission policy on extraordinary property losses; (iv) an attestation pursuant to section 35.13 of the Commission's regulations; (v) revisions to incorporate an informational filing with the Commission explaining its annual true-up of

³ The TrAIL Project is a proposed 500 kilovolt (kV) transmission line that is to be constructed from southwestern Pennsylvania to West Virginia to Northern Virginia, within the PJM region. A petition for declaratory order on transmission rate incentives for an early version of the TrAIL Project was granted in *Allegheny Energy, Inc.*, 116 FERC ¶ 61,058 (2006) (July 20, 2006 Order), *order on reh'g*, 118 FERC ¶ 61,042 (2007) (January 19, 2007 Order). In that proceeding, the Commission approved several incentives for a multi-state 500 kV line: (1) a return on equity (ROE) be set at the high end of the zone of reasonableness; (2) the ability to recover construction work in progress (CWIP) prior to the in-service date of the proposed project; (3) the option to expense and recover on a current basis the costs that the companies incur during the pre-construction/pre-operating (pre-commercial) period; and (4) the ability to recover all development and construction costs if the proposed project is abandoned as a result of factors beyond applicant's control.

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

formula rates charged in the immediately preceding year; and (vi) the correction of certain typographical errors. TrAILCo filed its compliance filing on July 2, 2007 (July 2 Compliance Filing).

II. Notice and Responsive Pleadings

5. Notice of TrAILCo's July 2 Compliance Filing was published in the *Federal Register*, 72 Fed. Reg. 39,616 (2007), with interventions and protests due on or before July 23, 2007. None was filed.

III. Discussion

A. Request for Rehearing

1. TrAILCo's Request for Rehearing

6. TrAILCo argues that the Commission erred by not explicitly limiting the issues set for hearing in the May 31 Order. TrAILCo is not seeking reconsideration of the specific issues the Commission set for hearing, but seeks to exclude from the hearing issues that have been previously litigated and decided.⁵ TrAILCo notes that the Commission has previously allowed similar formula rates to be adjusted with minor revisions and/or no hearing.⁶

7. TrAILCo argues that by setting the entire formula rates for hearing without limiting the scope of the hearing, the Commission has nullified the benefit of using the established formula rate. TrAILCo states that allowing parties to raise issues that have been previously litigated and ultimately approved by the Commission increases the risks that TrAILCo might not recover the full costs of the project. TrAILCo argues that this undercuts the Commission's (and Congress') goals for greater transmission investment. TrAILCo also states that it chose to replicate a Commission-accepted formula rate to facilitate the Commission's review and leverage the existing precedent in order to reduce the administrative cost and uncertainty. TrAILCo states that the cost of increased interest rates required by investors in TrAILCo debt to compensate for the regulatory risk is potentially significant. Additionally, TrAILCo states that the broad inquiry into a well-established and Commission-promoted rate mechanism might result in an unnecessarily

⁵ TrAILCo Request for Rehearing at 1, 3 (citing *Baltimore Gas & Elec. Co.*, 115 FERC ¶ 61,066 (2006) (*BG&E*); *UGI Utilities, Inc.*, Docket Nos. ER06-1445-000 and ER06-1445-001 (Dec. 13, 2006) (unpublished letter order) (*UGI*)).

⁶ *Id.* at 3.

long proceeding. TrAILCo further notes that the Commission has encouraged transmission owners to use formula rates.⁷ TrAILCo maintains that “[c]ustomers are adequately protected by the established formula rates that are being adopted almost entirely verbatim by TrAILCo.”⁸ Finally, TrAILCo points out that the intervenors in the May 31 Order did not challenge the efficacy of the proposed formula rate and “do not need the ability to raise additional issues regarding the TrAILCo formula rate except to divert the focus from the key issues set for hearing by the Commission in the May 31 Order.”⁹ TrAILCo requests that the Commission issue an order on rehearing as soon as possible limiting the issues set for settlement and hearing to reduce any potential delay in the financing of the project.

2. Commission Determination

8. We deny TrAILCo’s request for rehearing. TrAILCo has not persuaded us that the protested formula rate can be resolved summarily, and we find that the formula rate is best resolved through the hearing and settlement judge procedures previously established.¹⁰

9. As noted by TrAILCo, the May 31 Order identified several issues that must be addressed in the hearing and settlement judge procedures.¹¹ However, the May 31 Order

⁷ *Id.* at 5 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 386; *Allegheny Power System Operating Cos.*, 106 FERC ¶ 61,003, at P 32 (2004); *BG&E; Southwest Power Pool, Inc.*, 111 FERC ¶ 61,118, at P 32 (2005)).

⁸ *Id.* at 6.

⁹ *Id.*

¹⁰ The Commission has broad discretion to structure its proceedings so as to resolve a controversy in the way it best sees fit. *See, e.g., Ameren Energy Generating Co.*, 108 FERC ¶ 61,081, at P 23 (2004); *accord FPC v. Transcontinental Gas Pipe Line Corp.*, 423 U.S. 326, 333 (1976) (agencies can determine how best to proceed to develop the needed evidence); *Fla. Mun. Power Agency v. FERC*, 315 F.3d 362, 366 (D.C. Cir. 2003) (administrative agencies enjoy broad discretion to manage their own dockets).

¹¹ These include: TrAILCo’s proposed ROE and overall range of reasonableness, including the composition of its proxy group, as applicable to the TrAIL Project and Black Oak SVC; modifications to its formula rates to include pre-commercial costs using Account 566; the appropriateness of TrAILCo’s inclusion of CWIP balance in both the Gross and Net Plant Allocators, their impact on costs that are assigned to the transmission

(continued)

did not expressly limit the scope of the hearing and settlement judge procedures to those issues. TrAILCo did not meet its burden of proof under section 205 to demonstrate that its proposed formula rate was just and reasonable and, therefore, the formula rate could be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful.¹² As a general practice, when setting a rate for hearing, we permit the presiding judge to consider all components of the rate that bear on the determination of the proposed rate's justness and reasonableness.¹³ This is consistent with our treatment of formula rate cases.¹⁴ This is also consistent with directives in the July 20, 2006 Order and January 19, 2007 Order that although TrAILCo should receive an ROE in the upper end of the zone of reasonableness, the Commission, in setting the ROE within the upper end of the zone of reasonableness in a section 205 proceeding, will take into account all risk factors including whether the non-ROE incentives previously granted serve to lower risk.¹⁵

function, and the relationship to plant under construction; the use of Gross Revenue Requirement in developing the Net Plant Carrying Charge; and proposed depreciation rates to be applied to its transmission plant. May 31 Order, 119 FERC ¶ 61,219 at P 40, 50-53, 91.

¹² *Id.* P 37.

¹³ *See, e.g., Connecticut Yankee Atomic Power Co.*, 61 FERC ¶ 61,346, at 62,351 n.11 (1992). When the Commission sets for hearing the justness and reasonableness of rates, it sets for hearing all issues – other than those summarily disposed of by the Commission or which the Commission has explicitly refused to set for hearing – that are relevant to assessment of justness and reasonableness. *See, e.g., Long Island Lighting Co.*, 83 FERC ¶ 61,076, at 61,378 (1998); *Cincinnati Gas & Electric Co.*, 59 FERC ¶ 61,072, at 61,291 (1992).

¹⁴ *See, e.g., American Electric Power Service Corp.*, 120 FERC ¶ 61,205 (2007); *Duquesne Light Co.*, 118 FERC ¶ 61,087 (2007); *San Diego Gas & Electric Co.*, 118 FERC ¶ 61,073 (2007); *Idaho Power Co.*, 115 FERC ¶ 61,281 (2006), *order on compliance*, 118 FERC ¶ 61,156 (2007); *Michigan Electric Transmission Co., LLC*, 113 FERC ¶ 61,343 (2005), *order on reh'g*, 116 FERC ¶ 61,164 (2006); *Cambridge Electric Light Co.*, 111 FERC ¶ 61,246 (2005), *order approving uncontested settlement*, 118 FERC ¶ 61,166 (2007); *American Transmission Co., LLC*, 105 FERC ¶ 61,388 (2003), *order providing clarification and approving uncontested settlement*, 107 FERC ¶ 61,117 (2004); *Northeast Utilities Service Co.*, 105 FERC ¶ 61,089 (2003), *order on reh'g and aff'g initial decision*, 111 FERC ¶ 61,333 (2005).

¹⁵ January 19, 2007 Order, 118 FERC ¶ 61,042 at P 40.

10. TrAILCo's argument that its proposed formula rate has been fully litigated by the Commission in other cases is incorrect. The proposed formula rate has not been litigated before this Commission in any prior proceeding, by TrAILCo or any other utility. Other utilities' adoption of similar formula rates were the product of settlement agreements and therefore, not litigated. As specifically stated in the order approving the settlement in the *BG&E* proceeding, the Commission's approval of that settlement "does not constitute approval of, or precedent regarding, any principle or issue in this proceeding."¹⁶ Further, TrAILCo's reliance on an unpublished delegated letter order in *UGI* is in error. The fact that the Director of Rates may have, without explanation, accepted a similar (though not identical) formula rate proposal does not constitute precedent, nor does it mean that similar action is appropriate in all other cases.¹⁷

11. Finally, as to TrAILCo's suggestion that a hearing increases the risk that it might not recover the full costs of the projects, we disagree. TrAILCo's formula rates have been approved, subject to refund, with the requested effective date and nominal suspension. It therefore has been permitted to collect the filed rate pending Commission determination of the just and reasonable cost of providing service over the new facilities.

12. Accordingly, the Commission denies the request for rehearing of the May 31 Order.

B. July 2 Compliance Filing

1. May 31 Order

13. The May 31 Order directed TrAILCo to provide a narrative describing the preventative internal accounting procedures and controls that TrAILCo will implement to ensure that no improper capitalization occurs in a later section 205 filing.¹⁸ The May 31 Order also required that TrAILCo indicate whether there will be an ongoing verification by an independent auditor attesting to the proposed accounting treatment as part of annual FERC Form No. 1 audits. Moreover, the May 31 Order required that, for the duration of its pre-commercial cost recovery, TrAILCo include an updated

¹⁶ *BG&E*, 115 FERC ¶ 61,066 at P 2.

¹⁷ Actions taken by Commission staff pursuant to delegated authority "do not constitute precedent binding the Commission in future cases." *See, e.g., Midwest Generation, LLC*, 95 FERC ¶ 61,231, at 61,799 (2001).

¹⁸ May 31 Order, 119 FERC ¶ 61,219 at P 48.

comprehensive list of its pre-commercial costs as part of its required annual filing to ensure that these costs are in fact legitimate pre-commercial costs.¹⁹ The May 31 Order further required TrAILCo to expense and amortize all pre-commercial costs related to the TrAIL Project in Account 566, Miscellaneous Transmission Expense.²⁰

14. The May 31 Order also rejected TrAILCo's request to recover, in the formula rate, certain changes in PBOP costs²¹ without making a filing under section 205 or 206 of the FPA. Accordingly, the May 31 Order directed TrAILCo to file revised tariff sheets removing such provisions to be consistent with the Commission's policy on PBOPs.²² In addition, the May 31 Order directed TrAILCo to conform to Commission policy its proposal for the collection of costs for extraordinary property losses without a section 205 filing with the Commission.²³

15. Further, the May 31 Order denied TrAILCo's request for waiver regarding the attestation required pursuant to section 35.13 of the Commission's regulations (18 C.F.R. § 35.13(d)(6)(2007)), regarding Period II information.²⁴

16. Moreover, the May 31 Order directed TrAILCo to make an informational filing regarding the annual updates to the formula rate. Specifically, the informational filing was to:

include the information TrAILCo is required to post on its web site regarding updates to its formula rate. TrAILCo must also provide a detailed accounting of transfers between CWIP and Plant in Service, by work order identifier and date in service and reconcile any changes. TrAILCo must also

¹⁹ *Id.* P 49.

²⁰ *Id.* P 50.

²¹ Revisions were required as to PBOP costs that did not exceed a 2.5 percent impact on the formula output Net Zonal Revenue Requirement.

²² May 31 Order, 119 FERC ¶ 61,219 at P 54. *See also Post-Employment Benefits Other Than Pensions*, 61 FERC ¶ 61,330 (1992), *order on reh'g and clarification*, 65 FERC ¶ 61,035 (1993).

²³ May 31 Order, 119 FERC ¶ 61,219 at P 55.

²⁴ *Id.* P 57.

provide a detailed accounting of all costs based upon “company records,” with references to the source FERC Accounts. True-ups of estimated costs and actual costs also should be itemized.[²⁵]

Finally, the May 31 Order directed TrAILCo to correct several typographical errors.²⁶

2. Compliance Filing

17. In its July 2 compliance filing, TrAILCo explains that it has implemented internal accounting controls to ensure that the TrAIL Project costs are properly classified in its accounting records and are accounted for within one category through use of the PowerPlant asset accounting system. Specifically, TrAILCo will code as type “TrAIL” those work orders associated with the construction of transmission facilities for which CWIP treatment has been granted by this Commission. The PowerPlant system will then recognize this “TrAIL” code and will not calculate or capitalize Allowance for Funds Used During Construction (AFUDC) on the TrAIL Project as a component of the costs to be recorded in Account 107, Construction Work in Progress—Electric. TrAILCo states that this process will ensure that the CWIP included in the formula rate filing will not include AFUDC. Similarly, TrAILCo argues that the process ensures that, once placed in service, the TrAIL Project will not include AFUDC when the facilities are classified to Account 101, Electric Plant in Service, and unitized. TrAILCo also states that, as required in the May 31 Order, it will ensure that all expensed pre-commercial costs will be charged to Account 566 and TrAILCo will reclassify any amounts previously expensed in other accounts. Further, TrAILCo states that, to the extent an independent auditor determines it necessary, there will be an ongoing verification by the independent auditor attesting to the proposed accounting treatment as part of the annual FERC No. 1 audits.

18. In addition, TrAILCo revised its tariff sheets to provide a stated rate for PBOPs and to provide for informational filings of its formula rate annual true-up. TrAILCo has also revised its tariff sheets to correct the typographical errors noted in the May 31 Order. Further, TrAILCo provided the attestation required by section 35.13(d)(6) of the Commission’s regulations, and clarified that it does not seek authority to collect or modify extraordinary property losses without a section 205 filing.

²⁵ *Id.* P 59.

²⁶ *Id.* P 58.

3. Commission Determination

19. We find that TrAILCo's July 2 Compliance Filing is consistent with the directives of the May 31 Order and, therefore, accept the revised tariff sheets as filed.

The Commission orders:

(A) TrAILCo's request for rehearing is hereby denied, as discussed in the body of this order.

(B) TrAILCo's July 2 Compliance Filing is hereby accepted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.