Decision **PROPOSED DECISION OF ALJ ALLEN (Mailed 7/19/2016)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Trans Bay Cable LLC (U934E) for Order Exempting Securities Issuance Transactions from Commission Authorization Pursuant to Public Utilities Code Sections 829 and 853.	Application 16-03-011 (March 22, 2016)

DECISION GRANTING EXEMPTION FROM PUBLIC UTILITIES CODE SECTIONS RELATING TO SECURITIES TRANSACTIONS

Summary

This decision grants, with conditions and limitations, the request of Trans Bay Cable, LLC (Trans Bay Cable)[1] for exemption from the requirements of Public Utilities Code §§ 816 through 830, and a partial exemption from the requirements of Public Utilities Code § 851. Trans Bay Cable does not need to obtain prior Commission authorization for securities transactions, such as refinancing its debt, subject to certain conditions and limitations.

[1] Trans Bay Cable uses the acronym "TBC" in its pleadings; quoted language will accordingly use "TBC" for Trans Bay Cable.

Background

Trans Bay Cable describes itself as follows:

> TBC is the owner and operator of a fifty-three mile, approximately 400 megawatt High Voltage Direct Current transmission line and associated facilities (the "Project"), which provides direct electric transmission between the Pacific Gas and Electric Company's (PG&E) Pittsburg Substation located at a site adjacent to the City of Pittsburg, California, in Contra Costa County and PG&E's Potrero Substation within the City and County of San Francisco. […] TBC has been held to be a "public utility" (PUC Section 216(a)) subject to Commission jurisdiction. However, TBC is also a FERC-regulated transmission-only company, and FERC has exclusive jurisdiction over TBC's rates and terms and conditions of service. In addition, the Project is under the operational control of the California Independent System Operator Corporation (CAISO), which recovers its transmission service rates through its own FERC approved tariff. TBC has no retail California customers, and TBC recovers its entire revenue requirement pursuant to its FERC-jurisdictional Transmission Owner Tariff (TO Tariff). (TBC Application at 4-5, footnotes omitted.)

In this proceeding, Trans Bay Cable's request is:

> [T]hat the Commission issue an Order which:
>
> (1) Exempts TBC from the requirements of PUC Sections 816 through 830, and
>
> (2) Exempts TBC from the transfer and encumbrance requirements of PUC Section 851 whenever such transfer or encumbrance serves to secure debt exempted from PUC Sections 816 through 830 by said Order. (Application at 2-3.)

Trans Bay Cable is making this request at this time because it is seeking to refinance its existing debt. (*Id.* at 4.) It appears, however, that Trans Bay Cable is seeking exemption from Commission review and approval not just for this

transaction, but for all transactions of this type. (*Id.* at 2-3, 10.) No protests or other responses to Trans Bay Cable's Application were filed.[2]

Discussion

Trans Bay Cable argues that it should be exempt from the statutory requirements of Public Utilities Code (Pub. Util. Code) §§ 816 through 830,[3] which address the processes by which utilities under the Commission's jurisdiction may issue "stocks and stock certificates or other evidences of interest or ownership, and bonds, notes, and other evidences of indebtedness." (*See*, e.g. Section 817.)[4]

Before addressing Trans Bay Cable's arguments why it should be exempted from Sections 816 through 830, we need to confirm that we can in fact do so under state law. Section 829(c) states:

> The commission may from time to time by order or rule, and subject to such terms and conditions as may be prescribed therein, exempt any public utility or class of public utility from this article if it finds that the application thereof to such public utility or class of public utility is not necessary in the public interest.

Accordingly, it appears that the Commission has the authority to grant the relief requested by Trans Bay Cable.

Trans Bay Cable presents a number of reasons why it should not be required to obtain Commission authorization for its securities transactions.

[2] Trans Bay Cable filed its Application on March 22, 2016. Because the Application had not been served on anyone other than the Commission, the assigned Administrative Law Judge (ALJ) ordered Trans Bay Cable to serve its Application more broadly. Trans Bay Cable did so, and filed a revised certificate of service on April 22, 2016, along with a motion requesting a shortened protest period to its re-served Application. No responses to the motion were filed.

[3] All further references to section numbers are to the Public Utilities Code unless otherwise noted.

[4] Collectively, §§ 816 through 830 are the entire contents of Article 5 of the Public Utilities Code, titled: "Stocks and Security Transactions."

Those reasons are: 1) Trans Bay Cable is a transmission-only company, and has no "captive" customers (or even any retail customers), unlike a more typical utility (Application at 5, 7); 2) Trans Bay Cable's rates are set by the Federal Energy Regulatory Commission (FERC), not this Commission (*id*. at 5, 8); 3) Trans Bay Cable's securities issuances are subject to FERC review and approval (*id.* at 6, 8); and 4) interested parties may intervene and participate in FERC proceedings relating to Trans Bay Cable's rates and securities issuances. (*Id.* at 5-6, 7-8.)

Based on these reasons, Trans Bay Cable argues that there is essentially no purpose for the Commission to follow the procedures set forth in §§ 816-830 for Trans Bay Cable's securities transactions, and that applying those procedures to Trans Bay Cable is essentially a waste of time and money and serves no real purpose. (*Id*. at 9.)

In addition to review under §§ 816-830, securities transactions can also trigger a requirement for Commission approval under § 851, which reads in relevant part:

> A public utility […] shall not sell, lease, assign, mortgage, or otherwise dispose of, or encumber the whole or any part of its railroad, street railroad, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder, or by any means whatsoever, directly or indirectly, merge or consolidate its railroad, street railroad, line, plant, system, or other property, or franchises or permits or any part thereof, with any other public utility, without first having either secured an order from the commission authorizing it to do so for qualified transactions valued above five million dollars ($5,000,000), or for qualified transactions valued at five million dollars ($5,000,000) or less, filed an advice letter and obtained approval from the commission authorizing it to do so.

Trans Bay Cable accordingly asks for an exemption from the requirements of § 851 that corresponds to its requested exemption from §§ 816-830. As Trans Bay Cable states its request, it wants an order that: "Exempts TBC from the transfer and encumbrance requirements of PUC § 851 whenever such transfer or encumbrance serves to secure debt exempted from PUC §§ 816 through 830 by said Order." (Application at 3.) There is some logic to this, as it does not make sense for the Commission to perform a Section 851 review for a transaction that the Commission determined it did not need to review under §§ 816-830.

The Commission can also provide for an exemption from the requirements of § 851 under § 853(b), which states:

> (b) The commission may from time to time by order or rule, and subject to those terms and conditions as may be prescribed therein, exempt any public utility or class of public utility from this article if it finds that the application thereof with respect to the public utility or class of public utility is not necessary in the public interest. The commission may establish rules or impose requirements deemed necessary to protect the interest of the customers or subscribers of the public utility or class of public utility exempted under this subdivision. These rules or requirements may include, but are not limited to, notification of a proposed sale or transfer of assets or stock and provision for refunds or credits to customers or subscribers.

Based on the record before the Commission, it appears reasonable to grant Trans Bay Cable at least some of the statutory exemptions it has requested. The main question is the scope of those exemptions. Trans Bay Cable requests to be exempted from §§ 816-830 for any and all transactions that would otherwise require review under those sections. (*Id.* at 2-3, 15-16.) While Trans Bay Cable provides valid reasons for generally exempting it from the requirements of §§

816-830, providing a broad exemption with no limits or conditions does not appear to be in the public interest.

This Commission has an interest in ensuring that Trans Bay Cable's facilities are maintained and operated in a safe and reliable manner, and ensuring that Trans Bay Cable's securities transactions do not impair its ability to provide safe and reliable service. (*See*, Section 451.) In addition, securities transactions have the potential to result in a functional or actual change of ownership or control of a company; this Commission does not intend to authorize any such change by this decision. And finally, while Trans Bay Cable's rates are set by FERC, this Commission does not want to inadvertently authorize by omission securities transactions that result in significant rate increases that will ultimately be passed on to retail customers in California. At the same time, having the Commission review every securities transaction (such as the present one) does appear to provide little value while imposing costs on Trans Bay Cable, the Commission, and California ratepayers. Accordingly, the Commission grants Trans Bay Cable's request for exemption from §§ 816-830 and a corresponding exemption from § 851, but with conditions and limitations.

The exemptions granted to Trans Bay Cable by this order may be revoked, limited, or conditioned by the Commission at any time. If Trans Bay Cable is cited by the Commission for a safety violation, or if the Commission opens an Order Instituting Investigation for a safety violation, the exemptions are no longer in effect. If Trans Bay Cable anticipates requesting more than a 20% rate increase from FERC as a result of a securities transaction, the exemptions do not apply to that transaction, and Trans Bay Cable must file an application at this Commission. If a securities transaction will result in a functional or actual change of ownership or control of Trans Bay Cable or its facilities, the exemptions

do not apply, and Trans Bay Cable must file an application at this Commission. This decision does not grant an exemption from the requirements of § 854, and the scope of exemption from § 851 is does not extend beyond transactions exempt from §§ 816-830.

Categorization and Need for Hearing

In Resolution ALJ 176-3375, dated April 7, 2016, the Commission preliminarily categorized this Application as ratesetting, and that hearings were necessary. No protests or report were received; the determination is changed to no hearings are necessary.

Comments on Proposed Decision

As provided by Rule 14.3 of our Rules of Practice and Procedure and Pub. Util. Code § 311(g)(1), the proposed decision of the ALJ in this matter was mailed to the parties on July 19, 2016. Comments were filed by Trans Bay Cable. Trans Bay Cable asked for two changes to the proposed decision.[5]

First, Trans Bay Cable suggested a "clarification" that any revocation of the exemptions granted to it would operate prospectively only, and: "[W]ould not be applicable to any securities transaction that TBC had entered into or committed to prior to such revocation of the exemptions." (Trans Bay Cable Comments at 3.) We clarify that, as set forth in the proposed decision, the revocation of the exemptions would operate prospectively, and accordingly would not apply to a securities transaction ~~that~~where Trans Bay Cable had already issued securities or entered into a legally binding written agreement to issue securities. If Trans Bay Cable has entered into a ~~transaction~~legally binding written agreement to issue securities, but that transaction has not yet been

[5] Subsequently, Trans Bay Cable filed a Motion for Leave to File Additional Comments on the Proposed Decision. That Motion was granted, and minor clarifications have been made in response.

completed, that transaction would not be impacted by a revocation of the exemptions.

Trans Bay Cable does not define or describe what it means for Trans Bay Cable to "commit to" a securities transaction – whether that requires a vote of the board of directors, or just a decision or intention by management, nor does it describe how far in advance of a transaction such a commitment may occur. Potentially, Trans Bay Cable could commit to doing a particular securities transaction, but delay its execution for a significant length of time. Because the potential impact and consequences of this requested change are unclear, we decline to make this change.

Second, Trans Bay Cable requests a change to the proposed decision's condition that "the exemptions will be revoked if the TBC is cited for a safety violation or the Commission opens an Order Instituting Investigation for a safety violation." (*Id.* at 2-3.) Specifically, Trans Bay Cable requests that this triggering event be changed to a "non-appealable Commission order finding that a safety violation by TBC has actually occurred." (*Id.* at 4.) Trans Bay Cable correctly notes that as written, the language of the proposed would result in an automatic revocation of the exemptions if Trans Bay Cable is cited for a safety violation or if a formal investigation into a safety violation is ordered by the Commission. Trans Bay Cable supports its requested change by arguing that:

> Typically penalties are imposed upon a *finding of fault*. As currently written Condition Two arguably imposes a penalty of revocation of the exemption prior to any *finding of fault*. Accordingly TBC respectfully requests that Condition Two be amended to clarify that TBC would not be penalized by the loss of the exemptions granted by the Decision until the Commission has fully determined that TBC has committed a safety violation. (*Id.*, emphasis in original.)

Trans Bay Cable has requested an exemption from statutory requirements that apply to it as a public utility. The proposed decision grants Trans Bay Cable those exemptions from the otherwise applicable statutes. Now Trans Bay Cable is complaining that the possibility of having to comply with the statutory requirements (that it submitted itself to voluntarily by becoming a public utility) is the equivalent of a penalty. It is not.

The conditions placed on the exemptions granted to Trans Bay Cable are intended in part to ensure that Trans Bay Cable is operating safely; if there is an indication that Trans Bay Cable may have potential safety problems, the Commission should act quickly in response. Allowing Trans Bay Cable to operate under broad exemptions from statutory requirements during the pendency of a safety investigation or in light of a safety citation is not consistent with this Commission's duty to protect the public safety. In addition, the possible revocation of their exemption may also incentivize Trans Bay Cable to operate safely.

No substantive changes have been made to the proposed decision.

Assignment of Proceeding

Michel Peter Florio is the assigned Commissioner and Peter V. Allen is the assigned ALJ in this proceeding.

Findings of Fact

1. Trans Bay Cable is a transmission-only public utility with no California retail customers.
2. Trans Bay Cable's rates are set by FERC, not by this Commission.
3. Trans Bay Cable's transactions must be approved by FERC.

4. Trans Bay Cable is subject to the requirements of Pub. Util. Code §§ 816-830 relating to securities transactions, and § 851 relating to the transfer or encumbrance of utility assets.

Conclusions of Law

1. Pub. Util. Code § 829(c) allows for exemptions from the requirements of Pub. Util. Code §§ 816-830.

2. Pub. Util. Code § 853(b) allows for exemptions from the requirements of Pub. Util. Code § 851.

3. It is reasonable to grant Trans Bay Cable an exemption from the requirements of Pub. Util. Code §§ 816-830, and a corresponding exemption from Pub. Util. Code § 851, but with conditions and limitations to protect the public interest.

O R D E R

IT IS ORDERED that:

1. Trans Bay Cable, LLC is granted an exemption from the requirements of California Public Utilities Code §§ 816-830 for securities transactions, subject to conditions and limitations.

2. Trans Bay Cable, LLC is granted an exemption from the requirements of California Public Utilities Code §§ 851 corresponding to the exemption granted by this decision from the requirements of Public Utilities Code §§ 816-830.

3. The exemptions granted to Trans Bay Cable, LLC by this decision may be revoked, limited, or conditioned on a prospective basis by the Commission at any time.

4. The exemptions granted to Trans Bay Cable, LLC (Trans Bay Cable) by this decision are subject to the following conditions and limitations: a) if Trans Bay Cable is cited by the Commission for a safety violation, or if the Commission

opens an Order Instituting Investigation for a safety violation, the exemptions are ~~no longer in effect~~prospectively revoked; b) if Trans Bay Cable anticipates requesting more than a 20% rate increase from the Federal Energy Regulatory Commission as a result of a securities transaction, the exemptions do not apply to that transaction, and Trans Bay Cable, LLC (Trans Bay Cable) must file an application at this Commission; c) if a securities transaction will result in a functional or actual change of ownership or control of Trans Bay Cable or its facilities, the exemptions do not apply, and Trans Bay Cable must file an application at this Commission; d) this decision does not grant an exemption from the requirements of Public Utilities Code § 854.

5. Application 16-03-011 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

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