

170 FERC ¶ 61,268
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

Trans Bay Cable LLC

Docket No. ER19-2846-001

ORDER DISMISSING REQUEST FOR REHEARING

(Issued March 27, 2020)

1. On November 21, 2019, the Commission accepted for filing Trans Bay Cable LLC's (Trans Bay) proposed revisions to its transmission owner tariff, to increase its transmission revenue requirement (TRR) for its 53-mile 400 MW high-voltage, direct-current submarine transmission line beneath the San Francisco Bay from \$133,900,000 to \$157,284,000.¹ The Commission stated "preliminary analysis indicates that Trans Bay's proposed TRR has not been shown to be just and reasonable and may be unjust and unreasonable and unduly discriminatory, or preferential or otherwise unlawful."² Further, the Commission determined that "issues of material fact cannot be resolved based on the record before it and are more appropriately addressed in the hearing and settlement judge procedures ordered in the Hearing Order."³ Accordingly, the Commission suspended Trans Bay's proposed revisions for five months to become effective April 23, 2020, subject to refund, and established hearing and settlement judge procedures.⁴
2. On December 20, 2019, Trans Bay requested rehearing of the Hearing Order, or alternatively, clarification.⁵ Trans Bay contends that the Commission erred in finding that there is an issue of material fact regarding the continuation of Trans Bay's incentive

¹ *Trans Bay Cable LLC*, 169 FERC ¶ 61,138, at P 2 (2019) (Hearing Order).

² *Id.* P 27.

³ *Id.*

⁴ *Id.* P 1.

⁵ Trans Bay December 20, 2019 Rehearing Request, Or Alternatively, Request for Clarification (Rehearing Request).

return on equity (ROE) at the top of the zone of reasonableness.⁶ In addition, Trans Bay claims that if the Commission has “changed its policy such that demonstrating ongoing benefits is no longer the requisite showing for continued application of an ROE incentive, it has done so without reasoned analysis and indeed without any analysis.”⁷

3. On January 10, 2020, the California Public Utilities Commission (CPUC) filed a “Motion for Commission Order Scheduling Briefs on Issues Raised in Trans Bay Cable LLC’s Request for Rehearing, or in the Alternative, Motion for Late-File Answer and Answer to Request for Clarification.”

Discussion

4. Rule 713(d)(1) of the Commission’s Rules of Practice and Procedure⁸ prohibits answers to requests for rehearing. Accordingly, to the extent CPUC’s filing responds to Trans Bay’s request for rehearing, we deny CPUC’s motion to answer and reject CPUC’s answer to Trans Bay’s request for rehearing. We also deny CPUC’s motion to schedule briefs on the issues raised in the request for rehearing given our findings below.

5. We dismiss Trans Bay’s request for rehearing. Rule 713(b) of the Commission’s Rules of Practice and Procedure permits requests for rehearing “of any final decision or other final order in a proceeding.”⁹ A final order is one that imposes an obligation, denies a right, or fixes some legal relationship as a consummation of the administrative process.¹⁰ There is no final decision or determination in the Hearing Order. Moreover, the Commission stated that its preliminary analysis indicated that the proposed revisions had not been shown to be just and reasonable and raised issues of material fact that could not be resolved on the record before the Commission, and thus set all issues raised by the

⁶ *Id.* at 2.

⁷ *Id.* at 6.

⁸ 18 C.F.R. § 385.713(d)(1) (2019).

⁹ 18 C.F.R. § 385.713(b); 16 U.S.C. § 825l (a) (2018) (parties “aggrieved by an order issued by the Commission in a proceeding . . . may apply for a rehearing within thirty days after the issuance of such order.”).

¹⁰ *Reliable Automatic Sprinkler Co. v. Consumer Prod. Safety Comm’n*, 324 F.3d 726, 731 (D.C. Cir. 2003) (holding that “[f]inal agency action ‘mark[s] the consummation of the agency’s decision making process’ and is ‘one by which rights or obligations have been determined, or from which legal consequences will flow’”) (quoting *Bennett v. Spear*, 520 U.S. 154, 178 (1997)).

protestors for hearing and settlement judge procedures.¹¹ Where, as here, Commission action is not final and is to be succeeded by further Commission action, a request for rehearing may be dismissed.¹²

6. We also deny Trans Bay's request for clarification that the Commission "did not intend to change its policy without explanation, but rather intended merely to set for hearing (i) whether the Project continues to satisfy the continued benefits standard under its existing policy, and/or (ii) whether 13.5 percent ROE remains within the zone of reasonableness."¹³ In this case, the Commission established a hearing under section 205 of the Federal Power Act and the Presiding Judge has discretion to determine the appropriate scope of the hearing and the parties' evidentiary burdens during the hearing process.¹⁴ Therefore, having set Trans Bay's proposed revisions for hearing, we decline to respond to, or otherwise prejudice, Trans Bay's request.

The Commission orders:

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

(B) CPUC's motion for an order scheduling briefs on issues raised in the Trans Bay request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹¹ Hearing Order, 169 FERC ¶ 61,138 at P 27.

¹² See, e.g., *Talen Energy Marketing, LLC*, 158 FERC ¶ 61,077, at P 4 (2017); *Pacific Gas & Elec. Co.*, 162 FERC ¶ 61,246, at PP 6-7 (2018).

¹³ Rehearing Request at 9.

¹⁴ *PJM Interconnection, L.L.C.*, 167 FERC ¶ 61,192, *order denying clarification and dismissing reh'g*, 169 FERC ¶ 61,262, at P 3 (2019).