

115 FERC ¶61,179
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Trans-Elect Path 15, LLC

Docket No. ER05-17-000

California Independent System
Operator Corporation

Docket No. ER04-1198-000

ORDER ADDRESSING MOTION TO CONSOLIDATE
AND MOTION FOR SUMMARY DISPOSITION

(Issued May 16, 2006)

1. On September 30, 2005, Southern California Edison Company (SoCal Edison), San Diego Gas and Electric Company, the California Public Utilities Commission (CPUC), and Pacific Gas & Electric Company (PG&E) (collectively, Joint Parties) filed a Joint Motion to Consolidate the on-going proceedings concerning Trans-Elect NTD Path 15, LLC's (Trans-Elect) transmission revenue requirement (TRR) (Docket No. ER05-17-000) with the California Independent System Operator Corporation's (CAISO) tariff amendment No. 63 (Docket No. ER04-1198-000). We find that the Joint Parties have not shown good cause to consolidate these proceedings. Therefore, the joint motion to consolidate is denied. In this order, we also grant Trans-Elect's motion for summary disposition of one of the pending issues, as discussed in detail below.

Background

2. In May 2001, the Secretary of Energy authorized Western Area Power Administration (Western) to explore ways to relieve California's Path 15 capacity constraints and increase reliability through transmission expansion in the Path 15 corridor. Through a competitive selection process, Western chose Trans-Elect to build an 83-mile 500 kV transmission line within the existing Path 15 transmission corridor and for PG&E to make related modifications to its Los Banos and Gates substations (Path 15 Upgrade). Construction of the Path 15 Upgrade was completed in late 2004 and the line was put into commercial operation on December 21, 2004.

3. In April 2002, Western submitted for filing, on behalf of itself, Trans-Elect and PG&E (Path 15 Participants) a Letter Agreement.¹ The Path 15 Upgrade Participants stated that this Letter Agreement was an essential ingredient in the Path 15 Upgrade project and it identified the parties' obligations and expected rate methodologies. The Letter Agreement also set out the allocation of capacity entitlements and the associated Transmission System Rights (TSRs) in the project. Initially, Trans-Elect was to receive 72 percent of the TSRs, PG&E was to receive 18 percent and Western was to receive 10 percent.² The Letter Agreement also stated that: "In no event will Western's share [of TSRs] be less than 10 percent."³

4. In June 2002, the Commission issued an order which accepted the Letter Agreement,⁴ noted that the CPUC raised the issue of the appropriate allocation of TSRs among the Path 15 Participants given the proposal by the parties which allocated, based on investment, a disproportionate share of TSRs to Western, and found that resolution of this issue was premature since the Path 15 Participants had committed to future filings with the Commission.

5. On September 7, 2004, the CAISO filed, in Docket No. ER04-1198-000, Amendment No. 63, which modified the CAISO's tariff to accommodate the transfer by Western of the operational control over Western's interest in the Path 15 Upgrade project to the CAISO.⁵ The CAISO also modified the tariff to provide clarifications concerning cost recovery. The CAISO noted that Western is not a public utility under the Federal Power Act, nor is it currently a participating Transmission Owner (TO) or partial TO. The CAISO stated that instead, at present, Western may be characterized as a Project Sponsor. The CAISO stated that Western had chosen to forego the filing of a TO Tariff and accompanying TRR but instead Western had chosen to receive the congestion revenues, wheeling through revenues, and FTR auction revenues associated with its 10 percent interest in the project consistent with the CAISO's current tariff provisions.

¹ *Western Area Power Administration*, 99 FERC ¶ 61,306, *reh'g denied*, 100 FERC ¶ 61,331 (2002) (June 12 Order).

² The Letter Agreement also provided that final allocation amounts would be determined based on the ratio of the contribution made by a participant to the Path 15 project either in terms of funding or actual work performed.

³ See Transmittal Letter at 11-12 (Docket No. ER02-1672-000).

⁴ See *Western Area Power Administration*, 99 FERC ¶ 61,306 (2002).

⁵ The CAISO Tariff was modified to reflect Western turning over its entitlement in Path 15 only and not any other transmission facility or entitlement.

6. On November 5, 2004, the Commission issued an order addressing Amendment No. 63.⁶ The Commission permitted Western to recover its investment as a Project Sponsor rather than a participating TO with a TRR and an accompanying Transmission Revenue Balancing Account (TRBA). The Commission also found that Western was entitled to recover the amount of its project investment (approximately \$1.3 million) plus interest on the investment amount, which would compensate Western for the time value of money. However, the Commission expressed certain concerns regarding the CAISO's proposed amendment regarding Western's compensation and, therefore, this aspect of Amendment No. 63 was conditionally accepted for filing, subject to further Commission action, suspended for a nominal period, and made effective November 1, 2004, subject to refund. The Commission also afforded the parties the Commission's Dispute Resolution Service (DRS) to resolve the issue of the appropriate level of Western's compensation.

7. On December 2, 2004, in Docket No. ER05-17-000, the Commission issued an order accepting Trans-Elect's proposed TRR and TRBA, and accompanying TO Tariff, suspended them for a nominal period to be effective upon commercial operation and established hearing and settlement judge procedures.⁷ Trans-Elect's proposed TRR recovers all costs associated with the construction of the Path 15 Upgrade project, except the \$1.3 million in study costs incurred by Western. Trans-Elect also includes a TRBA provision, under which it will reduce its TRR by the amount of congestion revenues, wheeling through revenues and FTR auction revenues associated with Trans-Elect's 72 percent entitlement of TSRs.

Joint Motion to Consolidate

8. The Joint Parties state that consolidation of the proceedings in Docket No. ER05-17-000 and ER04-1198-000 is appropriate since there is a direct correlation between Trans-Elect's TRR and Western's 10 percent TSR entitlement. The Joint Parties rely on changed circumstances to support their motion for consolidation, specifically the failure of the parties to come to settlement in the Docket No. ER04-1198-000 proceeding and statements made by the presiding judge in the Docket No. ER05-17-000 proceeding.⁸

⁶ See *California Independent System Operator Corporation*, 109 FERC ¶ 61,153 (2004).

⁷ *Trans-Elect NTD Path 15, LLC*, 109 FERC ¶ 61,249 (2004) (December 4 Order).

⁸ Joint Parties rely, in part, on a statement made by the presiding judge: "[f]or the life of me, I don't understand why the cases weren't consolidated." See Joint Motion at 3 citing Docket No. ER05-17-000 at 3 (citing Docket No. ER05-17-000 hearing transcript at 185:20-21).

The Joint Parties state that the presiding judge repeatedly suggested that the Joint Parties promptly renew their request for consolidation, which was initially rejected by the Commission in the December 4 Order, which set Docket No. ER05-17-000 for hearing.

9. The Joint Parties argue that consolidation is warranted because the two proceedings are intertwined in that Trans-Elect is seeking to recover costs that Trans-Elect incurred associated with the 10 percent share of the Path 15 Upgrade that is held by Western. Specifically, some of the Joint Parties previously argued in their initial protests in Docket No. ER05-17-000 and Docket No. ER04-1198-000 that Western's intent to turn over to the CAISO its 10 percent share of the Path 15 Upgrade project under the current CAISO tariff provisions regarding a Project Sponsor is unreasonable. Under that tariff provision, a Project Sponsor whose investment adds capacity to the CAISO grid is entitled to receive congestion revenues, wheeling through revenues and FTR auction revenues but would have no TRR that it would recover in the CAISO's Transmission Access Charge (TAC). These parties therefore maintain that Western and Trans-Elect want the capital and O&M costs associated with Western's 10 percent entitlement to be borne by Trans-Elect and reflected in Trans-Elect's TRR and be recovered in the CAISO's TAC charge while Western would receive the congestion, wheeling through, and FTR auction revenues associated with the 10 percent share of TSRs. Some of the Joint Parties stated that the Commission must ensure that the combination of any TSRs or TRR recovery that Western receives through the CAISO, whether in its TRR as a participating TO or under the Project Sponsor methodology as an "investor" in the Path 15 Upgrade project, when combined with Trans-Elect's TRR does not result in an overpayment by the CAISO ratepayers for the Path 15 Upgrade. Similarly, some of the Joint Parties have argued that it would be unreasonable for Western to keep congestion revenues and FTR auction proceeds from the Path 15 Upgrade project when other participating TOs are required to submit a TRBA which credits the participating TO's TRR with, or reduces by, congestion, wheeling, and FTR auction revenues. Finally, PG&E has argued that, during negotiations among the Path 15 Participants, Western made a commitment to the other parties that, in no circumstances would it seek to profit from its participation in the project.

Trans-Elect's Answer and Motion for Summary Judgment

10. On October 7, 2005, Trans-Elect filed an answer to the Joint Parties motion to consolidate and a motion for summary judgment. In its answer, Trans-Elect states that issues concerning Trans-Elect's rates and revenue requirements are entirely independent from Western's rates and revenue requirements. Trans-Elect states that the Joint Parties waited five months after settlement negotiations failed in the Docket No. ER04-1198-000 proceeding before filing its motion to consolidate. Trans-Elect states that consolidation at this late stage of the Docket No. ER05-17-000 proceeding will not further administrative efficiency and will delay resolution in the Docket No. ER05-17-000 proceeding.

11. Contemporaneously in the same pleading, Trans-Elect filed a motion for an affirmative finding that the Joint Parties are collaterally estopped from challenging final Commission orders issued in Docket Nos. ER02-1672, ER04-1198 and ER05-17. Trans-Elect states that the requested finding is necessary and appropriate in order to truncate any further debate regarding Trans-Elect's exposure to possible reductions to its TRR based on Trans-Elect's ultimate TSR entitlement and/or cost recovery proposals advanced by Western. Alternatively, Trans-Elect moves for summary disposition pursuant to Rule 217 of the Commission's procedural rules. Trans-Elect states in support of its motion that the Joint Parties seek to reduce Trans-Elect's TRR based on the ultimate disposition of cost recovery proposals advanced by Western and pending in Docket No. ER04-1198-000. Specifically, Trans-Elect requests that the Commission explicitly confirm that its proposed TRR will be evaluated in Docket No. ER05-17-000 under conventional prudence standards and presumptions and will be unaffected by Western's cost recovery and/or rate treatment proposals in Docket No. ER04-1198-000.

Discussion

12. The Commission typically consolidates proceedings only for purposes of hearing and decision.⁹ The hearing in Docket No. ER05-17-000 has already completed.¹⁰ As for Docket No. ER04-1198, concurrently with this order, we are summarily deciding, without an evidentiary hearing, the issue of Western's ability to retain congestion and FTR auction revenues. Thus, there is no reason to consolidate these dockets. Moreover, while these two proceedings involve the same parties, they raise separate and distinct issues of fact and law. For these reasons, we deny the motion for consolidation.

13. In addition, we respond to Trans-Elect's motion for summary disposition included in its answer to the Joint Parties' motion for consolidation. As requested by Trans-Elect, we explicitly confirm that Trans-Elect's proposed TRR will be evaluated under conventional prudence standards and presumptions and thus will be unaffected by Western's cost recovery and/or rate treatment proposal in Docket No. EL04-133-001. The Joint Parties are concerned that the combination of Western's 10 percent entitlement in TSRs and Trans-Elect's TRR may result in an overpayment by the CAISO ratepayers for the Path 15 Upgrade. We agree that a resulting rate for the Path 15 Upgrade will be higher than if the Path 15 Upgrade was owned by a single participating TO. However, we disagree that a higher rate in this case is an unjust and unreasonable result. As we state in a contemporaneously issued order in Docket No. EL04-133-001, in accordance with court precedent, the Commission has the discretion to evaluate rate proposals to include non-rate factors and is not required to include the cost of such incentives in other

⁹ *New York Independent System Operator, Inc.*, 105 FERC ¶ 61,108, at P 14 (2003) (citing *Arizona Public Service Company*, 90 FERC ¶ 61,197, at 61,639 (2000)).

¹⁰ *Trans-Elect NTD Path 15, LLC*, 113 FERC ¶ 63,039 (2005).

rate proceedings so as to keep the total overall rate impact *on par* with a cost-based revenue requirement that did not include such incentives.¹¹ Furthermore, to require overall rate parity in Western's and Trans-Elect's proceedings would penalize Trans-Elect and undo the bargain that served as the catalyst to get the critically needed infrastructure constructed. As the result of the construction of the Path 15 Upgrade, California consumers have avoided millions, if not hundreds of millions, of dollars, in congestion charges.¹² Requiring rate parity in these proceedings would also be contrary to the Commission's objective of expanding transmission infrastructure. If Trans-Elect, a consortium of privately owned companies, has its TRR reduced by the amount of incentives that the Commission has allowed Western, it could have a chilling effect on future investments in transmission infrastructure in California. For these reasons, we find that Trans-Elect's TRR will not be affected by Western's cost recovery. Accordingly, we grant Trans-Elect's motion for summary disposition of this aspect of the instant proceeding.

The Commission orders:

(A) The Joint Parties' motion for consolidation is hereby denied, as discussed in the body of this order.

(B) Trans-Elect's motion for summary disposition is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

¹¹ *Public Utilities Commission of the State of California v. FERC*, 367 F.3d 925 (D.C. Cir. 2004).

¹² *See, e.g., Public Utilities Commission of the State of California v. FERC*, 367 F.3d 925, 928 (D.C. Cir. 2004).