

169 FERC ¶ 61,138
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. ER19-2846-000

ORDER ACCEPTING AND SUSPENDING PROPOSED TARIFF REVISIONS AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued November 21, 2019)

1. On September 20, 2019, Trans Bay Cable LLC (Trans Bay) filed revisions to its transmission owner tariff (TO Tariff) seeking to increase its transmission revenue requirement (TRR) from \$133,900,000 to \$157,284,000. In this order, we accept for filing Trans Bay's proposed TRR, suspend it for five months to become effective April 23, 2020, subject to refund, and establish hearing and settlement judge procedures, as discussed below.

I. Background

2. Trans Bay is a limited liability company formed in 2004 to develop, construct, finance, and operate a 53-mile, 400 MW high-voltage, direct-current submarine transmission line buried beneath the San Francisco Bay, with converter stations at either end (Project). Trans Bay states that prior to July 16, 2019, it was one of the portfolio companies of the SteelRiver Infrastructure Partners, an infrastructure investment management firm. On July 16, 2019, Trans Bay became an indirect, wholly owned subsidiary of NextEra Energy Transmission, LLC, which is, in turn, an indirect, wholly owned subsidiary of NextEra Energy, Inc (NextEra).¹

3. The Project allows transmission between Pacific Gas and Electric Company's (PG&E) Pittsburg substation, located at a site adjacent to the City of Pittsburg, California, and PG&E's Potrero substation, located in San Francisco, California. Trans Bay states that the Project currently delivers power to serve approximately 40 percent of San Francisco's peak load.² As a participating transmission owner member of the California

¹ Transmittal at 3.

² *Id.*

Independent System Operator Corporation (CAISO), Trans Bay recovers its high voltage TRR through CAISO's transmission access charge pursuant to CAISO's tariff.

4. On July 22, 2005, the Commission accepted a proposed operating memorandum which set forth the rate principles and operational responsibilities governing the development, financing, construction, and operation of the Project among Trans Bay, the City of Pittsburg, California and Pittsburg Power Company.³ Specifically, the Commission accepted certain rate principles for the Project including a 13.5 percent ROE. The Commission stated that Trans Bay, as a newly-formed, transmission-only company, faced unique and elevated risks that justified the "enhanced" 13.5 percent ROE, in light of the reliability and economic benefits the Project would provide in addressing the critical need for generation within the City of San Francisco.⁴ Trans Bay then filed rate cases with the Commission in 2009, 2013, and 2016 that were each set for hearing and settlement judge procedures.⁵ In each of those cases, Trans Bay and intervenors reached a "black box" settlement, which the Commission accepted.⁶

II. Trans Bay's Filing

5. Trans Bay makes the instant filing pursuant to the 2017 Settlement and proposes to revise its TO Tariff to increase its annual TRR from \$133,900,000 to \$157,284,000. Trans Bay seeks an incentive ROE of 13.5 percent and requests that the Commission summarily accept its proposed ROE, its cost-of-service, and resulting TRR without refund, suspension, or hearing, to become effective November 23, 2019. Trans Bay states that its proposed TRR and associated cost-of-service reflect the use of Trans Bay's

³ *Trans Bay Cable LLC*, 112 FERC ¶ 61,095 (2005) (Operating Memorandum Order).

⁴ The Commission stated that these benefits include the potential to reduce congestion costs and the reliability must-run requirements in San Francisco, decrease local pollution, and increase system reliability. *See* Operating Memorandum Order, 112 FERC ¶ 61,095 at P 24.

⁵ *Trans Bay Cable LLC*, 129 FERC ¶ 61,225 (2009); *Trans Bay Cable LLC*, 145 FERC ¶ 61,151 (2013); *Trans Bay Cable LLC*, 157 FERC ¶ 61,133 (2016).

⁶ *Trans Bay Cable LLC*, 137 FERC ¶ 61,258 (2011); *Cities of Anaheim v. Trans Bay Cable LLC*, 149 FERC ¶ 61,081 (2014); *Trans Bay Cable LLC*, 161 FERC ¶ 61,134 (2017) (2017 Settlement).

actual capital structure, proposed capital additions to the Project, and the allocation of its proposed TRR between high voltage and low voltage facilities.⁷

A. Trans Bay's Proposed ROE

6. Trans Bay asks that the Commission summarily affirm Trans Bay's proposed ROE of 13.5 percent, stating that the Project is consistent with the type of transmission infrastructure investment that the Commission policy seeks to encourage.⁸ Trans Bay argues that the Commission should affirm Trans Bay's incentive ROE "at the top of the zone of reasonableness of the applicable proxy group," and that sufficient evidence exists to support a summary finding. In support of its proposed ROE, Trans Bay requests that the Commission exercise discretion and find that an ROE set at the top of the zone of reasonableness, not to exceed 13.5 percent, is just and reasonable. Trans Bay argues that the Commission has done this for similarly situated utilities that were granted enhanced ROEs prior to Order No. 679,⁹ which provides for incentive ROEs for critical transmission assets constructed to reduce severe transmission constraints. Trans Bay argues that abandoning the incentive ROE would be problematic for investor reliance and hinder the Commission's ability to incentivize critical infrastructure development. Trans Bay also argues that California's inverse condemnation laws elevate its risk profile, thus further justifying the incentive ROE.¹⁰

7. Trans Bay argues that an incentive ROE of 13.5 percent is within the range of reasonable returns using the Commission's proposed methodology in *Coakley*¹¹ and MISO Briefing Orders¹² based on a proxy group of regulated utility companies in capital

⁷ Transmittal at 11.

⁸ *Id.* at 11-12.

⁹ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, 116 FERC ¶ 61,057, *order on reh'g*, Order No. 679-A, 117 FERC ¶ 61,345 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

¹⁰ Transmittal at 2, 11, 17.

¹¹ *Coakley v. Bangor Hydro-Elec. Co.*, 165 FERC ¶ 61,030 (2018).

¹² *Ass'n of Bus. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, 156 FERC ¶ 61,234 (2016); *Ass'n of Bus. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, 165 FERC ¶ 61,118 (2018).

intensive network industries that Trans Bay asserts are more comparable in risk than an electric utility sample.¹³

8. In addition, Trans Bay explains that the Project provides significant benefits to consumers that outweigh Trans Bay's total TRR and displace the need for in-city generation. Specifically, Trans Bay states that the Project provides between \$143 million and \$261 million in societal and ratepayer benefits per year.¹⁴ Trans Bay notes that the Commission has previously granted continued use of an incentive ROE at the top of the zone of reasonableness for similarly situated independent transmission owners.¹⁵

9. Trans Bay also asserts that its proposed ROE is consistent with the Commission's policies promoting transmission investment and highlights the risks investors took in financing the Project, noting that Trans Bay was at risk for its entire investment and was not able to recover any amount of its investment until after the Project went into commercial service. Trans Bay states that acceptance of its Operating Memorandum,¹⁶ including the 13.5 percent incentive ROE, allowed the Project to move forward. Trans Bay highlights that the Project faced challenges during development, financing, and construction that were heightened by Trans Bay's position as a start-up company¹⁷ and that it faces significant ongoing risks.

10. Trans Bay states that it calculated a composite range of reasonable returns using the Commission's established DCF, Capital Asset Pricing Model (CAPM), and Expected Earnings methodologies. Trans Bay argues that the proposed proxy group is appropriate because, as a single-asset company, Trans Bay lacks the diversification of traditional electric utilities. Trans Bay states that the top end of its calculated zone of reasonable returns is 16.6 percent, higher than its proposed ROE of 13.5 percent.¹⁸

¹³ Transmittal at 12, 18-19.

¹⁴ *Id.* at 13.

¹⁵ *Id.* at 14.

¹⁶ *Trans Bay Cable LLC*, Operating Memorandum, Docket No. ER05-985-000 (filed May 19, 2005).

¹⁷ Transmittal at 16-17.

¹⁸ *Id.* at 18-20.

B. Trans Bay's Proposed Wildfire Reserve Fund

11. Trans Bay also seeks to establish a wildfire reserve fund. According to Trans Bay, risks have arisen related to wildfires and California's inverse condemnation laws that elevate Trans Bay's current risk profile. Trans Bay notes that while the Project's design limits wildfire risk, it cannot wholly prevent fire ignition resulting from its equipment due to its location, particularly related to the possibility of a fire at its Pittsburg converter substation. Trans Bay states that it is procuring \$85 million in additional insurance to cover third-party damage claims related to wildfires, but proposes in the instant filing to collect a reserve fund of approximately \$10 million per year over the next 50 years to address the uninsured risk, which according to Trans Bay amounts to at least \$463 million.¹⁹ Trans Bay seeks to include the proposed reserve fund in its TRR. Trans Bay also requests regulatory asset treatment for any wildfire damages paid by Trans Bay that exceed the balance of its wildfire reserve and insurance policy limits.²⁰

C. Trans Bay's Cost of Service Support

12. Trans Bay also proposes to include in its TRR, capital additions expected to be in service before December 31, 2020, including nine significant capital additions primarily aimed at increasing the resiliency of the Project and complying with regulatory requirements and North American Electric Reliability Corporation (NERC) standards.²¹ Further, Trans Bay proposes to annualize capital additions that will come in service toward the end of the Period II test period. Trans Bay notes that the Commission generally precludes treating plant additions that occur toward the end of Period II as being in service for the entire test period. Trans Bay argues that a waiver of the Commission's regulations and any prohibition on annualization is justified because Trans Bay does not have flexibility to adjust its filing date, test period, or requested effective dates, which were set forth in the 2017 Settlement.²² Trans Bay also seeks authorization to include of 50 percent of Construction Work in Progress (CWIP) for certain capital additions that will not be in service before the end of the test period.²³

¹⁹ *Id.* at 30.

²⁰ *Id.* at 31.

²¹ *Id.* at 20-21.

²² *Id.* at 22-23.

²³ *Id.* at 23-25.

13. Trans Bay explains four additional components of its cost of service support. First, with respect to capital structure, Trans Bay proposes to use its estimated end-of-Period II capital structure of 35 percent debt and 65 percent equity. Trans Bay argues that use of its actual capital structure is consistent with the Commission's prior holding that Trans Bay's rate filings should use its actual capital structure after 36 months of operation.²⁴ Second, Trans Bay states that its projected Period II operation and maintenance (O&M) and administrative and general (A&G) expenses are higher than historical Period I costs as a result of actions Trans Bay is undertaking to make the Project more resilient and comply with relevant NERC standards.²⁵ Third, with respect to accumulated deferred income taxes (ADIT), Trans Bay identified an excess in the amount of \$28,487,716 that it proposes to incorporate into its TRR as a rate reduction. Fourth, with respect the allocation of the TRR among high voltage and low voltage facilities, Trans Bay proposes to allocate 7.1 percent of its TRR to low voltage transmission facilities (below 200 kV), consistent with CAISO's tariff.²⁶

14. Finally, Trans Bay requests waiver of section 35.13 of the Commission's regulations to the extent necessary, stating that several of the filing requirements are inapplicable to its proposal,²⁷ as well as waiver of 18 C.F.R. § 35.13(h)(4)(i) (2019) to permit the annualization of capital additions estimated to occur in the Period II test period. Trans Bay also requests waiver of several aspects of the Commission's requirements for rate base treatment of CWIP that Trans Bay asserts are inapplicable or irrelevant,²⁸ and confidential treatment for certain exhibits and associated workpapers, which it states contain commercially sensitive data that could have a debilitating effect on its business enterprise if released to the public.²⁹

²⁴ *Id.* at 20.

²⁵ *Id.* at 26.

²⁶ CAISO requires separating the revenue requirement into a high-voltage TRR and a low-voltage TRR based on an assessment of facilities.

²⁷ Specifically, Trans Bay requests waiver of the requirement to file cost-of-service statements AR, AT, AU, AW, AX, BA through BF, BI, BL, and partial waiver of BM, stating that these documents are inapplicable.

²⁸ Transmittal at 35-36.

²⁹ *Id.* at 37.

III. Notice of Filing and Responsive Pleadings

15. Notice of Trans Bay's filing was published in the *Federal Register*, 84 Fed. Reg. § 51, 532 (2019), with interventions and comments due on or before October 11, 2019. The California Public Utilities Commission filed a timely notice of intervention and an out-of-time protest. Timely motions to intervene were filed by PG&E; the City of Santa Clara, California; the Transmission Agency of Northern California; the City and County of San Francisco; and DATC Path 15, LLC. Timely motions to intervene and protests were filed by the California Department of Water Resources State Water Project (CDWR); the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (Six Cities); and the Northern California Power Agency (NCPA). On October 28, 2019 and November 8, 2019, Trans Bay filed answers to the protests.

A. Protests

16. Protestors challenge Trans Bay's request for a 13.5 percent ROE and ask that the Commission set Trans Bay's entire filing for hearing and settlement judge procedures with a five-month suspension.³⁰ Six Cities, CDWR, and CPUC argue that Trans Bay's DCF range of reasonableness does not follow Commission precedent because Trans Bay uses non-electric utility proxy companies.³¹ Six Cities and CDWR contend that Trans Bay's requested 13.5 percent ROE does not fall within their separately calculated estimates of Trans Bay's range of reasonableness³² and that Trans Bay's risk profile should reflect that of electric utility proxy groups and its parent company NextEra. Six Cities further argues that Trans Bay's CAPM analysis is inflated.³³

17. NCPA, CDWR, and CPUC argue that, since Trans Bay is no longer a start-up company or independent transmission company after its acquisition by NextEra, Trans Bay no longer qualifies for an incentive ROE, and that the Commission should instead apply a base ROE.³⁴ NCPA and CDWR both assert that Trans Bay is far removed from the siting and permitting risks that were relied upon to partially justify use of an incentive

³⁰ Six Cities Protest at 1; CDWR Protest at 2; NCPA Protest at 1; CPUC Protest at 2.

³¹ Six Cities Protest at 3; CDWR Protest at 6; CPUC Protest at 5.

³² Six Cities Protest at 9; CDWR Protest at 6.

³³ Six Cities Protest at 3.

³⁴ NCPA Protest at 4; CDWR Protest at 4; CPUC Protest at 6.

ROE.³⁵ Six Cities and CDWR protest the use of Trans Bay's capital structure of 35 percent debt and 65 percent equity, noting that Trans Bay has not shown that NextEra does not guarantee Trans Bay's debt.³⁶ Six Cities argues that this equity ratio is not comparable to the companies in Trans Bay's proxy group and will not result in a just and reasonable rate. Six Cities asserts that Trans Bay's equity level should not exceed 60 percent.³⁷

18. Six Cities and CPUC argue that Trans Bay has not justified its proposed capital additions and asserts that several projects were included in Trans Bay's previous rate filing, with in-service dates planned for 2017.³⁸ According to Six Cities and CPUC, it is unclear whether Trans Bay has already recovered any costs associated with these projects. Six Cities and CDWR further argue that the listed projects, although prudent, do not merit special incentive treatments.³⁹

19. With respect to the wildfire reserve fund, Six Cities, CDWR, and CPUC argue that the proposal is unjustified and inappropriate. Six Cities and CPUC note that the Project's location underwater reduces wildfire risk, and that the urban nature of the above-ground components suggest low risk.⁴⁰ CDWR points out that California's inverse condemnation laws pre-date the Project, but that this is the first time Trans Bay has cited a wildfire risk. CDWR and CPUC also distinguish this case from instances Trans Bay points to in which the Commission allowed utilities to self-insure.⁴¹ CPUC also argues that Trans Bay has misrepresented the level of commercially available insurance, failed to consider interest in the amount to be collected, and otherwise failed to justify regulatory asset treatment for the reserve fund.⁴²

³⁵ NCPA Protest at 4.

³⁶ CDWR Protest at 10; Six Cities Protest at 9.

³⁷ Six Cities Protest at 10-11.

³⁸ *Id.* at 13; CPUC Protest at 12.

³⁹ Six Cities Protest at 14; CDWR Protest at 10.

⁴⁰ Six Cities Protest at 19; CPUC Protest at 7.

⁴¹ CDWR Protest at 12-13; CPUC Protest at 11.

⁴² CPUC Protest at 8-10.

20. Protestors also contest other elements of Trans Bay's filing, such as the proposed annualization of capital additions, increases in O&M and A&G expenses, the treatment of excess ADIT, the \$5.1 million cost of the instant rate proceeding, and Trans Bay's request for privileged treatment of filing material and its requests for waiver of certain disclosure requirements under 18 C.F.R. § 35.13.⁴³ Regarding Trans Bay's waiver request, CPUC argues that Trans Bay should be required to provide full documentation and support for its requested rate increase. CPUC also requests amendment of the model protective order and protests Trans Bay's use of end of test period balances, inclusion of CWIP and Allowance for Funds Used During Construction, depreciation schedules, and cost of debt.⁴⁴ CDWR argues that Trans Bay's asset should depreciate over time, and that Trans Bay's continued requests for increases in TRR are inappropriate. NCPA and CDWR both suggest that further review is needed to determine whether Trans Bay is attempting to recover acquisition premiums following its acquisition by NextEra.⁴⁵

B. Trans Bay's Answers

21. Trans Bay disagrees with protestors that its requested 13.5 percent ROE should be reviewed under the Commission's current framework for approving incentive ROE requests for new transmission investment. According to Trans Bay, the Commission has approved the continued application of incentive ROEs, both before and after Order No. 679, where such projects continue to provide the benefits the projects were originally incentivized to provide, as is the case here.⁴⁶ Trans Bay also contends that a continued incentive ROE is needed to protect investors' reliance on, and ensure investment in, future transmission infrastructure projects.⁴⁷

22. Trans Bay argues that neither its acquisition by NextEra nor the fact that the Project is in service changes the ROE analysis given that Trans Bay faced obstacles in putting the Project into service. Trans Bay also claims that the removal of the incentive ROE after a Project is in service would negatively impact investor confidence because most of the value investors derive from incentive ROEs is from the post-development phase when incentivized assets are included in the rate base and the incentive return can

⁴³ Six Cities Protest at 15, 17, and 21; CDWR Protest at 15; NCPA Protest at 6-7; CPUC Protest at 16-17.

⁴⁴ CPUC Protest at 13-15, 19.

⁴⁵ CDWR Protest at 16; NCPA Protest at 5.

⁴⁶ Trans Bay October 28 Answer at 3, 6-8; Trans Bay November 8 Answer at 4-5.

⁴⁷ Trans Bay October 28 Answer at 8-10; Trans Bay November 8 Answer at 5-6.

be translated into earnings.⁴⁸ Likewise, Trans Bay contends that a change in ownership does not change Trans Bay's risk profile and that eliminating the incentive ROE upon a change in ownership would only reduce future sales prices and diminish the value of incentivized assets to the original owner.⁴⁹ Moreover, Trans Bay argues that capital expenditures incurred to operate and maintain an incentivized transmission project need not be individually evaluated under Order No. 679's risks and challenges analysis in order to justify a continued incentive ROE.⁵⁰

23. Trans Bay argues that the Commission should approve the use of end of period plant balances and the inclusion of 50 percent of CWIP in rate base in this hearing order because, regardless of the CPUC's arguments to the contrary, the Commission's precedent and regulations support Trans Bay's requests.⁵¹

24. In response to Six Cities' assertion that Trans Bay should not be allowed to use annualized end of period plant balances rather than Period I or Period II thirteen monthly balances, Trans Bay argues that it does not have flexibility to model its test period due to the 2017 Settlement prescribed filing date, effective date, and test period for this instant rate filing.⁵² Trans Bay contends that the use of its requested test period capital structure is consistent with Commission precedent.⁵³ Trans Bay also argues that its request for a protective agreement for confidential information is appropriate and that NCPA's contention that its employees would be disadvantaged by not viewing the information is unsupported.⁵⁴ Likewise, Trans Bay disagrees with the CPUC's request to modify the protective agreement to permit any CPUC employee access to the material without signing a non-disclosure agreement as unsupported and improper.⁵⁵ Finally, Trans Bay

⁴⁸ Trans Bay October 28 Answer at 11-12.

⁴⁹ *Id.* at 13-14.

⁵⁰ *Id.* at 14.

⁵¹ Trans Bay November 8 Answer at 7-9.

⁵² Trans Bay October 28 Answer at 15-17.

⁵³ *Id.* at 17-18.

⁵⁴ *Id.* at 20.

⁵⁵ Trans Bay November 8 Answer at 9-10.

states that it does not oppose protestors' request to set the issues that the Commission cannot rule on in this order for hearing and settlement judge procedures.⁵⁶

IV. Discussion

A. Procedural Matters

25. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the notice of intervention and timely, unopposed motions to intervene serve to make the entities who filed them parties to this proceeding.

26. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept Trans Bay's answers because they have provided information that assisted us in our decision-making process.

B. Commission Determination

27. Our preliminary analysis indicates that Trans Bay's proposed TRR has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Trans Bay's proposed TRR, including the requested 13.5 percent ROE and the establishment of a wildfire risk reserve fund, raises issues of material fact that cannot be resolved based upon the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below. We note that, in the November 21 MISO Order,⁵⁷ the Commission adopted a revised ROE methodology for determining a just and reasonable ROE.

28. In *West Texas Utilities Co.*, the Commission explained that, when its preliminary examination indicates that proposed rates may be unjust and unreasonable and may be substantially excessive, the Commission will generally impose a five-month suspension.⁵⁸ Based on our preliminary analysis, we find that Trans Bay's proposed rates may yield substantially excessive revenues. Accordingly, we will accept Trans Bay's proposed TRR, suspend it for the maximum five-month period, to become

⁵⁶ Trans Bay October 28 Answer at 22.

⁵⁷ *Association of Businesses Advocating Tariff Equity Coalition of MISO Transmission Customers, et al. v. Midcontinent Independent System Operator, Inc., et al.*, 169 FERC ¶ 61,129 (2019).

⁵⁸ *W. Tex. Utils. Co.*, 18 FERC ¶ 61,189, at 61,374-75 (1982).

effective April 23, 2020, subject to refund, and set all issues for hearing and settlement judge procedures.

29. For good cause shown, we grant Trans Bay's request for waivers of certain Commission regulations. We grant Trans Bay's requested waiver of the filing requirements under section 35.13 of the Commission's regulations with respect to the specific cost-of-service statements noted above; however, this finding does not preclude parties at the hearing from demonstrating the need for additional information to allow for a full evaluation of Trans Bay's proposed ROE and overall TRR. Further, we find that Trans Bay has provided support for its request for waiver of section 35.13(h)(4)(i),⁵⁹ i.e., because Trans Bay was required by its earlier Commission-approved settlement to request a November 23, 2019 effective date for its revised TRR. In addition, Trans Bay has justified its request for waiver of section 35.25 of the Commission's regulations for the reasons it describes in its transmittal letter.⁶⁰ With request to Trans Bay's request for privileged treatment of certain materials, we note that the parties will have the ability to request access to the privileged portions of Trans Bay's filing during the course of the hearing and settlement judge procedures pursuant to the Commission's regulations.⁶¹

30. While we are setting this matter 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.⁶² The settlement judge shall report to the Chief Judge and the Commission within 30 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. Should the settlement judge ultimately determine that a hearing is warranted, Trans Bay shall file a full case in chief pursuant to the Commission's regulations to support its proposed rate structure at hearing.

⁵⁹ See Transmittal at 22-23.

⁶⁰ See *id.* at 35-36.

⁶¹ 18 C.F.R. § 388.112(b)(2) (2019).

⁶² 18 C.F.R. § 385.603 (2019).

The Commission orders:

(A) Trans Bay's proposed TRR is hereby accepted for filing and suspended for five months, to become effective on April 23, 2020, subject to refund, and subject to hearing and settlement judge procedures, as discussed in the body of this order.

(B) Trans Bay's request for waivers of the Commission's regulations specified above 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 in Docket No. ER19-2846-000 concerning the justness and reasonableness of Trans Bay's proposed TRR, 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 (2019), 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.

(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)

Nathaniel J. Davis, Sr.,
Deputy Secretary.