

133 FERC ¶ 61,029
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Western Grid Development, LLC

Docket No. EL10-19-001

ORDER DENYING REHEARING

(Issued October 12, 2010)

1. In this order, we deny requests for rehearing of an order issued on January 21, 2010 that granted Western Grid Development, LLC's (Western Grid) petition for declaratory order, finding that operation of its proposed sodium sulfur battery storage projects (Projects) in the manner it proposed would make the Projects wholesale transmission facilities, and conditionally granting the requested transmission rate incentives, with the exception of the abandoned plant incentive.¹

I. Background

2. On November 20, 2009, Western Grid filed a petition for declaratory order (Petition), requesting a Commission finding that its Projects are wholesale transmission facilities.² In addition, Western Grid requested Commission approval of certain incentive rate treatments for the Projects pursuant to section 219 of the Federal Power Act (FPA)³ and Order No. 679.⁴ In the Declaratory Order, the Commission found that, based on the circumstances and characteristics of the Projects, the Projects are wholesale transmission facilities. Importantly, the Commission determined that, because the Projects would be operated by Western Grid under the direction of the California Independent System

¹ *Western Grid Dev., LLC*, 130 FERC ¶ 61,056 (2010) (Declaratory Order).

² Western Grid November 20, 2009 Petition for Declaratory Order in Docket No. EL10-19-000 (Petition).

³ 16 U.S.C. § 825s (2006).

⁴ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222 (2006), *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236, *order on reh'g*, 119 FERC ¶ 61,062 (2007).

Operator Corporation (CAISO) in a manner similar to the way in which high-voltage wholesale transmission facilities are operated currently by participating transmission owners (PTO) under the direction of CAISO, the independence of CAISO would be maintained.⁵ The Commission also found that, based on the proposal to use the Projects to provide voltage support and address thermal overload situations, the Projects shared some important characteristics with capacitors, which the Commission had previously found to be transmission equipment.⁶ In addition, the Commission noted that the Projects would not be bid into the CAISO markets or be market participants in any way and would pass through any incidental market revenues to customers through a PTO tariff.⁷ Based upon these facts, the Commission concluded that the Projects would be wholesale transmission facilities if built and operated in the manner proposed. The Commission emphasized that its findings applied only to the specific Projects already identified by Western Grid to CAISO in CAISO's transmission planning process as of the date Western Grid filed the Petition. The Commission stated that it did not intend to classify all energy storage projects as wholesale transmission facilities and did not rule out the possibility of a general rulemaking on the issue in the future.⁸

3. The Commission also conditionally granted Western Grid's request for the following incentives: (1) inclusion of 100 percent of the Projects' construction work in progress (CWIP) in rate base; (2) a combined return on equity (ROE) adder of 195 basis-points for the Projects; (3) deferred cost recovery through creation of a regulatory asset for pre-commercial costs that will be amortized over five years; and (4) a hypothetical capital structure of 50 percent equity and 50 percent debt until the Projects are placed into service. The Commission's grant of these incentives was conditioned upon, among other things, CAISO's approval of the Projects in its transmission planning process. The Commission denied Western Grid's request for recovery of 100 percent of prudently-incurred abandoned plant costs if the Projects were cancelled or abandoned for reasons beyond Western Grid's control.

4. Public Service Electric & Gas Company, PSEG Energy Resources & Trade LLC, and PSEG Power LLC (collectively, PSE&G) and the California Department of Water Resources State Water Project (SWP) filed timely requests for rehearing.

⁵ Declaratory Order, 130 FERC ¶ 61,056 at P 45.

⁶ *Id.* P 47.

⁷ *Id.* P 46, 47, 50, 51.

⁸ *Id.* P 56.

II. Discussion

A. Rehearing Requests

5. In its request for rehearing, PSE&G argues that the Commission erred in finding that batteries could function as transmission assets. PSE&G asserts that, very much like pumped storage facilities that have long been classified as generation, batteries store energy received and later release stored energy to provide ancillary services. PSE&G further contends that batteries are easily distinguished from capacitors, which have been classified as transmission, because, unlike capacitors, batteries are “active” in the sense that they can produce real energy and displace generation or other resources that are supplying energy and/or ancillary services in the competitive marketplace.⁹

6. Further, PSE&G asserts that the Commission failed to articulate a sound basis for departing from applicable precedent regarding the status of energy storage facilities.¹⁰ PSE&G argues that this “substantial deviation from past established Commission policy and practices” clashes with the reasonable expectations of market participants and violates procedural due process requirements.¹¹ Finally, PSE&G contends that the Commission’s determination in the Declaratory Order is not consistent with the definition of transmission facilities under the North American Electric Reliability Corporation (NERC) reliability standards¹² because batteries “are not associated equipment necessary for the movement of power over bulk power transmission lines.”¹³

7. Both PSE&G and SWP claim that the Commission’s approval of the requested rate treatment for the Projects is inconsistent with existing open access and pro-competition policies and fails to articulate a basis for departing from such requirements.

⁹ PSE&G February 22, 2010 Request for Rehearing in Docket No. EL10-19-001 at 5-6 (PSE&G Rehearing Request).

¹⁰ *Id.* at 7-8 (citing *Norton Energy Storage, L.L.C.*, 95 FERC ¶ 61,476 (2001) (*Norton Energy Storage*) (granting petition for declaratory order to establish that energy exchange transactions facilitated by a compressed air energy storage facility were subject to the Commission’s exclusive jurisdiction); *Nevada Hydro Co.*, 122 FERC ¶ 61,272, at P 83 (2008) (*Nevada Hydro II*) (rejecting request to recover costs of pumped storage facility in CAISO transmission access charge)).

¹¹ *Id.* at 15-16.

¹² *Id.* at 10.

¹³ *Id.*

Specifically, according to SWP and PSE&G, the Projects would be providing ancillary services that cannot be rolled into transmission rates under Order No. 888.¹⁴ PSE&G contends that the products that will be supplied by the Projects are part of the competitive ancillary services market and, as such, must be unbundled from transmission to ensure a competitive outcome.¹⁵ SWP asserts that the Declaratory Order is at odds with the Commission's finding in *Nevada Hydro II* that the "purpose of the CAISO's transmission access charge is to recover the costs of transmission facilities under the control of the CAISO; the purpose is not to recover bundled services."¹⁶ In addition, SWP argues that the Projects exhibit none of the natural monopoly characteristics of transmission facilities and asserts that Commission transmission ratemaking is not intended to use ratepayer funding as a way to shield a start-up competitor from market forces. Further, SWP claims that the Commission's decision to use a case-by-case approach to electricity storage devices not only eliminates the efficiencies of competition by selecting certain projects as "winners" in terms of rate and financing advantages, but also fosters undue discrimination against other providers of similar reliability services.¹⁷ Finally, SWP argues that the Commission's failure to address what SWP considers the "anti-competitive effects" of Western Grid's proposal cannot be reconciled with the Commission's statutory duty under numerous sections of the FPA.¹⁸

8. Similarly, PSE&G asserts that the Commission failed to adequately consider the impact of its finding on the CAISO markets and opines that any energy and ancillary services that would be provided by the Projects would displace energy that would otherwise be competitively procured. Thus, PSE&G argues that any energy released by the Projects would affect market prices. PSE&G contends that the record does not

¹⁴ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

¹⁵ PSE&G Rehearing Request at 10-11.

¹⁶ SWP Request for Rehearing in Docket No. EL10-19-001 at 8-9 (SWP Rehearing Request) (citing *Nevada Hydro II*, 122 FERC ¶ 61,272 at P 83 (internal quotes omitted)).

¹⁷ *Id.* at 10-12.

¹⁸ *Id.* at 12 (citing *Gulf States Utils. Co. v. FPC*, 411 U.S. 747, 758-59 (1973)).

support the Commission's finding of no adverse market impact.¹⁹ PSE&G argues that the Commission failed to adequately consider and respond to the concerns raised by the CAISO that the treatment of energy storage devices as transmission will result in discrimination and harm to the markets.²⁰

9. SWP claims that the Commission failed to consider the justness and reasonableness of the rate incentives approved in the Declaratory Order. SWP appears to argue that, by conditioning the grant of the rate incentives on approval of the Projects in the CAISO transmission planning process, the Commission improperly delegated its ratemaking responsibilities to CAISO.²¹ SWP challenges the Commission's determination that Western Grid's proposal to retain operational control of the Projects makes transmission rate treatment appropriate. SWP argues that this finding is contrary to both the CAISO tariff, which defines the transmission revenue requirement as "the total annual authorized revenue requirements associated with transmission facilities ... turned over to the operational control of the CAISO,"²² and prior Commission determinations that energy storage facilities must be under CAISO control to receive transmission rates.²³ According to SWP, the Projects would not be under CAISO's operational control. Thus, SWP asserts that the finding that CAISO will be responsible for directing the use of the Projects in the same manner as other transmission assets rests upon factual error and not substantial record evidence.²⁴

10. PSE&G contends that the Commission should have set this matter for hearing or undertaken further investigation of the issues through a technical conference or rulemaking. PSE&G argues that, pursuant to the requirements of the Administrative Procedure Act,²⁵ the Commission cannot use this single issue proceeding to effect a major policy change regarding the treatment of energy storage.²⁶ SWP repeats its request

¹⁹ PSE&G Rehearing Request at 11-13.

²⁰ *Id.* at 13-15.

²¹ SWP Rehearing Request at 6-7.

²² *Id.* at 13 (citing CAISO Tariff 4th Replacement Vol. II, 1st Rev. Sheet 960, available at <http://www.aiso.com/2471/2471974a121c0.pdf>).

²³ *Id.* (citing *Nevada Hydro II*, 122 FERC ¶ 61,272 at P 83).

²⁴ *Id.* at 14.

²⁵ 5 U.S.C. §§ 501, *et seq.* (2006).

²⁶ PSE&G Rehearing Request at 17.

that the Commission convene a proceeding to establish a national policy for the treatment of energy storage devices, instead of proceeding via a case-by-case approach. SWP states that cost allocation is one of the energy storage issues that needs to be addressed. Specifically, SWP questions whether the Projects would pay transmission costs when acting as a load, as other loads do. SWP expresses concern that the “load pays” approach to transmission cost allocation has been adopted by CAISO and other RTOs/ISOs without clear explanation or justification and has, as a practical matter, become increasingly difficult to apply and reconcile to demand response and energy storage. SWP suggests that this policy may unfairly discriminate against demand response and energy storage to the extent that they are allocated costs that other, generation-based, resources are not.²⁷

B. Commission Determination

11. The Commission denies the rehearing requests of PSE&G and SWP. First, we reject PSE&G’s contention that battery storage facilities cannot be considered transmission facilities. In the Declaratory Order, the Commission acknowledged that electricity storage devices, in a general sense, do not readily fit neatly into either of the traditional functions of generation, transmission or distribution.²⁸ Accordingly, rather than making a general pronouncement regarding the classification of battery storage, the Commission limited its findings to the specific facts and circumstances of this case.²⁹ Based on the proposed use of the Projects and the evidence submitted by the parties, the Commission concluded that the Projects share enough characteristics with capacitors to justify the analogy and afford similar treatment.³⁰ Therefore, we reject PSE&G’s argument that, because batteries can produce real power and interact in the market, any comparison to capacitors is inapt. The mere fact that batteries, in general, have the potential to produce real power does not mean that the Projects cannot be considered transmission assets. As the Commission stated in the Declaratory Order, the Projects would “not be bid into the CAISO markets or be a market participant in any way;” instead, they would “only be operated at the CAISO’s request when system reliability issues require them to provide voltage support to the grid.”³¹ This fundamental operational difference justifies a different cost recovery treatment. Indeed, the information supplied by Western Grid persuaded the Commission that the Projects will function in a manner that is comparable to capacitors in the sense that they will be

²⁷ SWP Rehearing Request at 14-16.

²⁸ Declaratory Order, 130 FERC ¶ 61,056 at P 44.

²⁹ *Id.*

³⁰ *Id.* P 47.

³¹ *Id.* P 50.

operated to provide electricity to the transmission grid to maintain system reliability, rather than to act as an energy or capacity resource.³² PSE&G has not supplied any additional evidence in its rehearing request to persuade us otherwise.

12. Moreover, the fact that batteries share some characteristics with pumped storage facilities, which have previously been classified as generation,³³ does not mandate a general finding that battery storage devices are generation. The rationale for denying incentive transmission rate treatment in prior cases involving pumped storage focused on the operation of the facilities at issue.³⁴ As the Commission explained in the Declaratory Order, the concerns that contributed to the Commission's denial in *Nevada Hydro II* were sufficiently addressed by Western Grid in its Petition.³⁵ *Nevada Hydro II* raised the question of whether the CAISO's operation of the Lake Elsinore Advanced Pump Storage (LEAPS) storage facility would render it an energy market participant. Nevada Hydro proposed that CAISO would decide when to charge and discharge the facility and would therefore have influence over the prices paid and received during those operations. Nevada Hydro also did not propose any mechanism to deal with the potential costs and revenues from such market operations, which could have left CAISO in the position of being a profit-seeking operator of the LEAPS facility. Thus, the Commission concluded that it would be inappropriate for CAISO to assume operational control over the LEAPS facility.³⁶ In contrast, in the Declaratory Order, the Commission explained that Western Grid's proposal eliminated the concern raised in *Nevada Hydro II* by specifying that Western Grid, rather than CAISO, will be responsible for maintaining the state of charge of the Projects, thereby minimizing the risk that CAISO will become a profit-seeking market participant.³⁷ Additionally, the Commission found that Western Grid will further mitigate the concern presented by the LEAPS facility because Western Grid will credit any incidental net revenues from such transactions to its customers via the transmission access charge.³⁸ Therefore, there is little likelihood here that CAISO will become a profit-seeking energy market participant, and we disagree with PSE&G's contention that

³² Petition, Exhibit AJP (Affidavit of Armando J. Perez) at para. 24.

³³ See, e.g., *Nevada Hydro II*, 122 FERC ¶ 61,272.

³⁴ Declaratory Order, 130 FERC ¶ 61,056 at P 48.

³⁵ *Id.* P 48-49.

³⁶ *Nevada Hydro II*, 122 FERC ¶ 61,272 at P 82.

³⁷ Declaratory Order, 130 FERC ¶ 61,056 at P 49.

³⁸ *Id.* at P 49.

the Commission failed to meaningfully consider the evidence offered by CAISO on this issue. We therefore continue to find that the result in *Nevada Hydro II* is not controlling in this case.

13. PSE&G's reliance on *Norton Energy Storage* is likewise misplaced. In *Norton Energy Storage*, the Commission did not consider the issue of whether the applicant's compressed air storage facility could be considered transmission. Rather, the case dealt with the jurisdictional question of whether a delivery of energy to the facility as part of an energy exchange was part of a wholesale transaction or whether such a delivery would be considered an end-use, retail purchase. Further, the proposed use of the facility at issue in *Norton Energy Storage* was the reclamation of energy from the compressed air facility for delivery to the parties that supplied the compression energy for subsequent resale into wholesale markets.³⁹ Unlike the facility in *Norton Energy Storage*, which was intended specifically to engage in wholesale energy exchange transactions, the Projects will not be market participants; the intended purpose of the Projects is to provide transmission services at CAISO's instruction. Thus, because the cases cited by PSE&G and SWP are readily distinguishable from the facts and circumstances in this proceeding, we continue to find the Projects are wholesale transmission facilities eligible for incentive rate treatment.

14. Also unavailing is PSE&G's assertion that the determination in the Declaratory Order is inconsistent with the definition of transmission facilities under the NERC reliability standards. PSE&G did not raise this issue in its initial comments on Western Grid's proposal. It is well established that a request for rehearing is not the appropriate procedural vehicle for raising issues for the first time because it is disruptive to the administrative process and denies parties the opportunity to respond.⁴⁰ As such, we need not address PG&E's arguments on this issue. However, even if we were to consider the merits of PSE&G's rehearing request on this issue, we would find PG&E's argument unavailing. The NERC definition encompasses equipment that is associated with the

³⁹ *Norton Energy Storage*, 95 FERC ¶ 61,476 at 62,699.

⁴⁰ *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,030, at P 15 (2009) (citing *Enron Energy Servs. Inc. v. Sellers of Energy*, 122 FERC ¶ 61,015, at P 64 n.98 (2008); *Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,113, at P 188 (2006) (denying rehearing of new issues as outside the proper scope of the rehearing)).

movement or transfer of energy, along with the lines themselves.⁴¹ The NERC definition does not, as PSE&G implies, require that the facilities be “necessary” for the movement of power over bulk transmission lines. When used as proposed by Western Grid, the Projects are clearly equipment that is associated with the movement or transfer of electricity over the bulk power system; in much the same way as large electricity capacitors are used, the Projects will be called to action when the system requires them for the reliable movement of power.

15. Likewise, we find no conflict between our findings in the Declaratory Order and the requirements of Order No. 888 and related precedent. As PSE&G and SWP correctly state, the cost of providing ancillary services cannot be rolled into wholesale transmission rates under Order No. 888.⁴² However, the Projects will not be used to provide competitively-procured ancillary services, so this case does not raise the type of concern over bundled rates (i.e., rates that include both generation and transmission services) that would implicate the requirements of Order No. 888. The fact that batteries are capable of providing ancillary services is incidental because, as proposed, Western Grid will not be bidding the Projects into the CAISO markets. For the same reason, we reject SWP’s claim that the Declaratory Order departs from the precedent regarding the prohibition against recovering the cost of bundled services in transmission rates in *Nevada Hydro II* on this issue. In *Nevada Hydro II*, the Commission stated that the purpose of the CAISO transmission access charge is to recover the cost of transmission facilities under CAISO’s control, and not the cost of bundled services.⁴³ We find, however, that the Projects are intended solely to enhance the reliability of the CAISO transmission grid and will not provide any bundled services. Our finding here is thus consistent with our finding in *Nevada Hydro II*.

16. Because the Projects will not be bid into the CAISO’s markets, we continue to find that the Projects will not undercut the competitive markets for ancillary services. In fact, as the Commission found in the Declaratory Order, the Projects will only be used to provide voltage support and to address thermal overload situations, at CAISO’s instruction, only if there is no other competitive bid to provide that service through the

⁴¹ NERC defines transmission as “[a]n interconnected group of lines and associated equipment for the movement or transfer of electric energy between points of supply and points at which it is transformed for delivery to customers or is delivered to other electric systems.” NERC Glossary of Terms Used in Reliability Standards (Apr. 20, 2010), *available at* http://www.nerc.com/docs/standards/rs/Glossary_of_Terms_2010April20.pdf.

⁴² Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,654-55.

⁴³ *Nevada Hydro II*, 122 FERC ¶ 61,272 at P 83.

markets.⁴⁴ The record contains no evidence to indicate that the Projects will be used otherwise. In their rehearing requests, neither PSE&G nor SWP provide any facts or arguments on this issue that have not already been considered by the Commission. Thus, we reject PSE&G and SWP's claims that the record does not support the Commission's finding of no adverse market impact.

17. In addition, we reject PSE&G's contention that the Commission failed to address the concerns raised by CAISO in its comments that treating the Projects as transmission facilities will result in an undue competitive advantage for the Projects. The Commission gave meaningful consideration to the comments filed by all parties, including CAISO.⁴⁵ Upon careful consideration of the evidence, the Commission determined that the fundamental operational differences between the Projects, on one hand, and generation and pumped storage, on the other, justify a different cost recovery treatment.⁴⁶ The protection against undue discrimination prohibits the dissimilar treatment of similarly situated entities; rate differences may be justified and rendered lawful based on the specific factual differences between the entities at issue.⁴⁷ Unlike generation and pumped storage, which are active market participants that earn market revenues, the Projects will not be bid into the CAISO markets or be market participants in any way. The "products" of generation and pumped storage are energy and ancillary services that are bid into the CAISO markets, whereas the "product" created by the Projects is a transmission reliability service that will only be used when there is no competitive product available to address a potential transmission reliability issue. Therefore, we continue to find that, because the Projects are not similarly situated to generation and pumped storage, the Commission's finding in the Declaratory Order will not provide undue preference or discriminatory treatment to the Projects.

18. Regarding operational control of the projects, we find that SWP appears to misunderstand the division of operational responsibilities proposed by Western Grid. First, in the Declaratory Order, the Commission explained that, in order to avoid the conflicts that arose in *Nevada Hydro II*, Western Grid has proposed to perform the duties associated with day-to-day operation and maintenance, including keeping the Projects

⁴⁴ Declaratory Order, 130 FERC ¶ 61,056 at P 51.

⁴⁵ We note that the CAISO did not request rehearing of the Declaratory Order.

⁴⁶ *Id.* P 50.

⁴⁷ *See, e.g., Cities of Bethany v. FERC*, 727 F.2d 1131, 1139 (D.C. Cir. 1984) (upholding Commission order allowing utility to charge different rates pursuant to settlement agreement, negotiated in good faith, or based on differences in general characteristics such as load profile).

energized. The Commission found in the Declaratory Order that this strategy preserves the independence of CAISO and minimizes the likelihood that CAISO will become a profit-seeking market participant.⁴⁸ With respect to the transmission functions to be provided by the Projects, the Commission found that the Projects will be operated under the direction of CAISO in a way that is similar to the operation of other transmission assets such as capacitors that address voltage issues or alternate transmission circuits that address line overloads or trips.⁴⁹ SWP has not submitted any information in its rehearing request to convince us that the proposed distribution of operational responsibilities will conflict with CAISO tariff requirements or Commission precedent.

19. In finding that the Projects are eligible for transmission rate treatment and conditionally approving the requested incentives, the Commission has not, contrary to SWP's assertion, improperly delegated its ratemaking authority to CAISO. In the Declaratory Order, the Commission conditionally granted the incentives requested by Western Grid, with the exception of the abandoned plant incentive, subject to the Projects' approval in the CAISO transmission planning process. Specifically, the Commission found that Western Grid had not made a factual showing sufficient to demonstrate that the Projects are needed and, therefore, failed to satisfy the requirements of FPA section 219.⁵⁰ The Commission noted, however, that, because the CAISO transmission planning process would adequately consider the reliability and congestion-relieving impacts of the Projects, conditional approval was appropriate.⁵¹

20. Such conditional approval does not constitute an improper delegation of the Commission's duty to ensure just and reasonable rates. The Commission made clear in the Declaratory Order that, if CAISO does approve the Projects in its transmission planning process, Western Grid must make an additional filing with the Commission that includes evidence not only that the Projects were approved, but also that the CAISO transmission planning process included a finding that the Projects will ensure reliability or reduce the cost of delivered power by mitigating congestion, consistent with Order No. 679-A.⁵² In the Declaratory Order, the Commission also conditioned its approval of Western Grid's proposal to recover 100 percent of CWIP in rate base upon Western Grid fulfilling the Commission's requirements for CWIP inclusion in a future FPA section 205

⁴⁸ Declaratory Order, 130 FERC ¶ 61,056 at P 49.

⁴⁹ *Id.* P 45.

⁵⁰ *Id.* P 67 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 57).

⁵¹ *Id.* P 71.

⁵² *Id.* (citing Order No. 679-A, FERC Stats & Regs. ¶ 31,236 at P 49).

filing.⁵³ Likewise, the Commission stated that it would determine whether Western Grid's requested ROE is within the zone of reasonableness when Western Grid makes a future FPA section 205 filing.⁵⁴ Finally, the Commission reserved judgment regarding the justness and reasonableness of Western Grid's recovery of pre-commercial expenses, if any, until it seeks such recovery in a future FPA section 205 filing.⁵⁵ Thus, the Commission, not CAISO, retains the final authority regarding whether the requested incentives are appropriate and whether the resulting rates are just and reasonable.

21. In response to the claims by PSE&G and SWP that a single-issue proceeding is inappropriate for addressing the issues presented in this case, we remind the parties that the findings in the Declaratory Order do not represent a general policy regarding the classification of energy storage devices. The Commission stated clearly in the Declaratory Order that our determination was "strictly limited to the specific circumstances identified by the applicant" and emphasized that the Commission did not "intend to classify all energy storage devices as transmission or otherwise."⁵⁶ Because, as stated in the Declaratory Order, electricity storage devices do not fit neatly into one of the traditional categories of generation, transmission, or distribution, the Commission has addressed the classification of these devices on a fact-and-circumstance-sensitive, case-by-case basis.⁵⁷ While we continue to find that a general rulemaking is not necessary to address the merits of the Petition, we note that the Commission has not ruled out a general rulemaking on this issue.⁵⁸

22. Finally, we find that SWP's concern that the current "load pays" approach to transmission cost allocation may unduly discriminate against demand response and energy storage is beyond the scope of this proceeding. This proceeding is concerned solely with the issue of whether, under the facts and circumstances of this case, the Projects can be treated as wholesale transmission facilities that are eligible for transmission rate incentives. Accordingly, we find that it would be inappropriate to

⁵³ *Id.* P 81.

⁵⁴ *Id.* P 95, 96, 98.

⁵⁵ *Id.* P 103.

⁵⁶ *Id.* P 56.

⁵⁷ *Id.* P 44.

⁵⁸ We note that, on June 11, 2010, Commission staff issued a request for comments on rates, accounting and financial reporting for new electric storage technologies in Docket No. AD10-13-000. Comments were filed by numerous parties.

generally consider the efficacy of the predominant policy approach to transmission cost allocation within the context of this proceeding.

The Commission orders:

The requests for rehearing are hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.