

119 FERC ¶ 61,093  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Trans-Elect NTD Path 15, LLC

Docket No. ER05-17-007

ORDER DENYING REHEARING

(Issued April 26, 2007)

1. In the Order on Initial Decision,<sup>1</sup> the Commission affirmed in part, and modified in part, the Initial Decision issued in this proceeding,<sup>2</sup> concerning the appropriate base Transmission Revenue Requirement (TRR) for Trans-Elect NTD Path 15, LLC (NTD), a new Participating Transmission Owner in the California Independent System Operator Corporation (CAISO or ISO). Atlantic Path 15, LLC (Path 15), the successor to NTD, seeks rehearing of the Order on Initial Decision on one issue, the computation of Allowance for Funds Used During Construction (AFUDC). In this order, we deny Path 15's request for rehearing.

**Background**

2. Under the approved base TRR, NTD is reimbursed for its TRR by the CAISO through the CAISO's collection of a Transmission Access Charge (TAC) from all users of the ISO grid. The TAC is a formula rate based on the TRRs of all Participating Transmission Owners.<sup>3</sup>

3. On December 2, 2004, the Commission accepted, suspended, and set for hearing the filed TRR and TO Tariff.<sup>4</sup> Following a hearing on the TRR and TO Tariff, the presiding Administrative Law Judge (ALJ) issued an Initial Decision.

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<sup>1</sup> *Trans-Elect NTD Path 15, LLC*, 117 FERC ¶ 61,214 (2006).

<sup>2</sup> *Trans-Elect Path 15 NTD Path 15, LLC*, 113 FERC ¶ 63,039 (2005) (Initial Decision).

<sup>3</sup> See *California Independent System Operator Corporation*, Opinion No. 478, 109 FERC ¶ 61,301 (2004).

<sup>4</sup> *Trans-Elect NTD Path 15, LLC*, 109 FERC ¶ 61,249 (2004).

4. In the Initial Decision, the ALJ: (1) excluded from NTD's rate base the prepaid debt and liquidity reserves; (2) excluded from NTD's rate base much of NTD's proposed working capital costs; (3) accepted NTD's methodology and amount for AFUDC; and (4) declined to consider the whether the NTD's proposed TRR could allow NTD to over recover costs associated with Western Area Power Administration's 10 percent entitlement in the Path 15 upgrade.

5. In the Order on Initial Decision, the Commission reversed the Initial Decision with regard to prepaid debt and liquidity reserves and with regard to the proposed AFUDC amount. The Commission also affirmed the Initial Decision with regard to the proposed working capital costs, and with regard to the issue of the potential over-recovery of costs by NTD.

6. On the issue of the appropriate amount of AFUDC to be used in the calculation of NTD's initial plant balances, the Commission reversed the presiding ALJ and required the use of semi-annual compounding to be used in the calculation of the AFUDC amount. In this regard, the Commission found that Trial Staff's proposed method of computing AFUDC on a semi-annual basis was appropriate. Specifically, the Commission found that Trial Staff's calculation, which adopted both NTD's plant balances and AFUDC rates, and applied a conversion formula to ensure that the company's AFUDC never exceeded the amount that would be derived from compounding on a semi-annual basis, to be just and reasonable. The result of using Trial Staff's conversion formula, utilizing a Reduced Rate Method (RRM) methodology, to ensure semi-annual compounding, reduced the Company's claimed AFUDC amount from \$22,358,736 to \$21,517,560.

7. Path 15 filed a timely request for rehearing of the Order on Initial Decision.

### **Request for Rehearing**

8. Path 15 argues that the Commission erred in finding that Path 15 has not shown that its method of calculating AFUDC is just and reasonable, and in finding that Trial Staff's alternative is just and reasonable.

9. Path 15 next argues that it compounded AFUDC monthly because the AFUDC rate consisted of financial obligations with costs that accrued monthly. Path 15 states that its financing was more akin to project financing rather than the traditional financing upon which Order No. 561 is based, and therefore necessitated the use of monthly rather than semi-annual compounding. Accordingly, Path 15 concludes that monthly compounding ensured the recovery of Path 15's cost obligations. Path 15 also notes that Order No. 561 rejected monthly compounding only because cash outlays for interest and dividends are not normally made on a monthly basis and, thus, Order No. 561's rationale for semi-annual compounding and its rationale against monthly compounding do not apply to Path 15.

10. Path 15 argues that it is a startup, project-financed enterprise with monthly financing needs. Path 15 also states that it experienced a significant change in financing costs as a result of the replacement of development financing with much lower permanent construction financing. As a result, Path 15 claims that its departure from semi-annual compounding requirements was warranted so that ratepayers would receive the benefit of Path 15's mid-year reduction in AFUDC rates. Specifically, Path 15 argues that under a strict application of Order No. 561, it should have continued the use of its initial AFUDC rate of 49.28 percent for the full calendar year 2003 rather than implementing a reduction in that rate in September 2003 to reflect the conversion to permanent construction loan financing.

11. Path 15 also argues that the Commission's required use of semi-annual compounding through the adoption of trial staff's RRM methodology does not itself adhere to Order No. 561 but rather creates a mismatch between the Commission's Order No. 561 methodology and the unique circumstances associated with Path 15's financing. That is, Path 15 believes that if the Commission requires strict adherence to semi-annual compounding, it should also require the use of a single interest rate throughout the year as required by Order No. 561.

12. Finally, Path 15 also argues that the Commission's conclusion with respect to semi-annual compounding ignores established Commission precedent that recognizes the flexibility the Commission has in departing from traditional rate concepts when authorizing projects that address critical infrastructure needs – precedent that will be needed in the future if the market is to finance other needed critical infrastructure such as Path 15.

### **Discussion**

13. We reject Path 15's argument that the Commission erred in finding that Path 15 had not shown that its AFUDC methodology is just and reasonable, and in finding that Trial Staff's alternative methodology is just and reasonable. In the Order on Initial Decision, we explicitly explained why Path 15's proposed AFUDC was unjust and unreasonable and why Trial Staff's proposed method of computing AFUDC on a semi-annual basis was appropriate.<sup>5</sup> Additionally, by adopting Trial Staff's recommendation that semi-annual compounding was reasonable, the Commission simply applied the policy requirement embodied in a long-standing order, Order No. 561, on the proper calculation of AFUDC.

14. Regarding Path 15's argument that NTD compounded AFUDC monthly because NTD's financing arrangements established monthly obligations on all of its financing and that the AFUDC rate consisted of financing obligations whose costs accrued monthly, we

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<sup>5</sup> Order on Initial Decision, 117 FERC ¶ 61,214 at P 57-61.

note that Order No. 561 found that monthly compounding may result in excess amounts capitalized since *cash outlays* for interest and dividends are not normally made on a monthly basis. Thus, to support its position that monthly compounding of AFUDC is appropriate, Path 15 is required to demonstrate that monthly cash outlays related to AFUDC financing occurred. However, the record evidence cited by Path 15, Statement AO and Exhibit NTD-1,<sup>6</sup> fails to demonstrate this. Specifically, Path 15's referenced Statement AO simply shows the AFUDC rates for three distinct time periods: (1) January 1 through September 12, 2003; (2) September 12 through December 31, 2003; and (3) Calendar year 2004. The comments shown therein do not reference any debt instrument that required monthly compensation, and do not provide any source of information related to such a requirement. In addition, Exhibit NTD-1 also does not provide any specific cites nor evidence to support this proposition.<sup>7</sup> While the record evidence indicates that during the initial period, January through September 12, 2003, NTD had 100 percent debt financing, which led to a computed AFUDC rate of 49.28 percent, NTD has not demonstrated that this short-term debt had monthly cash outlays. Path 15 also argues that it is precisely the refinancing of this short-term debt obligation that is the basis upon which it is entitled to monthly AFUDC compounding. Therefore, Path 15 itself does not appear to be relying on any initial monthly cash outlays related to this short-term debt obligation as the basis for permitting monthly compounding of AFUDC. Accordingly, we conclude that Path 15 did not provide sufficient record evidence that demonstrates there were financing obligations that it incurred on a monthly basis that were cash outlays for dividends and interest as grounds to permit monthly compounding of AFUDC.

15. Having dismissed Path 15's initial arguments regarding justification for permitting the monthly compounding of AFUDC, we are left with Path 15's rather stark proposition: it is entitled to monthly compounding of AFUDC because it was proactive in refinancing its initial construction debt, which it characterizes as a developmental loan, in mid-year calendar year 2003. It claims this was extremely beneficial to ratepayers because Order No. 561 requires the use of a single rate for the entire year. Path 15 argues that, pursuant to Order No. 561, it could have continued on for another three and one-half months at its initial 49.28 percent AFUDC rate, and under this regime, the ratepayers would have incurred roughly \$12 million in additional AFUDC costs. We reject this justification for permitting monthly compounding of AFUDC. Any entity utilizing a 49.28 percent AFUDC rate should seek alternative financing as soon as possible. To do otherwise would raise serious concerns regarding the prudence of such financing arrangements. Additionally, as Trial Staff noted in its Brief on Exceptions, the Commission's regulations, Electric Plant Instruction No. 3(17), AFUDC,<sup>8</sup> provides that short-term debt

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<sup>6</sup> See Statement AO; Exhibit NTD-1 at 31-32.

<sup>7</sup> See Exhibit NTD-1 at 31-32.

<sup>8</sup> 18 C.F.R. pt. 101 (2006).

balances and related cost shall be estimated for the current year with appropriate adjustments as actual data becomes available. Thus, we are not persuaded that such mid-year refinancing entitles Path 15 to the reward it seeks, i.e., the monthly compounding of AFUDC. Rather, there must be a definitive cost basis for the Commission to consider such a deviation from the required semi-annual compounding as set forth in Order No. 561. As Order No. 561-A notes, the interest on long-term debt is normally paid semi-annually. Path 15 has not demonstrated that its refinanced long-term debt differs from this requirement.

16. We disagree with Path 15's argument that the Commission should, as part of a package of incentives to promote the construction of needed infrastructure such as the instant Path 15 upgrade, allow for the monthly compounding of AFUDC. We note that NTD's initial application in this proceeding included requested incentives on the return on common equity, the use of a 50/50 target capital structure, and a three-year rate moratorium. The Commission found those proposed incentives reasonable. However, NTD did not request monthly compounding of AFUDC. Therefore, it bore the burden of proof as to why this additional incentive is appropriate, and it did not do so. Furthermore, as we have discussed, the record evidence does not support the need for such monthly compounding of AFUDC.

17. Finally, with respect to Path 15's concerns regarding the Commission's finding that Trial Staff's use of the Reduced Rate Method methodology is an appropriate measure of computing the appropriate level of AFUDC, we note that Path 15 has not pointed to any specific flaw in this methodology, but simply noted the presiding judge's concern that the method was overly-complicated and unnecessary. Therefore, we will not alter our finding on this specific matter.

The Commission orders:

Path 15's request for rehearing regarding the use of monthly compounding of AFUDC is hereby denied.

By the Commission.

( S E A L )

Kimberly D. Bose  
Secretary