UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
and Jon Wellinghoff.

Trans-Elect NTD Path 15, LLC — Docket No. ER05-17-002

ORDER ON INITIAL DECISION

(Issued November 20, 2006)

1. This case is before the Commission on exceptions to an Initial Decision[1] issued on December 21, 2005 by the Presiding Administrative Law Judge (ALJ) in this proceeding. At issue is whether Trans-Elect NTD Path 15, LLC's (NTD's) Transmission Revenue Requirement (TRR) and Transmission Owner (TO) Tariff are just and reasonable.

2. Specifically, the Commission must determine (1) whether rate base recovery of NTD for the construction of a transmission line upgrade and related substation upgrades (Path 15 Upgrade) should include certain prepaid debt service and liquidity reserves totaling $10.77 million, (2) whether rate base should include a proposed working capital allowance of $7.2 million, (3) whether NTD correctly calculated an Allowance for Funds Used during Construction (AFUDC), and (4) whether the ALJ properly declined to consider any issues of potential over-recovery by NTD as a result of Western Area Power Administration (Western) cost recovery proposals related to the Path 15 Upgrade, since the issue of over-recovery was under review in Western's Docket No. ER04-1198-000.

3. As discussed below, the Commission finds that the proposed TRR and TO Tariff are just and reasonable, with the exception of the AFUDC allowance and the $7.2 million of working capital included in rate base.

[1] *Trans-Elect NTD Path 15, LLC,* 113 FERC ¶ 63,039 (2005) (*Initial Decision*).

Background

A. Transmission Infrastructure and the Path 15 Corridor

4. The Path 15 Upgrade is an 83-mile, 500-kilovolt transmission line built along the existing Path 15 transmission corridor in California to ameliorate a seriously constrained congestion point. The development of the Path 15 corridor parallels the difficulties experienced by the western energy markets, and its history is important for understanding the Commission's decision in the instant case.

5. As early as 1999, the Commission recognized the need for investment in transmission capacity and organization to support the demands of evolving competitive electricity markets.[2] Nevertheless, investment in transmission infrastructure was sluggish even as the need for transmission capacity grew. By 2000, California's major investor owned utilities (IOUs) experienced extreme financial pressure from spiking energy costs making investment in the western energy markets appear particularly risky.[3] Such risk only increased in 2001 when Pacific Gas & Electric Company (PG&E) declared bankruptcy in the wake of electricity shortages, unchecked wholesale energy costs and caps on retail rates.[4]

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[2] *See* Order No. 2000, Regional Transmission Organizations, III FERC Stats. & Regs. ¶ 31,089, 30,998 (1999)(Order No. 2000)("It appears that the planning and construction of transmission and transmission-related facilities may not be keeping up with increased requirements").

[3] Both Pacific Gas & Electric Company (PG&E) and Southern California Edison (SoCal) incurred billions of dollars of debt as wholesale electricity prices spiked while retail rates remained frozen. *Pac. Gas & Elec. v. FERC* (*In re Cal. Power Exch. Corp*.), 245 F.3d 1110, 1115 (9th Cir. 2001)(" Retail rates for SDG&E customers rose 200 to 300 percent, while PG&E and SCE, which were still subject to [a] rate freeze, incurred billions of dollars of debt because they were unable to pass their wholesale power costs onto their customers.").

[4] *Opinion Modifying the Proposed Settlement Agreement of Pacific Gas & Electric Company, PG&E Corporation and the Commission Staff, and Approving the Modified Settlement Agreement*, Docket No. 03-12-035 at 5 (Pub. Utilities Comm. of the State of Cal., Dec. 18, 2003).

6. The Commission reacted to electricity shortages in 2001 by entering an emergency order to foster the installation of critical transmission investment in the Western grid.[5] As part of the Commission's Removing Obstacles Orders, the Path 15 corridor was specifically targeted as a significant problem that required incentives for investment to alleviate costly congestion.[6]

7. The Commission was not alone in highlighting the need for new infrastructure in the Path 15 corridor. Several months after the Commission's Removing Obstacles Orders, an energy policy group established by President George W. Bush released a National Energy Policy (Energy Policy) that identified insufficient infrastructure in the Path 15 corridor as a major cause of California's energy crisis.[7] Pursuant to a Presidential directive, the Secretary of Energy authorized Western to initiate a public process to solicit proposals from non-federal entities to participate in the construction and ownership of the Path 15 upgrades.

8. Western ultimately selected NTD and PG&E as participating partners. The upgraded Path 15 transmission line went into service on December 22, 2004, and added roughly 1,500 MW to 5,400 MW of transmission capacity from southern to northern California, and increased transmission capacity from north to south by about 1,100 MW.

B. Procedural History

9. On April 30, 2002, the Path 15 participants filed a Letter Agreement with the Commission setting forth the rate principles to be followed to recover the costs of the transmission upgrades. The Commission accepted the letter agreement and required

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[5] *Removing Obstacles to Increased Electric Generation and Natural Gas Supply in the Western United States*, 94 FERC ¶ 61,272, *reh'g denied*, 95 FERC ¶ 61,225, *order on requests for reh'g and clarification*, 96 FERC ¶ 61,155, *further order on requests for reh'g and clarification,* 97 FERC ¶ 61,024 (2001)(Removing Obstacles Orders).

[6] *Id*. at 61,973.

[7] The Energy Policy labeled the Path 15 corridor "a crucial transmission bottleneck," and recommended that the President "direct the Secretary of Energy to authorize the Western Area Power Administration to explore relieving the 'Path 15' bottleneck through transmission expansion financed by nonfederal contributions." White House, *Reliable, Affordable, and Environmentally Sound Energy for America's Future: Report of the National Energy Policy Development Group* at 1-3, http://www.whitehouse.gov/energy (accessed Sept. 26, 2006).

subsequent filings to resolve certain non-rate principles in the agreement.[8] Trans-Elect Inc. subsequently filed a notice of intent with the California Independent System Operator (ISO) to become a Participating Transmission Owner (PTO) and turn over operational control of its Path 15 entitlements to the ISO.[9] On June 30, 2004, the Commission accepted for filing the Coordinated Operations and Interconnection Agreement (COIA) entered into by PG&E, Western, and NTD, to be effective July 1, 2004.[10] On October 4, 2004, NTD filed with the Commission its proposed TRR and TO Tariff to recover its costs related to the Path 15 Upgrade. On December 2, 2004, the Commission accepted, suspended and set for hearing the filed TRR and TO Tariff.[11] Following a hearing on the TRR and TO Tariff, the ALJ issued the Initial Decision now under review.

10. In the Initial Decision, the ALJ excluded from NTD's rate base the prepaid debt service and liquidity reserves and much of NTD's proposed working capital costs. The ALJ accepted NTD's methodology and amount for AFUDC, and declined to consider whether NTD's proposed TRR could allow NTD to over recover costs associated with Western's 10 percent entitlement in the Path 15 Upgrade.

11. Exceptions and briefs opposing exceptions were filed by NTD, SoCal, SDG&E, CPUC, the Trial Staff and PG&E.

Discussion

12. As discussed below, the Commission reverses the Initial Decision with regard to prepaid debt and liquidity reserves, affirms the Initial Decision with regard to the proposed working capital costs, reverses the Initial Decision with regard to the proposed AFUDC, and affirms the Initial Decision with regard to the issue of potential over-recovery.

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[8] *Western Power Admin.,* 99 FERC ¶ 61,306 (2002).

[9] On August 15, 2003 Trans-Elect Inc. filed revisions to the transmission control agreement between it and the existing PTOs to reflect the transmission entitlements that Trans-Elect Inc. intended to turn over to the ISO, which revisions the Commission accepted, effective January 1, 2004. *California Independent System Operator Corp.,* Letter Order, Docket No. ER03-1217-000 (Oct. 14, 2003).

[10] *Pacific Gas & Electric Co.,* 107 FERC ¶ 61,335 (2004).

[11] *Trans-Elect NTD Path 15, LLC,* 109 FERC ¶ 61,249 (2004).

<u>Prepaid Debt Service and Liquidity Reserves</u>

<u>ALJ's Findings</u>

13. The ALJ ordered NTD to remove from rate base a prepaid debt service reserve of $8.27 million and a prepaid liquidity reserve of $2.5 million.

14. In support of his decision, the ALJ determined that NTD's prepaid debt service and liquidity reserves were analogous to the cost of refinancing preexisting debt which the Commission had precluded from rate base in *Enbridge Pipelines (KPC)*, 109 FERC ¶ 61,042 (2004) (*Enbridge*). The ALJ held that, similar to refinancing costs for preexisting debt, the prepaid debt and liquidity reserves did not directly benefit NTD's customers and could not be considered as operational costs. Moreover, the ALJ reasoned that NTD had failed to raise any equitable considerations that would warrant departure from *Enbridge* or other Commission precedent on the ratemaking treatment of such expenses.[12] Accordingly, the ALJ ordered NTD to remove the reserve expenses from its rate base.

<u>Exceptions</u>

15. On exceptions, NTD contends that the prepaid debt service and liquidity reserves used to finance the Path 15 Upgrade should be included in rate base because the costs were required by NTD's lenders given the financial weakness and volatility in the market at the time. NTD notes that the prepaid debt service and liquidity reserves were only incurred after arms-length negotiations between NTD and its lenders and that the Path 15 Upgrade has relieved consumers of millions of dollars in congestion expenses.[13] Thus,

[12] *Citing Transcontinental Gas Pipe Line Corp.*, 59 FPC 1237 (1977), *aff'd sub nom., Tennessee Gas Pipeline Co. v. FERC*, 606 F.2d 1094, 1123 (D.C. Cir. 1979), *cert. denied*, 445 U.S. 920 and 447 U.S 922 (1980)(*Transcontinental Order Denying Rehearing*) for the proposition that even prudent costs are not necessarily includable in rate base unless they are "prudent investments for utility property that are used and useful to provide service to customers."

[13] NTD points out that the United States Department of Energy's National Transmission Grid Study of May 2002 highlighted that constraints on Path 15 resulted in congestion costs to California energy customers estimated at $ 222 million over just the 16 months prior to December 2000. United States Department of Energy, *National Transmission Grid Study of May 2002*, at 21 (May 2002), *available at* http://certs.lbl.gov/certs-rtinakey-ntgs-p.html (accessed October 4, 2006).

the debt service and liquidity reserve expenses associated with securing the project have been shown to be used and useful.[14]

16. NTD also contends that including prepaid debt service and liquidity reserves in rate base is not barred by Commission precedent[15] or the codified definition of "prepayments."[16] Instead, NTD maintains that these costs are consistent with the Commission's policy initiatives to promote new transmission investment expressed in the Commission's NOPR to promote investment through pricing reform.[17]

17. NTD argues that *Enbridge* is distinguishable because there, the Commission addressed debt incurred to refinance pre-existing loans on a project that had already been completed.[18] NTD also notes that the Commission has proposed incentive rates specifically benefiting independent transmission companies like NTD.[19]

Opposing Exceptions

18. Trial Staff opposes NTD's exceptions. Trial Staff argues that precedent and policy requires the Commission to apply the traditional "used and useful" standard to

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[14] *NTD Brief on Exceptions* at 6-7, *citing New England Power Co.,* 31 FERC ¶ 61,047 (1985).

[15] NTD Brief on Exceptions at 9-13.

[16] NTD argues that the ALJ's determination that liquidity reserve expenses do not qualify as "prepayments" under the Commission's codified definitions is erroneous because the definition of prepayment includes a non-exclusive list of qualifying prepayments and incorporates "miscellaneous items." *Id*. at 13; *see* 18 C.F.R. Part 101, Account No. 165 (2006).

[17] *Promoting Transmission Investment Through Pricing Reform, Notice of Proposed Rulemaking,* Docket No. RM06-4-000, 113 FERC ¶ 61,182 (2005)(NOPR).

[18] *Enbridge Pipelines (KPC),* 109 FERC ¶ 61,042, at P 12-13 (2004).

[19] NTD Brief on Exceptions at 14, citing NOPR. The Commission subsequently issued a Final Rule on July 20, 2006. *See Promoting Transmission Investment through Pricing Reform,* Order No. 679, 71 Fed. Reg. 43294 (July 31, 2006)(Order No. 679).

protect customers from paying "costs that are not related to the provision of jurisdictional utility business."[20]

19. Specifically, Trial Staff argues that prepaid debt service and liquidity reserves are not "used and useful" because such expenses "are held in reserve for the *lender's benefit* indefinitely and therefore do not directly benefit the utility's customers."[21] Moreover, argues Trial Staff, such lender-imposed obligations do not have a significant nexus to the ratepayers' benefit to be considered used and useful as traditionally understood, and inclusion of such costs here may set a dangerous precedent for future rate cases.[22]

20. Finally, Trial Staff rejects NTD's argument that the NOPR is a basis for allowing the prepaid debt and liquidity reserve expenses in rate base.[23] PG&E also opposes NTD's exception regarding prepaid debt and liquidity reserve obligations, arguing that the Commission should not adopt rates that are unjust and unreasonable simply to promote transmission investment. PG&E also argues that NTD's reliance on the NOPR is premature.

21. The California Public Utilities Commission (CPUC) did not oppose NTD's exceptions on this issue.

Commission Determination

22. Allowing the prepaid debt service and liquidity reserves in NTD's rate base is just and reasonable in this particular instance given the well-documented need for the Path 15 Upgrade, the obvious financial hurdles that the project faced in the midst of a collapsing energy market and the clear nexus between security for lenders and the development and completion of the project, which has proven itself used and useful in the broadest sense.

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[20] Trial Staff Brief Opposing Exceptions at 7.

[21] *Id.*, *quoting* Initial Decision at 27 (emphasis in original).

[22] *Citing Otter Tail Power Co.*, 4 FERC ¶ 63,046, at 65,357 (1978), *order on initial decision*, 12 FERC ¶ 61,169 (1980).

[23] Trial Staff Brief Opposing Exceptions at 2-3. As noted above, the Commission has since issued the final rule regarding transmission investment. *See Promoting Transmission Investment through Pricing Reform*, Order No. 679, 71 Fed. Reg. 43294 (July 31, 2006)(Order No. 679).

23. As a preliminary matter, the ALJ and the Trial Staff's reliance on *Enbridge* is misplaced. *Enbridge* addresses the costs of refinancing preexisting debt,[24] not the cost of acquiring capital for initial construction in a turbulent market. In *Enbridge*, the Commission determined that transaction costs incurred through the typical consolidation and refinancing of preexisting debts could not be included in rate base.[25] The logic of the holding is inapplicable here where the costs are associated with attracting capital for the construction of a sorely needed project in a risky financial environment.

24. In the instant case, the prepaid debt service and liquidity reserves at issue are not related to the routine refinancing of pre-existing debt. Instead, the costs constitute a reasonable security for NTD's lenders given the economic context at the time, and are inseparably associated with the construction of the Path 15 Upgrade. Accordingly, *Enbridge* does not prevent NTD from recovering prepaid debt and liquidity reserves in rate base. The Trial Staff's fears that this would set a dangerous precedent are overstated since the circumstances surrounding the project were uncommon, if not unique.

25. Similarly, any implicit reliance on the *Transcontinental Order Denying Rehearing*[26] by the ALJ to exclude these costs from rate base is inapposite.[27] In the

[24] *See Enbridge Pipelines* 100 FERC ¶ 61,260, at 61,962 (2002), *reh'g denied*, 102 FERC ¶ 61,310 (2003)(distinguishing between costs of reacquired debt from construction costs).

[25] The Commission in *Enbridge*, relying on *Northwest Pipeline Corporation*, explained: "When pipelines realize gains from refinancing debt, the Commission does not require the pipeline to reduce its rate base by the amount of the gains. Similarly, pipelines are not permitted to recover carrying charges when they incur costs to refinance the debt." *Enbridge* at 61,183, *quoting Northwest Pipeline Corporation*, 71 FERC ¶ 61,253, at 61,995-96 (1995).

[26] Initial Decision at n.30, *citing Transcontinental Gas Pipe Line Corp.*, 59 FPC 1237 (1977) (*Transcontinental Order Denying Rehearing).*

[27] The ALJ does not rely on *Transcontinental Order Denying Rehearing* as much as NTD implies through its brief on exceptions. Instead, the ALJ references *Transcontinental Order Denying Rehearing* in a footnote for the proposition that even prudently incurred costs must be used and useful in providing service to the customers before they are includable in rate base.

earlier *Transcontinental Order on Initial Decision*,[28] which articulated the Commission's decision to exclude certain costs from rate base, the Commission determined that the cost of four unsuccessful projects to manufacture synthetic natural gas could not be included in the rate base of a natural gas pipeline. There, the Commission balanced the benefits of research against the interests of the ratepayer and held that "[a]though we support further SNG development, the jurisdictional ratepayer should not bear the full risk." In the *Transcontinental Order Denying Rehearing*, the Commission affirmed the finding expressed in *Transcontinental Order on Initial Decision*, and further stated that, even if the costs were prudent, they were not used and useful because the SNG projects were ultimately unsuccessful.

26. Neither the *Transcontinental Order on Initial Decision* nor the *Transcontinental Order Denying Rehearing* bars the Commission from including in the rate base prepaid debt and liquidity reserves where such costs result in an ultimately used and useful project which was desperately needed. Accordingly, the Commission rejects the Trial Staff's argument that there is an established policy excluding prepaid debt service and liquidity reserves from rate base. Instead, the Commission retains the flexibility, under established canons of ratemaking, to assess NTD's proposed rate base element and determine whether it is just and reasonable.[29]

27. Ample precedent provides the Commission with sufficient discretion to adapt ratemaking methodologies to address infrastructure needs, so long as the result is just and reasonable.[30] As the Supreme Court has made clear, the Commission has the flexibility to "decide what ratesetting methodology best meets [its] needs in balancing the interests of the utility and the public."[31] Indeed, the D.C. Circuit sanctioned the Commission's

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[28] *Transcontinental Gas Pipe Line Corp.*, 58 FPC 2,038 (1977)(*Transcontinental Order on Initial Decision*)(supplying rationale upon which *Transcontinental Order Denying Rehearing* in part was based).

[29] *See, e.g., Maine Public Utilities Commission v. FERC,* 454 F.3d 278 (D.C. Cir. 2006) (*Maine PUC*).

[30] *See, e.g., Maine PUC at 287; Duquesne Light Co. v. Barasch*, 488 U.S. 299, 316 (1989); *Jersey Central Power & Light Co. v. FERC,* 810 F.2d 1168, 1187-88 (D.C. Cir.1987).

[31] *Duquesne Light Co.* at 316 (1989); *see also*, *Jersey Central* at 1187-88 (D.C. Cir. 1987)(finding the used and useful standard delineated in *Transcontinental* is simply one of several permissible tools of ratemaking and need not be employed in every instance).

ability to include incentives in rates to stimulate infrastructure when the court denied an appeal to review whether the Commission properly approved, as part of a project to increase the capacity of Path 15, incentives for PG&E to recover its costs in building or upgrading facilities.[32]

28. In assessing the rate treatment of the prepaid debt service and liquidity reserves, the Commission has weighed consumer and investor interests in light of the fact that the construction of new transmission was desperately needed along the Path 15 corridor. There is no dispute that the Path 15 Upgrade was developed at a time when the western energy markets were extremely volatile.[33] While California's energy crisis in 2000 and 2001 confirmed the need for additional infrastructure along Path 15, it also led to the bankruptcy of PG&E as well as the financial instability of SoCal Edison, making the Path

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[32] In *PUC of Cal. v. FERC,* 367 F.3d 925 (D.C. Cir. 2004), the D.C. Circuit held that:

> A primary purpose of the Federal Power Act, and its counterpart, the Natural Gas Act, "was to encourage the orderly development of plentiful supplies of electricity and natural gas at reasonable prices." *NAACP v. FPC*, 425 U.S. 662, 670, 48 L. Ed. 2d 284, 96 S. Ct. 1806 (1976). To carry out this purpose the Commission may consider non-cost factors as well as cost factors in setting rates. *See Permian Basin Area Rate Cases*, 390 U.S. 747, 791, 815, 20 L. Ed. 2d 312, 88 S. Ct. 1344 (1968). Using pricing incentives to increase the supply of energy available to customers is a valid, non-cost consideration in setting rates. *See Farmers Union Cent. Exch., Inc. v. FERC*, 236 U.S. App. D.C. 203, 734 F.2d 1486, 1503 (D.C. Cir. 1983); *Interstate Natural Gas Ass'n of Am. v. FERC*, 350 U.S. App. D.C. 366, 285 F.3d 18, 33-34 (D.C. Cir. 2002). Our decision thirty years ago in *Consumers Union of United States, Inc. v. FPC*, 166 U.S. App. D.C. 276, 510 F.2d 656, 660 (D.C. Cir. 1974), held as much: "reliance on non-cost factors has been endorsed by the courts primarily in recognition of the need to stimulate new supplies...."

Id. at 929.

[33] In late 2000, the Commission found that increases in natural gas costs, general electricity supply shortages and structural flaws in California's restructuring plan were causing unjust and unreasonable short-term rates in California. *San Diego Gas & Electric Co.*, 93 FERC ¶ 61,121, at 61,366 (Nov. 1, 2000). In its *Order Removing Obstacles*, the Commission cited "severe electric energy shortages facing California and other areas of the West" that were "likely to prevail into the foreseeable future." *Id*. at 61,967.

15 Upgrade particularly risky.[34] Thus, the need for additional infrastructure along Path 15 had been known for years, but no realistic solutions appeared until the Commission spurred investor interest and the instant upgrade was proposed.[35]

29. The prepaid reserve obligations were instrumental in making the Path 15 Upgrade feasible,[36] which in turn, has been used and useful in relieving consumers of millions of dollars in congestion expenses.[37] Accordingly, the Commission finds a nexus between the prepaid debt service and liquidity reserves paid by NTD to secure project financing, and the ultimate construction and implementation of the Path 15 Upgrade which has benefited ratepayers substantially.

30. The Commission rejects the argument that the prepaid debt service and liquidity reserves may not be included in rate base because the NOPR that was to become Order No. 679 had not become a final rule at the time the initial decision was entered. To reiterate our statements above, the Commission has always retained the ability to use flexible rate methods where unique circumstances demanded them.

31. As a final matter, it bears noting that the Commission is not accepting prepaid debt service and liquidity reserves in rate base simply because these costs were "required" by a privately negotiated agreement between NTD and its lenders. Mere reliance on privately negotiated lender requirements, without more, is insufficient to support rate

[34] Tr. 58:13-25, 59:1-7.

[35] Armando J. Perez Test. at 3-5, *Conditional Application of Pacific Gas and Electric Company for a Certificate of Public Convenience and Necessity Authorizing the Construction of the Los Banõs-Gates 500 kV Transmission Project. Application 01-04-012*. California Public Utilities Commission, available at http://www.caiso.com (accessed October 4, 2006)(recognizing historic congestion along Path 15 corridor during seasonal exchanges that resulted in congestion fees).

[36] *See* Ex. No. NTD-24 at 3:12-17 (testifying that project bonds would not have been available unless reserve obligations funded).

[37] *See Trans-Elect*, 109 FERC ¶ 61,249, at P 24, n.13 (estimating that the constraints on Path 15 resulted in $222 million in congestion costs over 16 months prior to December 2000).

base inclusion.[38] The mere fact that an expense is "contractually required" does not control the analysis of whether a rate component is just and reasonable.[39] It is but one factor to be considered.[40] With this in mind, the Commission next addresses the appropriate level of NTD's working capital allowance.

Working Capital Costs

ALJ's Findings

32. The ALJ rejected NTD's proposal to include $7.2 million as "working capital" costs.[41] The ALJ instead adopted the Commission's established methodology for calculating a cash working capital allowance in the absence of a lead-lag study, which resulted in an allowance of $300,812, an amount equal to 45 days' worth of operation and maintenance (O&M) expenses. Relying primarily on *Louisiana Power*,[42] the ALJ found that the Commission's policy is that "in the absence of a reliable lead-lag study approximating the utility's cash working capital needs or hardships that would justify a departure from the established formula, a utility should use the Commission's 45-day convention."[43] The ALJ concluded that the company provided no evidence that its proposed allowance reflected its actual working capital needs. In addition, the ALJ rejected the argument that unique risks associated with the Path 15 Upgrade justified departure from the Commission's lead-lag study policy.

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[38] *Missouri Pub. Service Com. v. FERC*, 337 F.3d 1066, 1073 (DC Cir. 2003)(holding that a legally binding obligation is not sufficient where expenditure does not benefit customers).

[39] *Id.* at 1076 (finding that the fact that cost is in a contract does not allow FERC to abdicate responsibility of independent judgment that a rate is just and reasonable).

[40] *See Jersey Cent. Power*, 810 F.2d 1168, 1177-78 (D.C. Cir. 1987).

[41] NTD did not distinguish between "cash working capital," and the more general "working capital," which includes cash working capital as well as prepayments, materials and supplies.

[42] *Louisiana Power & Light Co.*, 14 FERC ¶ 61,075 (1981).

[43] Initial Decision at P 46.

Exceptions

33. NTD filed exceptions to this ruling again arguing that its special circumstances and lender's requirements warrant departure from the 45-day convention for a traditional cash working capital allowance. NTD argues that the working capital might have been more readily understood as a "prepayment" rather than working capital, but argues nevertheless, that the costs associated with the lender's requirements are entitled to rate base treatment as prudently incurred costs related to transmission infrastructure development.

34. In addressing the ALJ's reliance on the 45-day convention, NTD contends that the convention is not binding where the working capital requirements are known, quantifiable and prescribed by contract. NTD suggests that a start-up enterprise with no operational expenses could not perform a lead-lag study, and therefore, should not be bound by a lead-lag study alternative to the 45-day convention.

Opposing Exceptions

35. In its brief opposing exceptions, Trial Staff highlights the discrepancy between the amount NTD purportedly was obligated to secure as working capital under the Depository Agreement ($9 million) and the amount it now seeks ($7.26 million). Trial Staff argues that this discrepancy erodes the contractual basis on which NTD relies to adjust its working capital beyond the 45-day convention without a lead-lag study. Moreover, Trial Staff argues that this discrepancy illustrates that NTD has, in fact, provided no evidence that its working capital request approximates its actual working capital needs.

36. Southern California Edison Company (SoCal), San Diego Gas and Electric Company (SDG&E) and the CPUC (Joint Parties) filed a joint brief opposing exceptions that criticized NTD's proposed working capital allowances. The Joint Parties argue that NTD improperly proposes to use a 75-day lag without any evidence or contention that this lag bore any relationship to NTD's actual payment obligations. Moreover, the Joint parties argue that NTD improperly seeks to include in its working capital expenses items such as depreciation, return and taxes instead of the traditionally accepted O&M. The Joint Parties balk at the sheer amount of working capital requested, which they argue equals about twenty-four times the amount that the 45-day convention and properly defined working capital expenses would allow.

37. In addition, the Joint Parties join Trial Staff's brief in questioning the discrepancy between the $9 million in working capital obligations under the Depository Agreement and the $7.2 million request by NTD.

38. PG&E also filed an exception in which it again argues that the Commission should not adopt rates that are unjust and unreasonable simply to promote transmission investment. PG&E further argues that NTD's reliance on the Transmission Investment NOPR is premature since the Commission has not yet issued a final rule.

Commission Determination

39. The Commission has a clear policy that where an entity does not, or cannot, provide a fully-developed lead-lag study, the cash working capital allowance must conform to the 45-day convention.[44] Here, NTD has provided very little information regarding its methodology in reaching its extremely large cash working capital sum and has no lead-lag study to give the Commission a basis on which to determine whether this cash working capital allowance is just and reasonable.

40. In reviewing NTD's assertion that the agreement with its lender imposed a $9 million "working capital" obligation, which NTD adjusted downward to $7.2 million, based on NTD's understanding of rate-making conventions, the Commission finds that the derivation of the $7.2 million allowance is extremely opaque. NTD has provided no evidence of the company's actual cash working capital needs, no testimony from the lender about the unusual working capital "requirement" in the Depository Agreement, and no evidence showing precisely how the allowance was derived or adjusted by NTD.

41. While NTD relies on the lender's requirements to support its position with regard to both issue one (prepaid debt service and liquidity reserves) and issue two (working capital), those requirements alone are too thin a basis to justify NTD's proposed working capital costs. The inclusion of prepaid debt service and liquidity reserves in rate base has a logical nexus to security that was reasonably required on an important project with a high financial risk. Allowing those costs in rate base appears to balance fairly investor and customer interests in the project. On the other hand, NTD's proposed working capital allowance shows no nexus to its actual working capital needs.

42. Moreover, as *Missouri PSC* suggests, the fact that a particular cost has been negotiated between two parties is insufficient to support rate base treatment.[45] In *Missouri PSC*, the court rejected the Commission's acceptance of pipeline rates based on rates negotiated by the pipeline and shippers. The court held that while the Commission

[44] *See, e.g., Carolina Power & Light Co.*, 6 FERC ¶ 61,154 at 61,296 (1979); *Louisiana Power & Light Co.*, 14 FERC ¶ 61,075 at 61,122-23.

[45] *Missouri PSC*, 337 F.3d at 1073.

may give weight to contracts and settlements of parties that are before it, the Commission retains the responsibility of making an "independent judgment,"[46] in order to discern whether the interest of the customers is sufficiently protected and served.

43. In sum, a lender cannot simply define working capital for ratemaking purposes. Nor can the utility then adjust that amount without supporting the derivation of its costs and showing what adjustments it has made. Accordingly, the ALJ's holding with regard to working capital is correct. To grant an extraordinarily large working capital allowance on a flimsy evidentiary showing would not fairly balance investor and customer interests.

AFUDC

ALJ's Findings

44. The ALJ accepted NTD's proposed methodology for calculating AFUDC over the Trial Staff's methodology. Accordingly, the ALJ accepted NTD's proposed AFUDC amount for inclusion in NTD's TRR.

45. In his initial decision, the ALJ observed that both NTD and the Trial Staff computed AFUDC rates for three specific periods from December 2002 through December 2004 to reflect a mid-year change in construction financing.[47] The record demonstrates that plant balances and fees proposed by NTD and used by both NTD and Trial Staff to derive AFUDC rates, and the resultant AFUDC amount, were likewise uncontested. The parties, however, chose dissimilar methods for compounding AFUDC. NTD proposed the use of monthly compounding which resulted in a proposed AFUDC of $22,358,736, while the Trial Staff proposed semiannual compounding, which resulted in an AFUDC of $21,517,560.

46. The ALJ adopted NTD's method of compounding AFUDC and the associated allowance, concluding that, even though NTD's methodology did not comport strictly with Commission precedent, it represented a reasonable attempt to deal with the unique

[46] *Id.* 1076 (quoting *Laclede Gas Co. v. FERC*, 997 F.2d 936, 946 (D.C. Cir. 1993)).

[47] NTD was able to refinance a temporary unsecured development loan and obtain a lower-rate permanent construction loan.

circumstances relating to the debt refinancing presented by NTD. The ALJ found that Trial Staff had "not shown that NTD's method resulted in unjust and unreasonable rates."[48]

47. In the Initial Decision, the ALJ considered and rejected arguments by both parties that either proposed methodology contravened Commission regulations. Instead, the ALJ found that the "key issue [was] whether NTD's use of monthly compounding impermissibly [violated] the regulations."[49] While the ALJ noted that NTD's monthly compounding method was a departure from Order No. 561,[50] which generally limits utilities to compounding no more frequently than semiannually, the Initial Decision found NTD's proposal to be a justified departure from the ordinary rules for compounding AFUDC because a strict application of semiannual compounding failed to account for mid-year changes in NTD's financing.[51]

48. Additionally, the ALJ pointed out that "[in] *Kuparuk*, the Commission prohibited a pipeline from compounding its AFUDC on a monthly basis, but in doing so the Commission noted that the pipeline had provided no reason why the Commission's general rule should not apply."[52] Conversely, the ALJ found the reasons provided by NTD for the deviation were persuasive. Specifically, the ALJ was guided by the company's arguments that the unique aspects of the Path 15 upgrade required special construction financing arrangements. Moreover, the ALJ observed that NTD's straightforward calculation of AFUDC on a monthly rather than semiannual basis allowed it to track the mid-year change in financing as it occurred, thereby allowing

[48] Initial Decision at P 68.

[49] *Id*. at P 70-72.

[50] Amendments to Uniform System of Accounts for Public Utilities and Licensees and for Natural Gas Companies (Classes A, B, C and D) to Provide for the Determination of Rate for Computing the Allowance for Funds Used During Construction and Revisions of Certain Schedule Pages of FPC Reports, Docket No. RM75-27, Order No. 561, 57 FPC 608, 612 (1977), *reh'g denied*, Order No. 561-A, 59 FPC 1340 (1977), *order on clarification*, 2 FERC ¶ 61,050 (1978) (Order No. 561).

[51] Initial Decision at P 70.

[52] Initial Decision at P 71, *citing Kuparuk Transportation Co.*, 45 FERC ¶ 63,006 (1998), *aff'd in part and modified in part on other grounds*, 55 FERC ¶ 61,122 at 61,371 (1991) (*Kuparuk*).

ratepayers the benefit from the lower costs associated with the new financing. Finally, the ALJ found that, in contrast to the Trial Staff's approach, "the Company's method avoids the need to use complex formulas to convert those rates to make them compatible with semiannual compounding."[53]

Exceptions

49. Trial Staff excepts to the ALJ's AFUDC determination in this proceeding. First, Trial Staff argues that the ALJ erred in shifting the burden of proof to Trial Staff to show that NTD's methodology for calculating AFUDC and the resulting AFUDC amount are unjust and unreasonable. To support its claim, Trial Staff cites to section 205(e) of the Federal Power Act (FPA), which states that "at any hearing involving a rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the public utility."[54] According to Trial Staff, NTD failed to meet its burden of proof and also failed to provide a persuasive reason to depart from long-standing Commission precedent. Trial Staff cites to Commission Order No. 561 which states, in part:

> We agree that compounding of AFUDC is proper in theory and necessary as a matter of sound cost determination; however, we believe that a monthly compounding of AFUDC . . . may result in excessive amounts capitalized . . . We shall therefore permit compounding but no more frequently than semiannually.[55]

50. As further support, Trial Staff asserts that "the Commission has consistently upheld its Order No. 561 directive by requiring companies to specifically modify their compounding of AFUDC from monthly to semiannually."[56]

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[53] Initial Decision at P 73.

[54] Trial Staff Brief on Exceptions, citing 16 U.S.C. §824(e) (1994). *See also City of Winfield v. FERC*, 744 F.2d 871, 877 (D.C. Cir. 1984) (hereinafter *City of Winfield*); *The Second Taxing District of the City of Norfolk v. FERC*, 683 F.2d 477, 486 (D.C. Cir. 1982); *Niagara Mohawk Corp*., 33 FERC ¶ 63,002 at 65,016 (1985), *aff'd*, 42 FERC ¶ 61,143 (1988) (hereinafter *Niagara Mohawk*).

[55] Trial Staff Brief on Exceptions, *citing* Order No. 561, FPC at 612.

[56] Trial Staff Brief on Exceptions, *citing Ingleside Energy Center, LLC*, 112 FERC ¶ 61,101 at P 81 (2005); *Iroquois Gas Transmission, L.P.*, 64 FERC ¶ 62,211 at 64,267 (continued)

51. Trial Staff further contends that pursuant to section 205(a) of the FPA, the ALJ was required to determine whether NTD's proposal met the Commission's just and reasonable standard. Instead, Trial Staff asserts that the ALJ merely stated that the NTD Path 15 AFUDC methodology "represents a reasonable attempt" to account for NTD's mid-year loan refinancing in 2003. Moreover, Trial Staff argues that the ALJ simply accepted NTD's bare bones assertion that it is not possible to compound AFUDC semiannually and account for a mid-year change in rates while at the same time he rejected Trial Staff's proposed methodology as too complex.[57]

52. As early as 1977 in Order No. 561, according to Trial Staff, the Commission recognized that short-term rates change frequently and are highly volatile. Considering today's volatile energy market, Trial Staff reasoned that many loans have variable rates that may change monthly, quarterly or semiannually based on changes in the various market indexes. According to Trial Staff, Order No. 561 recognizes this volatility, yet still mandates that AFUDC be compounded no more than semiannually. Thus, in Trial Staff's estimation, the ALJ's conclusion that NTD's mid-year financing arrangement constituted a unique circumstance is wholly antithetical to the directive issued in Order No. 561.

53. Finally, Trial Staff maintains that the ALJ did not find Witness Chrystina Steffy's methodology flawed, but only too complex.[58] Trial Staff asserts that by using the Reduced Rate Method, Steffy's methodology simply accounts for NTD's mid-year

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(1993); *Edicott Pipeline Co.* 55 FERC ¶ 63,028 at 65,154 (1991); Trunkline LNG Co., 29 FERC 61,195 (1984), *aff'd in part and rev'd in part on other grounds,* 45 FERC ¶ 61,256 (1988); *Carolina Power & Light Co.*, 4 FERC ¶ 61,023, *reh'g denied*, 5 FERC ¶ 61,065 (1978) (affirmed the ALJ's decision that semiannual compounding should be permitted consistent with the Order No. 561 principles).

[57] Trial Staff Brief on Exceptions at p 11.

[58] In her conversion calculation, Ms. Steffy used the Reduced Rate Methodology. As reflected in her testimony, Ms. Steffy used the monthly plant balances provided by NTD and only adjusted the AFUDC rates in her calculation. Therefore, the monthly AFUDC rate for each period reflected in NTD's testimony and supporting workpapers was converted by Ms. Steffy to an equivalent monthly rate that "when applied and compounded monthly has the effect of compounding AFUDC semiannually." Trial Staff Brief on Exception at p 17.

refinancing while comporting with Order No. 561.[59] Accordingly, by using this conversion technique, Trial Staff found NTD's proposed AFUDC to be excessive by $841,176.

Opposing Exceptions

54. NTD opposes Trial Staff's exceptions. NTD argues that the ALJ carefully analyzed NTD's AFUDC calculation and concluded that NTD had met its burden in support of its rate proposal. NTD argues that such finding alone was sufficient to approve NTD's AFUDC calculation.

55. NTD also excepts to the Trial Staff's view that the Commission, in Order No. 561, did not recognize any difficulty in compounding AFUDC semiannually despite its acknowledgement that short-term rates are "very volatile" and would likely to change during the AFUDC period. NTD acknowledges that its AFUDC proposal represents a departure from Order No. 561 semiannual compounding convention but that it offered a detail explanation that semiannual compounding was not readily applicable to NTD and would not permit the recognition of rate-reducing effects of NTD's mid-year financing changes. NTD also argues that Trial Staff's own AFUDC calculations implicitly recognize that the Order No. 561 methodology for compounding does not readily apply to NTD.

56. NTD further argues that Trial Staff's reliance on Order No. 561, which requires that utilities adjust estimated to actual short-term debt costs and balances at year-end if a significant deviation occurs, supports its AFUDC calculation. NTD states that its monthly compounding approach adjusts to actual at precisely the date that NTD's new debt had replaced the old. In conclusion, NTD argues that Trial Staff's Reduced Rate methodology attempts to use complex formulas to make NTD's AFUDC compatible with semiannual compounding, but was rejected by the presiding judge not only because of its complexity, but also because it may not have actually replicated the effects of semiannual compounding.

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[59] Ms. Steffy's testimony expresses that by taking NTD's monthly compounded AFUDC rate and applying the Reduced Rate Method, which is formulated to ensure that the AFUDC never exceeds the amount that would otherwise have been derived from semiannual compounding, an equivalent corresponding monthly rate is computed.

Commission Determination

57. The Commission's AFUDC method compensates the stockholders of a regulated utility for the pre-operational cost of funds invested in a new plant prior to the time the plant actually goes into service. In calculating AFUDC as set forth in Order No. 561, the Commission considers the regulated utility's average short-term debt and short-term debt interest, long-term debt and long-term debt interest, preferred stock and preferred stock cost rate and common equity and common equity cost rate. The rates are determined annually based on actual book balances. As noted previously, Order No. 561 requires AFUDC rates to be compounded no more frequently than semiannually.

58. In its brief on exceptions, the Trial Staff correctly states that the burden of proof to establish the justness and reasonableness of NTD's proposed AFUDC rests with NTD. NTD's argument that its unique debt-refinancing circumstances necessitated the use of monthly rather than semiannual compounding lacks merit. Specifically, for the period January 1, 2003 through September 11, 2003, NTD was funded entirely by debt through an unsecured, high-interest development loan. Once construction financing was secured, NTD experienced a corresponding reduction in interest rates.

59. NTD's decision to modify its AFUDC rate to account for significant changes in debt costs that reflected mid-year refinancing is consistent with Order No. 561's requirement to reflect an adjustment from estimated to actual costs if significant deviations occurred. It is appropriate to require the use of lower financing costs in the AFUDC calculation, as such costs are recorded. However, the Commission is not inclined to permit a departure from semiannual compounding of AFUDC simply because there is a purported lack of a "single rate" for the semiannual period. Trial Staff's calculation, which adopted both NTD's plant balances and NTD's AFUDC rates, applied a conversion formula to ensure that the company's AFUDC "never exceeded the amount that would be derived from compounding on a semiannual basis."[60] The Commission's review of Trial Staff's methodology indicates that the formula is not as complex as the presiding ALJ believed. Moreover, Trial Staff's methodology is more compatible with semiannual compounding than NTD's unadjusted AFUDC.

60. For each month, NTD calculated AFUDC using the following formula: [(plant costs including AFUDC + cumulative costs for AFUDC + cumulative AFUDC/2)] * (AFUDC rate/12). Trial Staff used a standard compound interest formula to account for semiannual compounding. The use of this conversion formula is appropriate because it ensures that ratepayers will not be charged an excessive AFUDC amount over the life of

[60] Exhibit No. S-10 at p.4.

NTD Path 15 facilities, and is consistent with Order No. 561's semi-annual compounding requirement. For these reasons, we find that NTD has not shown that its method of calculating AFUDC is just and reasonable.

61. Accordingly, we reverse the ALJ with respect to this issue and direct NTD to apply Trial Staff's method of compounding AFUDC for a total AFUDC allowance of $21,517,560.

<u>Over-recovery Allegation</u>

<u>ALJ's Findings</u>

62. The final matter considered by the ALJ was whether NTD may potentially over-recover if its transmission revenue requirement (TRR) includes costs associated with Western's 10 percent entitlement in the Path 15 Upgrade. The ALJ held that any issue of potential over-recovery by NTD as a result of Western's cost recovery in Western's rate proceeding in Docket No. ER04-1198-000 was beyond the scope of the NTD rate proceeding in Docket No. ER05-17-000.

63. Specifically, the ALJ based his decision on two interrelated findings. First, the ALJ found that NTD's potential over-recovery could not be determined without considering whether Western had over-recovered. The ALJ concluded that the record in the instant case was silent on Western's compensation and that Western's absence from the case made a decision on over-recovery improper. Second, the ALJ was concerned that any decision on NTD's over-recovery would prematurely determine the issue that the ALJ found had been designated for consideration in Western's docket. In essence, the ALJ understood that the Commission had essentially removed the issue of Western's over-recovery from the instant case, to be decided in Docket No. ER04-1198-000.

64. At the time of the ALJ's determination, the Commission had not ruled on a motion to consolidate Docket Nos. ER04-1198 and ER05-17. As discussed below, the Commission ultimately denied the motion to consolidate.

<u>Exceptions</u>

65. On exceptions, the Joint Parties argue that NTD's TRR is unjust and unreasonable because it includes costs of transmission capacity in excess of capacity that is actually controlled by NTD. The Joint Parties contend that such costs collected by NTD may duplicate costs collected by Western for identical transmission capacity. Moreover, the Joint parties argue that NTD's proposed TRR allows NTD to recover costs for transmission capacity that may not be available for use under the California Independent Operator Tariff in violation of the FPA and Commission precedent.

66. In support of their exceptions, the Joint Parties reject the contention that the Letter Agreement accepted by the Commission through an order entered on June 12, 2002 allows NTD to include in its TRR any costs it may incur to finance Western's entitlements. The Joint Parties maintain that the Letter Agreement does not ensure recovery of such costs, especially where Western has recovered the very same costs or has removed its entitlements from ISO operational control.

67. As a solution, the Joint Parties promote two alternatives to NTD's requested TRR. First, the Joint Parties propose tying NTD's cost recovery to the proportionate share of NTD's transmission service rights. In the alternative, the Joint Parties argue that NTD should credit its revenue requirement based on congestion and wheeling revenues retained by Western that exceed Western's proportionate capital contribution to the Path 15 Upgrade.

68. Pursuant to Rule 711(a)(iii), PG&E filed an exception that incorporated the exceptions raised by the Joint Parties.

Opposing Exceptions

69. As a preliminary matter, NTD argues that the Joint Parties' exceptions are procedurally improper and should be stricken or disregarded. NTD notes that the Joint Parties have attempted to link Western's Transmission System Rights (TSRs) entitlements to the ultimate disposition of NTD's revenue requirement on five separate occasions. NTD argues that each time the issue has been raised, it has been explicitly or implicitly rejected. Moreover, NTD argues that the issue has not been fully developed for the record because it was ruled to be beyond the scope of the initial decision in this docket.

70. In response to the merits of the Joint Parties' exceptions, NTD argues that the regulatory history of the Path 15 Upgrade confirms that NTD's TRR would be subject to conventional prudence standards and would not be adjusted as a function of proportionate TSRs entitlements or in response to Western's cost recovery and rate treatment proposals in Docket No. ER04-1198-000. NTD insists that Western's actual or expected conduct is not a legal ground for adjusting NTD's TRR.

71. In the event that the Commission finds merit in the Joint Parties exceptions, NTD attacks the remedy proposed by the Joint Parties. Specifically, NTD argues that the remedy is based on mere speculation and relies on events that have not and may never occur.

Commission Determination

72. For reasons stated below, the Commission affirms the ALJ on this issue and finds that NTD's TRR should be subject to conventional prudence standards and should not be adjusted as a function of proportionate TSRs entitlements or in response to Western's cost recovery and rate treatment proposals in Docket No. ER04-1198-000.

73. On April 30, 2002, Western, on behalf of itself, NTD and PG&E, filed a Letter Agreement pursuant to FPA section 205. The Letter Agreement, which was accepted by the Commission on June 12, 2002, provided that NTD, PG&E and Western would each receive an entitlement to TSRs, which definition included all associated rights such as Firm Transmission Rights and derived revenue.[61] Under the Agreement, NTD received 72 percent, PG&E received 18 percent and Western received 10 percent of the TSRs.[62]

74. The Letter Agreement also provided that final allocation of TSRs will be based on the "ratio of the contribution made by a participant" to the project "either in terms of funding or actual work performed."[63] The Letter Agreement further stated that in no event would Western's share be less than 10 percent.[64] In addition, the Letter Agreement provided that Western would contribute about $1.33 million to the project, which was about .5 percent of the project's estimated cost of $306 million.[65]

75. Subsequent to the Initial Decision, the Commission issued two orders on May 16, 2006 relevant to this issue. The first—an order on rehearing and clarification—held that Western would not over recover if it received 10 percent of the congestion and FTRs auction revenues, notwithstanding the fact that Western contributed only 0.5 percent of the project's cost.[66] In that order, the Commission determined that Western had provided valuable consideration in serving as a catalyst for the project,

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[61] Letter Agreement, § 2.15.

[62] *Id*., Ex. A.

[63] *Id*., § 3.2.2

[64] *Id*.

[65] *Id.*, Ex. B.

[66] *California Independent System Operator Corporation,* 115 FERC ¶ 61,178, at P 20 (2006).

making its 10 percent entitlement just and reasonable despite its relatively small monetary contribution.[67]

76. The second—an order denying consolidation and summary disposition—held that NTD's TRR proposal would be evaluated on its own merits without regard to Western's 10 percent entitlement in TSRs or associated revenues.[68] The Commission explained that, although the result would be a rate for the Path 15 Upgrade that was higher than if the Path 15 Upgrade was owned by a single participating TO, the result was not unjust or unreasonable under the circumstances.[69] No party to the proceeding sought rehearing of either of these orders.

77. As the Commission explained in those May 16, 2006 companion orders, Western has not "over recovered" by receiving 10 percent of the revenues associated with its TSRs. Instead, Western has been compensated for its non-monetary activities in furtherance of the Path 15 Upgrade. Moreover, Western's 10 percent recovery has no bearing on whether NTD's proposed TRR is just and reasonable. Rather, as stated in our order denying consolidation and summary disposition, we review NTD's proposed TRR independent of Western's compensation.

78. The Commission finds that NTD paid for the bulk of the actual cost of Western's 10 percent entitlement and has a corresponding right to recover those costs embedded in its rates as part of its TRR. The Joint Parties have provided no evidence demonstrating that it would be just and reasonable to tie NTD's TRR to its 72 percent entitlement rather than to NTD's actual investment in the project, which amounts to approximately 82 percent of the costs.

79. Moreover, if NTD has its TRR reduced because of non-cash consideration that the Commission has allowed as compensation for Western, the result could have a chilling effect on future investments in transmission infrastructure in California and beyond.

80. The Commission therefore rejects the Joint Parties' arguments that the cost of transmission capacity is in excess of available capacity, that NTD's recoverable costs are duplicative of costs recovered by Western or that ratepayers may be forced to pay for capacity unavailable should Western leave the California Independent Operator Tariff. These arguments miss the point. Western's 10 percent TSRs revenue entitlement

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[67] *Id*.

[68] *Trans-Elect Path 15, LLC*, 115 FERC ¶ 61,179, at P 13 (2006).

[69] *Id*.

compensates Western for facilitating the Path 15 Upgrade and saving the ratepayers millions of dollars in congestion fees. NTD's cost recovery under its proposed TRR is based on NTD providing 82 percent of the actual dollar investment in the Path 15 Upgrade. NTD's recovery of its investment through the proposed TRR is just and reasonable, especially since it only receives 72 percent of the TSRs entitlement. In other words, the recovery of NTD is based on consideration separate and apart from Western's consideration. Accordingly, the Joint Parties' argument of double recovery is untenable and the Commission affirms the ALJ's assessment of NTD's TRR independently of Western's cost recovery.

The Commission orders:

The Initial Decision is affirmed in part and reversed in part, consistent with discussion set forth above.

By the Commission. Commissioner Moeller not participating.

(S E A L)

Magalie R. Salas,
Secretary.