141 FERC ¶ 61,238
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

Valley Electric Association, Inc. Docket No. ER13-49-000

ORDER ACCEPTING PROPOSED TRANSMISSION OWNER TARIFF AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued December 20, 2012)

1. On October 9, 2012, Valley Electric Association, Inc. (Valley Electric) submitted for filing with the Commission a Transmission Owner Tariff (TO Tariff), which includes a proposed Transmission Revenue Requirement (TRR) related to Valley Electric's transmission facilities. Valley Electric requests that the Commission issue a declaratory order approving its TRR, which comprises a High Voltage Transmission Revenue Requirement (HVTRR), a Low Voltage Transmission Revenue Requirement (LVTRR), and a Transmission Revenue Balancing Account Adjustment (TRBAA). Valley Electric also requests that the Commission waive any filing fee associated with this filing. Valley Electric requests an effective date of January 3, 2013, and it consents to return any payments it receives from the California Independent System Operator Corporation (CAISO) in excess of those ultimately approved by the Commission.[1] As discussed below, we accept Valley Electric's TO Tariff for filing, including the proposed TRR, effective January 3, 2013, and set the matter for hearing and settlement judge procedures.

I. Background

2. Valley Electric is a member-owned electric cooperative based in Pahrump, Nevada with a service territory in southern Nevada and a small portion of California. Valley Electric states that it currently owns and operates approximately 267 miles of 138 kV and 230 kV transmission facilities, and that Valley Electric's service territory contains approximately 120 MW of load, which it currently serves through imports to its system.[2] Valley Electric states that it has a small entitlement to purchase hydro power, but it owns no generation.

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[1] Valley Electric October 9, 2012 Petition (Valley Electric Petition) at 26, n.44.

[2] *Id.* at 2.

3. Valley Electric states that it is in the process of constructing transmission infrastructure needed for reliability in its service area. Valley Electric explains that these transmission improvements will expand access to CAISO for renewable solar and geothermal generating projects that currently propose to locate in Valley Electric's service area. Valley Electric notes that some project developers have requested delivery to the CAISO grid, and this led Valley Electric to pursue joining CAISO as a Participating Transmission Owner (Participating TO). Valley Electric indicates that CAISO's operational control of Valley Electric's transmission facilities will provide CAISO market participants with greater access to the Nevada Power Company and Western Area Power Administration–Desert Southwest Region.

4. The Commission previously accepted a Transition Agreement between Valley Electric and CAISO that established the process for Valley Electric to join CAISO as a Participating TO.[3] According to Valley Electric, it has now completed its Participating TO application and executed the Transmission Control Agreement, which provides that all of the 138 kV and 230 kV transmission facilities owned by Valley Electric will be placed under CAISO operational control, effective on the transition date, which is expected to be January 3, 2013.

II. Valley Electric's Filing

5. Valley Electric states that the CAISO tariff requires each Participating TO to develop a TRR, TRBAA,[4] and a resulting HVTRR and LVTRR, as applicable.[5] CAISO utilizes the TRR's of all Participating TOs to establish a Transmission Access Charge (TAC), applicable to all users of the CAISO grid.

6. In this filing, Valley Electric has submitted a TO Tariff containing a TRR, and requests that the Commission: (1) issue a declaratory order approving Valley Electric's TRR, including the HVTRR, the LVTRR and the TRBAA; and (2) allow Valley Electric's TO Tariff to become effective January 3, 2013, without suspension, condition, or modification.[6] If the Commission finds that Valley Electric's proposed TRR is

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[3] *Cal. Indep. Sys. Operator Corp.*, 137 FERC ¶ 61,194 (2011).

[4] The TRBAA is a tracking mechanism used to ensure that all revenues forecasted to be received by a Participating TO in a given year from wheeling service, usage charges, and the sale of financial transmission rights benefit CAISO transmission customers without delay, subject to an annual true-up.

[5] Valley Electric Petition at 4, n.10 (citing CAISO Tariff § 26.1).

[6] *Id.* at 1.

excessive, Valley Electric commits to refund payments received for its TRR in excess of the TRR ultimately approved by the Commission.

7. Valley Electric states that its proposed TRR is $15,246,826, which consists of a HVTRR of $11,607,359 and a LVTRR of $3,739,467.[7] Valley Electric explains that its base HVTRR represents the combined cost of its existing transmission system and the transmission upgrades expected to be placed in service by the beginning of the 2013 test period.[8] Valley Electric has calculated its TRR using a projected 2013 test year and has utilized a hypothetical 50 percent equity and 50 percent debt (50/50) capital structure, resulting in an overall rate of return of 8.05 percent, including a return on common equity of 10.71 percent, discussed below.[9] The gross load associated with Valley Electric's proposed TRR is 544,970 MWh, which Valley Electric determined through a forecasting process based upon variables such as weather observations, economic conditions, and seasonal load patterns to predict future energy consumption.[10]

8. According to Valley Electric, all of its transmission facilities are owned by Valley Electric Transmission Association, LLC (VETA), which is a wholly-owned subsidiary of Valley Electric. Valley Electric and VETA have entered into a use and entitlement agreement that gives Valley Electric exclusive right and entitlement to use, operate, and maintain all of VETA's transmission facilities, and in return, Valley Electric must pay all transmission-related costs incurred by VETA. This means that Valley Electric's TRR includes the total cost of ownership of VETA's assets, plus the administrative and general (A&G), operation and maintenance (O&M), regulatory, and other costs that Valley Electric will incur to use, operate, and maintain VETA's transmission facilities in order to perform its obligations as a CAISO Participating TO.

9. Valley Electric asserts that it has a contractual entitlement to transmission capacity pursuant to an agreement with Western Area Power Administration-Desert Southwest Region (Western-DSR). This agreement provides Valley Electric with rights to deliver or receive power from any party connected to the Mead Substation up to the rating of Valley Electric's interconnection facilities. This entitlement will allow Valley Electric to

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[7] *Id.* at 2.

[8] *Id.* at 5.

[9] *Id.* at 10, 13.

[10] *Id.* at 16.

place its facilities under CAISO's operational control, effective on the transition date, and its cost is included in the TRR.[11]

10. Regarding its HVTRR, Valley Electric estimates that its O&M, A&G, and regulatory expenses allocated to high voltage transmission facilities will be $2,086,180, $515,617, and $147,109, respectively.[12] Additionally, Valley Electric estimates that its transmission depreciation and general plant depreciation expenses allocated to high voltage transmission facilities are $1,655,850 and $153,996, respectively. Finally, Valley Electric states that it has incurred significant expenses related to joining CAISO and has booked such costs as a regulatory asset to be amortized over five years. Valley Electric indicates that the regulatory asset portion allocated to high voltage transmission facilities is $241,577.

11. Regarding the LVTRR, Valley Electric states that its LVTRR is not a component of the CAISO TAC, but it requests approval of its LVTRR because it could be used to calculate the wheeling rate for using Valley Electric's low voltage facilities, which could be collected by CAISO on Valley Electric's behalf.[13] Valley Electric estimates that its O&M, A&G, and regulatory expenses allocated to low voltage transmission facilities will be $554,308, $185,382, and $86,681, respectively. Valley Electric also estimates that there will be an additional $52,891 for ongoing regulatory expenses. Low voltage transmission facilities are also allocated their portion of depreciation expense and extraordinary O&M costs. Valley Electric states that regulatory asset portion allocated to low voltage transmission facilities is $86,855.[14]

12. With respect to its TRBAA, Valley Electric states that the TRBAA is established in the TO Tariff and is calculated according to the methodology set out in the CAISO tariff. However, Valley Electric notes that its Transmission Revenue Balancing Account has no initial balance because Valley Electric has no outstanding credits and no transmission credits forecast for the test year.[15]

13. Valley Electric seeks an 8.05 percent return on rate base (ROR) based upon a hypothetical 50/50 capital structure and a return on equity (ROE) of 10.71 percent. Valley Electric states that it derived its ROE recommendation using the Commission's

[11] *Id.* at 8.

[12] *Id.* at 8-9.

[13] *Id.* at 5.

[14] *Id.* at 16.

[15] *Id.* at 15.

preferred discounted cash flow methodology, and that its proposed ROR is just and reasonable because it will permit Valley Electric to maintain adequate debt service coverage and rebuild its equity to the 30 percent level that most distribution cooperatives maintain as a minimum equity level. Valley Electric explains that its transmission investment has been nearly entirely debt-financed and notes that the Commission has allowed municipal and cooperative entities to use a hypothetical capital structure for ratemaking purposes when they have relied upon non-equity financing for a project.[16]

14. Valley Electric states that it based its ROE calculation on the proxy group approach used in Southern California Edison's (SoCal Edison) most recently approved ROE proceeding.[17] Using SoCal Edison's proxy group and methodology to prepare an updated discounted cash flow analysis, Valley Electric determined that the median of the range of reasonable returns for Valley Electric is 8.59 percent.[18] While Commission precedent has determined that the median is the appropriate ROE for a utility of average risk such as SoCal Edison, Valley Electric argues that its risk is much higher and warrants a ROE at the midpoint of the upper half of the zone of reasonableness.[19] Thus, Valley Electric recommends a base ROE of 10.21 percent, which is halfway between the median (8.59 percent) and the upper end of Valley Electric's zone of reasonable returns from its proxy group analysis (11.83 percent). Valley Electric is also requesting the Commission grant a 50 basis point adder to its ROE for joining CAISO. Therefore, Valley Electric requests a 10.71 percent ROE.

15. Finally, Valley Electric requests that the Commission waive any filing fees otherwise required under 18 C.F.R. § 385.207 for a petition for a declaratory order. Valley Electric notes that even if it does not fit the exemption contained at 18 C.F.R. § 381.108, the Commission has indicated a willingness to waive the filing fee for electric cooperatives seeking to clarify their rights under the reciprocity requirements of Order No. 888.[20]

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[16] *Id.* at 10-11.

[17] *Id.* at 12. *See S. Cal. Edison Co.*, 131 FERC ¶ 61,020 (2010); *S. Cal. Edison Co.*, 139 FERC ¶ 61,042 (2012).

[18] Valley Electric Petition at 12.

[19] *Id.* at 12-13 (citing Opinion No. 445, 92 FERC ¶ 61,070, at 61,266-67 (2000)).

[20] *Id.* at 17 (citing *Sunflower Elec. Power Corp.*, 87 FERC ¶ 61,263 (1999); *Umatilla Elec. Coop. Ass'n*, 97 FERC ¶ 61,235 (2001)).

III. Notice of Filing and Responsive Pleadings

16. Notice of Valley Electric's filing was published in the *Federal Register*, 77 Fed. Reg. 63,305 (2012), with interventions, comments, and protests due on or before October 30, 2012. The Northern California Power Agency, Modesto Irrigation District, and the City of Santa Clara, California and the M-S-R Public Power Agency filed timely motions to intervene. CAISO and Brightsource Energy, Inc. filed timely motions to intervene and comments in support of the filing. Pacific Gas and Electric Company (PG&E), SoCal Edison, California Department of Water Resources State Water Project (SWP), and the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (Six Cities) filed timely motions to intervene with comments or protests. San Diego Gas & Electric Company (San Diego) and Trans Bay Cable LLC (Trans Bay) filed motions to intervene out-of-time. Valley Electric filed an answer.

17. SoCal Edison asserts that Valley Electric's proposed 50/50 hypothetical capital structure requires further factual development to determine if it is just and reasonable.[21] SoCal Edison also argues that Valley Electric's transmission costs need further research and evaluation to determine whether they are reasonable.[22] Therefore, SoCal Edison requests that the Commission set the filing for hearing and settlement proceedings.

18. PG&E argues that Valley Electric's inclusion of a hypothetical capital structure and regulatory asset treatment of expenses should receive additional scrutiny in hearing and settlement procedures, to ensure that the resulting rates are just and reasonable.[23]

19. SWP and Six Cities argue that Valley Electric's proposed ROE is unsupported and excessive. SWP specifically notes that Valley Electric proposes that the base ROE be set halfway between the median and the upper end of the range, despite the fact that the Commission has an established policy of relying on the median to set the base ROE in single-utility cases.[24] Six Cities state that an additional 162 basis points above the 8.59 percent median and 50 basis point adder for CAISO participation is unsupported and unjustified.[25] SWP also argues that Valley Electric should not be allowed to include in its TRR any transmission facilities that are not in service by January 3, 2013, while Six Cities asserts that it is unable to verify the costs of new transmission projects

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[21] SoCal Edison October 30, 2012 Protest at 2.

[22] *Id.* at 3.

[23] PG&E October 30, 2012 Protest at 3.

[24] SWP October 31, 2012 Protest at 6-7.

[25] Six Cities October 31, 2012 Protest at 3.

scheduled to be in service as of that date. Finally, SWP and Six Cities argue that the projected O&M and A&G expenses should be examined. SWP and Six Cities conclude that, for these reasons, the Commission should establish formal hearing procedures.

IV. <u>Discussion</u>

A. <u>Procedural Matters</u>

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

21. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2012), the Commission will grant the late-filed motions to intervene submitted by San Diego and Trans Bay, given their interests in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay. Finally, Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept Valley Electric's answer and will, therefore, reject it.

B. <u>Standard of Review</u>

22. The Commission has addressed the standard of review to be applied to petitions involving non-jurisdictional TRRs in an opinion reviewing the TRR filed by the City of Vernon, California (Vernon).[26] In Opinion No. 479, the Commission recognized that, as a municipally-owned utility, Vernon was not subject to its section 205 jurisdiction. However, the Commission noted that because Vernon voluntarily submitted its TRR as a component of CAISO's jurisdictional rate, Vernon's TRR is "subject to a full and complete section 205 review as part of our section 205 review of that jurisdictional rate."[27] The Commission explained that, in *Pacific Gas & Elec. Co. v. FERC*, the U.S. Court of Appeals for the District of Columbia Circuit held that the Commission has statutory authority to review Vernon's TRR "to the extent necessary to ensure that the CAISO rates are just and reasonable."[28] Subsequently, the court upheld the

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[26] *See City of Vernon, California*, Opinion No. 479, 111 FERC ¶ 61,092, *order on reh'g*, Opinion No. 479-A, 112 FERC ¶ 61,207 (2005), *reh'g denied*, Opinion No. 479-B, 115 FERC ¶ 61,297 (2006).

[27] *City of Vernon, California*, Opinion No. 479, 111 FERC ¶ 61,092 at P 44.

[28] *Id.* P 43 (quoting *Pacific Gas & Elec. Co. v. FERC*, 306 F.3d 1112, 1117 (D.C. Cir. 2002)).

Commission's decision that subjecting the TRRs of non-jurisdictional utilities (like Vernon) to a full section 205 review is "the only way to ensure that CAISO's rate is just and reasonable."[29]

23. Therefore, we find that, based on the court's rulings, it is appropriate to apply the just and reasonable standard of section 205 to the rates in Valley Electric's TO Tariff. To determine the justness and reasonableness of the rates in Valley Electric's TO Tariff, we find that hearing and settlement judge procedures are appropriate, as discussed below.

24. Furthermore, Valley Electric is not subject to the Commission's traditional jurisdiction under Federal Power Act (FPA) section 205, and it is not within our authority to direct Valley Electric to comply with any suspension or refund obligations under section 205 of the FPA.[30] However, we note that Valley Electric has unilaterally offered to refund any payment it receives from CAISO for its TRR in excess of the TRR ultimately approved by the Commission.[31]

C. Hearing and Settlement Judge Procedures

25. We note that Valley Electric's decision to move its transmission system to the CAISO balancing authority area will expand CAISO's geographic scope beyond the state of California and into Nevada. We previously found that this larger CAISO footprint will benefit CAISO's market participants, as well as benefit generators in Valley Electric, and we affirm that finding here.[32] We continue to encourage the participation of new transmission owners, including non-jurisdictional entities, in the Independent System Operators (ISOs) and Regional Transmission Organizations (RTOs).

26. However, Valley Electric's proposed TO Tariff raises issues of material fact that cannot be resolved based on the record before us and are more appropriately addressed in the hearing and settlement judge procedures ordered below. We will however, consistent with previous orders, summarily grant the 50 basis-points of incentive ROE adder for Valley Electric's participation in CAISO, subject to suspension and the zone of reasonable returns determined at hearing.[33] The Commission's decision to grant Valley

[29] *Transmission Agency of Northern California v. FERC*, 495 F.3d 663, 672 (D.C. Cir. 2007) (*TANC*).

[30] *Id.* at 673-74.

[31] Valley Electric Petition at 17, n.44.

[32] *Cal. Indep. Sys. Operator Corp.*, 137 FERC ¶ 61,194 at P 16.

[33] *San Diego Gas & Electric Co.*, 118 FERC ¶ 61,073, at PP 26-27 (2007).

Electric an incentive ROE for participation in CAISO is consistent with the stated purpose of section 219 of the FPA.[34] The incentive applies to all utilities joining a transmission organization and is intended to encourage Valley Electric's membership in CAISO.

27. Our preliminary analysis indicates that Valley Electric's TRR has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will accept Valley Electric's TO Tariff for filing, make it effective January 3, 2013, as requested, and set all issues for hearing and settlement judge procedures.

28. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before the hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.[35] If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding, otherwise the Chief Judge will select a judge for this purpose.[36] The settlement judge shall report to the Chief Judge and the Commission within 30 (thirty) days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

D. Waiver of Filing Fees

29. Finally, we will grant Valley Electric's request for waiver of any filing fee required for this filing. The Commission's regulations specifically exempt states, municipalities and anyone who is engaged in the official business of the Federal Government from filing fees.[37] Because this TO Tariff filing is akin to a FPA

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[34] 16 U.S.C. § 824 (2006).

[35] 18 C.F.R. § 385.603 (2012).

[36] If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of the date of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (http://www.ferc.gov/legal/adr/avail-judge.asp).

[37] 18 C.F.R. § 381.108 (2012).

section 205 rate filing, insofar as Valley Electric's TRR affects CAISO's rates, discussed *supra*, we find the Commission's filing fee inapplicable to Valley Electric's Petition.[38]

The Commission orders:

(A) Valley Electric's proposed TO Tariff and associated TRR are hereby accepted for filing, effective January 3, 2013, as discussed in the body of this order.

(B) Valley Electric's request for waiver of the filing fee is hereby granted, as discussed in the body of this order.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning Valley Electric's TO Tariff rates, as discussed in the body of this order. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (D) and (E) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2012), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(E) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

[38] *See* 18 C.F.R. § 385.207 (2012) (providing, in part, that the filing fee applies to petitions for declaratory order).

(F) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.