

129 FERC ¶ 61,165  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
and Philip D. Moeller.

Green Energy Express LLC

Docket No. EL09-74-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued November 23, 2009)

1. On September 9, 2009, Green Energy Express LLC (Green Energy) filed a petition for declaratory order (Petition) pursuant to Rule 207 of the Commission's Rules of Practice and Procedure.<sup>1</sup> Green Energy requests approval of certain transmission rate incentives for its proposed transmission project (Project) under Federal Power Act (FPA) section 219<sup>2</sup> and Order No. 679.<sup>3</sup> In this order, we conditionally grant Green Energy's Petition.

**I. Background**

**A. Description of Green Energy**

2. Green Energy is a privately owned limited liability company, the sole purpose of which is to develop, finance, construct, own, and maintain the Project. Green Energy is the sole owner of the Project. Once construction of the Project is complete, Green Energy intends to turn operational control of the Project to the California Independent System Operator Corporation (CAISO) and to become a Participating Transmission Owner in the CAISO.

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<sup>1</sup> 18 C.F.R. § 385.207 (2009).

<sup>2</sup> 16 U.S.C. § 825s (2006).

<sup>3</sup> *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).

**B. Description of the Project**

3. The Project is comprised of three separate components: (1) an approximately 70-mile, double circuit 500 kV transmission line; (2) a new 500 kV/230 kV substation; and (3) a fast-acting phase shifter. According to Green Energy, the line would serve as a transmission outlet for up to 2,000 MW of renewable resources (primarily utility-scale solar resources) in eastern Riverside County, California for delivery to load zones in southern California.<sup>4</sup> Green Energy estimates that the total cost for developing and constructing the Project will be approximately \$400 million. Green Energy estimates that the Project will have an in-service date by mid-2013.<sup>5</sup>

**C. Green Energy's Petition**

4. Green Energy explains that the Project will interconnect Southern California Edison Company's (SoCal Edison) existing Devers Substation, which is located north of Palm Springs, California, to a new substation near the existing 230 kV Eagle Mountain Substation in Eagle Mountain, California.<sup>6</sup> Green Energy states that the Project is currently under study by the CAISO as part of its 2010 Transmission Plan, and that Green Energy has provided the CAISO with numerous studies in support of the CAISO's regional transmission planning study process (CAISO's planning process).<sup>7</sup> Green Energy explains that the Project's design phase, which includes the engineering, environmental, right-of-way, and permitting components, is expected to be completed in 2011. Afterwards, Green Energy states it will seek to secure financing needed to construct the Project.

5. Green Energy argues that the Project is eligible for incentives under FPA section 219 and Order No. 679, citing the Project's economic, reliability, and environmental benefits. According to Green Energy, the Project is currently at a stage where it needs significant new capital investment beyond the resources of Green Energy's principals, and it argues that such investment will not be forthcoming unless the Commission grants Green Energy the following rate incentives: (1) deferred recovery of pre-commercial expenses; (2) inclusion of 100 percent of construction work in progress (CWIP) in rate base; (3) abandoned plant recovery; (4) a return on equity (ROE) adder of 50 basis points for participation in a qualifying Transmission Organization; (5) an ROE adder of 100

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<sup>4</sup> Petition, Transmittal Letter at 5.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 4.

<sup>7</sup> *Id.* at 5.

basis points in recognition of Green Energy's status as an independent transmission company (transco); (6) an ROE adder of 50 basis points to otherwise compensate for the unique risks and challenges facing the Project and Green Energy's investors; and (7) a hypothetical capital structure of 50 percent equity and 50 percent debt, until the Project is placed in service.

6. Green Energy includes a Technology Statement in its Petition explaining that the Project will use a new and innovative phase-angle regulating transformer (new phase shifter) developed by Siemens, which has been successfully tested and implemented.<sup>8</sup> Green Energy notes that while phase shifters have been in use for years and are effective reliability tools, their response time has historically been slow. Green Energy states that the new phase shifter has a demonstrated response time of one step in approximately 5.5 seconds, and that 11 steps (approximately one minute) will shift more than 500 MW of transmission flow from one direction to the other, which translates into 11 seconds per each 100 MW shift. Green Energy claims that this response time is faster than any existing gas-fired generating plant and as fast as a large hydroelectric facility. In addition, Green Energy contends that the new phase shifter will provide the CAISO with an effective tool to manage its grid in and around Riverside County, and could allow it to avoid re-dispatching generating resources in many cases. Further, Green Energy states that this technology will be even more critical to manage the intermittent and unidirectional flows on the grid that are expected to result from the addition of new large-scale renewable generation resources in southern California. Green Energy states that the new phase shifter will help improve reliability and add flexibility for managing power flows, ultimately saving California ratepayers the expense of re-dispatch in many circumstances.

## **II. Notice of Filing and Responsive Pleadings**

7. Notice of Green Energy's Petition was published in the *Federal Register*, 74 Fed. Reg. 47938 (2009), with interventions, comments, and protests due on October 9, 2009. Motions to intervene were filed by the Metropolitan Water District of Southern California (Metropolitan) and San Diego Gas & Electric Company. The CAISO and SoCal Edison filed motions to intervene and comments. On October 26, 2009, Green Energy filed an answer to the CAISO's and SoCal Edison's comments. On November 18, 2009, the California Public Utilities Commission (CPUC) filed a motion to intervene out of time and protest.

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<sup>8</sup> *Id.* at 31-33.

### **III. Discussion**

#### **A. Procedural Matters**

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d), 18 C.F.R. § 385.214(d) (2009), the Commission will grant the late-filed motion to intervene filed by the CPUC. Pursuant to Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), answers to protests are prohibited unless otherwise permitted by the decisional authority. We accept Green Energy's answer because it has assisted us in the decision-making process.

#### **B. Substantive Matters**

##### **1. Timing of Commission Action and the CAISO's Planning Process**

###### **a. Comments**

9. The CAISO states that the Commission should not prejudge the planning process in approving incentives, and contends that the Commission could accomplish this in one of two ways. First, the Commission could defer action on a request for rate incentives until the applicable independent system operator or regional transmission organization determines that the project is needed. The CAISO argues that such deferment would be consistent with the Commission's determination in Order No. 679 that a regional planning process can determine whether a given project is needed, whether it is a better solution, and whether it is the most cost effective option in light of other alternatives. Alternatively, the CAISO states that the Commission could condition any incentives granted on a finding that the project is needed by the relevant regional planning process. The CAISO acknowledges that Green Energy has requested action on the petition by December 8, 2009, which is before the CAISO's planning process for the 2010 Transmission Plan will be completed. To the extent the Commission grants the Petition before the CAISO completes its economic planning study and any applicable review of the Project as an economic project, the CAISO requests that the Commission expressly state that its grant of incentives does not prejudge the outcome of the CAISO's planning process. The CAISO states that this would be consistent with Commission precedent.<sup>9</sup>

10. The CAISO argues that the findings necessary for the Commission to grant incentives are not a substitute for a more rigorous CAISO determination of need in a

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<sup>9</sup> CAISO Comments at 7 and n.8.

planning process. The CAISO explains that the Commission's rate incentive evaluation does not include a cost-benefit analysis and the Commission assesses each project without considering competing projects. The CAISO argues that if a determination to grant incentives prejudices the planning process, project developers could simply race to file incentive requests. The CAISO argues that such a rush of projects would short-circuit the planning process's detailed and comprehensive review. The CAISO notes that some incentive recipients have insisted that their receipt of Order No. 679 incentives eliminates the requirement that the project be considered in the CAISO's planning process.

11. SoCal Edison also requests that the Commission make clear that any Commission approval of a request for rate incentives does not predispose the project's review and ultimate approval by the CAISO. SoCal Edison requests the Commission reiterate its policy that approval of incentives does not constitute project approval.

**b. Green Energy's Answer**

12. Green Energy agrees with the CAISO and SoCal Edison that a Commission order approving rate incentives does not prejudice the outcome of the CAISO's planning process. Green Energy therefore urges the Commission not to delay action on its Petition, noting that it did not ask the Commission to make any "need" determination for the Project as related to the CAISO's planning process. Further, Green Energy asserts that granting the Petition at this time is critical for the Project to have continued development viability. Green Energy also argues that its request for action is fully consistent with Order No. 679, where the Commission stated that applicants could seek early rate incentive approval. Green Energy contends that the CAISO is attempting to re-litigate policy issues that the Commission has rejected in the past, and argues that the Commission should not permit the CAISO to re-litigate those issues here.<sup>10</sup> Finally, Green Energy explains that the Petition was filed for obtaining rate incentive assurance on a timely basis for capital investment purposes to ensure that the Project development could continue, and argues that the request for delayed action does not recognize the reality of early-stage development risks for independent transmission projects participating in regional planning processes.

**c. Commission Determination**

13. We will not delay acting on the Petition. As the CAISO notes, we have acted on incentive rate requests prior to the conclusion of the applicable regional planning process

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<sup>10</sup> Green Energy also notes that the CAISO did not raise these concerns with respect to a transmission project sponsored by Pacific Gas & Electric Company in Docket No. EL08-24.

or before any permits have been issued by the relevant governmental authorities. As we have stated previously, the Commission does not intend to prejudge the outcome of any regional planning process, including the CAISO's planning process, or any governmental permitting or similar proceeding by granting rate incentives under Order No. 679.<sup>11</sup> Further, we find that the Project has not satisfied FPA section 219's requirement that a company seeking rate incentives for transmission projects demonstrate that such projects ensure reliability and/or reduce the price of delivered power by reducing congestion and, accordingly, we are conditioning the grant of incentives on the Project being approved in the CAISO's planning process, as discussed below.

## 2. Section 219 Requirement

### a. Green Energy's Proposal

14. Green Energy argues that it is eligible for incentives under FPA section 219 and Order No. 679. In general, Green Energy asserts that the Project will ensure reliability and reduce the price of delivered power by reducing congestion. Green Energy states it has prepared several studies and reports that demonstrate the Project satisfies the criteria for obtaining rate incentives. For example, Green Energy explains that it provided a feasibility analysis to the CAISO that showed the results of preliminary power flow and contingency studies.<sup>12</sup> According to Green Energy, this study showed that, with the planned addition of the phase-shifting regulating transformer as part of the Project, resource flows could be redirected to more robust portions of the CAISO-controlled grid. Green Energy states that this could not only allow for the delivery of 2,000 MW of otherwise location-constrained renewable resources over the Project, but also allow for better management of power flows over the CAISO grid as a whole.<sup>13</sup> Green Energy asserts that this will provide a solid 500 kV backbone and a parallel path to the existing Devers-Palo Verde #1 500 kV transmission line and will enhance the reliability of the existing Eagle Mountain-Devers 230 kV transmission line.<sup>14</sup>

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<sup>11</sup> See, e.g., *Green Power Express LP*, 127 FERC ¶ 61,031, at P 42 (2009), *reh'g pending* ("ruling on a request for incentives pursuant to Order No. 679 does not prejudge the findings of a particular transmission planning process or the siting procedures at state commissions") (*Green Power Express*).

<sup>12</sup> Petition, Exh. PGH-2.

<sup>13</sup> Petition, Transmittal Letter at 10.

<sup>14</sup> *Id.*

15. Further, Green Energy points to an economic analysis it prepared for the CAISO that studied the overall economic benefits of the Project. Green Energy states that this analysis demonstrated that the Project had been designed for the transfer of up to 2,000 MW from otherwise location-constrained renewable resources (mostly utility-scale high load factor solar) from remote locations in eastern Riverside County to load centers in southern California.<sup>15</sup> Green Energy asserts that solar energy will be available to replace and reduce dispatch of more costly fossil-fired thermal generation.<sup>16</sup> According to Green Energy, this would not only lower costs but also provide for less dependence on thermal plants, which may be subject to new environmental constraints, and energy imports.<sup>17</sup>

16. Green Energy explains that there are certain areas in eastern Riverside County with great potential for the development of large-scale solar resources, and that the total amount of renewable generation in the queue for the area that will be served by the Project is 4,900 MW.<sup>18</sup> Green Energy states that the only other transmission project in eastern Riverside County being evaluated by the CAISO that could provide market access for some of these renewable and non-renewable generation resources is SoCal Edison's proposed Midpoint-Valley 500 kV line, which is rated at 1,200 MW.<sup>19</sup> Green Energy notes that this rating is far below the 4,900 MW needed just for the proposed renewable projects in eastern Riverside County in the CAISO queue and below the total needed to deliver the 4,120 MW of known projects in line at the Blythe portion of eastern Riverside County, which is near the Midpoint-Valley line's proposed new eastern terminus.<sup>20</sup>

17. In addition, Green Energy contends that the potential for renewable projects in eastern Riverside County is even greater, but could only occur if sufficient transmission capacity was available to make the energy from those projects available to load centers in

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<sup>15</sup> *Id.* at 10-11.

<sup>16</sup> *Id.* at 11.

<sup>17</sup> *Id.*

<sup>18</sup> Moreover, Green Energy points out that the CAISO queue includes 5,840 MW of proposed renewable and non-renewable generation in eastern Riverside County. Green Energy also states that the Bureau of Land Management (BLM) and the U.S. Department of Energy (DOE) have identified over 300,000 acres of BLM-administered land in and around the eastern Riverside County and Iron Mountain areas for potential solar energy development. *Id.* at 12.

<sup>19</sup> *Id.* at 12-13.

<sup>20</sup> *Id.* at 13.

southern California.<sup>21</sup> Again, Green Energy argues that the only other project that is currently being evaluated by the CAISO is SoCal Edison's proposed Midpoint-Valley line, which would only be able to carry approximately 11 percent of the renewable potential in eastern Riverside County.<sup>22</sup> Green Energy also points out that the CPUC has found a need for 3,000 MW of additional transmission capacity to provide market access to renewable generation resources in eastern Riverside County in order for the state to meet California's renewable portfolio standard (RPS).<sup>23</sup> Thus, according to Green Energy, the Project (and others) will be needed to provide transmission access to otherwise location-constrained renewable generation resources.

18. Green Energy also explains that its economic study provides a preliminary analysis of the quantifiable benefits that the Project would bring. Specifically, that study indicated that the annual potential benefits include: (1) \$62.5 million to \$134.4 million net reduction in energy costs; (2) \$6 million to \$13.5 million net reduction in congestion costs; (3) \$5 million to \$13 million net reduction in capacity costs; and (4) \$7.5 million annual reduction in emissions costs.<sup>24</sup> The study also found that there would be a \$0.6 million increase in the marginal cost of losses.<sup>25</sup> Green Energy states that, taken together, the gross savings to customers will be \$81.6 million to \$169 million annually if the Project is constructed.<sup>26</sup> Green Energy notes that the estimated "all-in" cost of the Project is approximately \$400 million and the estimated levelized annual revenue requirement for the Project is approximately \$64 million.<sup>27</sup> Green Energy further notes that the benefit analysis excluded hard-to-quantify benefits such as the increased availability of ancillary services in one of the CAISO zones, reduced reliance on generation units using once-through cooling, benefits associated with the new phase

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<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 13-14.

<sup>24</sup> *Id.* at 14.

<sup>25</sup> *Id.* The study, performed for Green Energy by ZGlobal, Inc., used a security-constrained unit commitment analysis for resources and loads on the CAISO-controlled grid. *See* Petition, Exh. PGH-4.

<sup>26</sup> Petition, Transmittal Letter at 14-15.

<sup>27</sup> *Id.* at 15.

shifter that is part of the Project, and the mitigation of potential generation market power through an increase in the number of sellers in the region.<sup>28</sup>

19. In addition, Green Energy argues that the Project provides environmental benefits and is consistent with state and national objectives to provide for the development of renewable resources. Green Energy points to California's RPS requirements, and cites statements from California agencies, such as the state's Renewable Energy Transmission Initiative, that the lack of adequate transmission capacity is a large barrier to achieving the state's RPS objectives.<sup>29</sup> Further, Green Energy asserts that the Project will promote federal objectives regarding renewable energy development, as expressed in the American Recovery and Reinvestment Act. Next, Green Energy argues that the environmental benefits provided by the Project, such as delivering energy from planned or potential renewable resources, are not offset by unacceptable environmental impacts. Green Energy points out that the route alternatives for the Project had been designed to ensure that environmental impacts were minimized.<sup>30</sup>

**b. SoCal Edison Comments**

20. SoCal Edison points out that the CAISO has not yet issued any studies or reports indicating that the Project is needed for reliability or is an economic project. SoCal Edison raises concerns about the accuracy of Green Energy's analysis of the costs of the Project and the benefits to the transmission grid. Specifically, SoCal Edison contends that in its projection of net benefits, Green Energy's only accounted for fuel costs, but failed to account for the actual cost of the generation itself. SoCal Edison argues that in failing to perform an adequate economic analysis, the Petition fails to demonstrate that the Project is economic under the approach utilized by the CAISO. SoCal Edison also argues that since no generation projects have yet requested interconnection to the Project, the Project's important benefit (i.e., delivery of 2,000 MW of renewable energy) is not guaranteed.

21. SoCal Edison also contends that the Project's proposed interconnection at a new substation close to the existing 230 kV Eagle Mountain Substation poses significant concerns about how the project will impact Metropolitan's transmission system. SoCal Edison asserts that even though the Project will utilize the new phase shifter, the proposal

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<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 16 (citing to *Renewable Energy Transmission Initiative Frequently Asked Questions* (prepared by the California Energy Commission)).

<sup>30</sup> The Petition describes the alternative routes under consideration for the Project. See Petition, Transmittal Letter at 18-19.

does not fully address the many reliability issues that could arise during an N-1 condition<sup>31</sup> if the new phase shifter becomes unavailable. SoCal Edison states that based on previous studies in the area, significant upgrades to the Metropolitan system and the SoCal Edison system would ultimately be required to address reliability issues, and that these issues have not yet been identified and the costs to mitigate these concerns have not been included in the Project's cost estimate. As a result, SoCal Edison asserts, the Project's cost could be highly underestimated. SoCal Edison requests that the Commission deny without prejudice Green Energy's request for incentives because the Project has not shown that it meets the Commission's economic or reliability requirements to qualify for incentive rate treatment.

**c. Green Energy's Answer**

22. Green Energy argues that SoCal Edison is introducing additional requirements under section 219 and Order No. 679, and that the Commission should reject this attempt. Specifically, Green Energy argues that SoCal Edison wants Green Energy to include a more rigorous cost-benefit analysis than what is actually required under section 219 and Order No. 679. Green Energy points to the CAISO's comment that the criteria for receiving approval of incentives under Order No. 679 are different and less comprehensive than the criteria for evaluating a project in a regional transmission planning process. Green Energy argues that the Commission has never required a rate incentive applicant to file cost-benefit analyses and has used a case-by-case approach to ensure flexibility. Green Energy asserts that the analyses that were included in the Petition have more than complied with section 219's burden.

23. Green Energy also takes issue with SoCal Edison's argument that these analyses do not account for the actual cost of generation. In response, Green Energy asserts that it is essentially using the same standard applied by the CAISO to SoCal Edison's own transmission projects that were designed to reach renewable energy in California (i.e., by measuring marginal energy cost savings to consumers). In addition, Green Energy contends that SoCal Edison's proposed standard is nonsensical, given the state and federal policies favoring renewable development and the fact that the installed cost of solar and wind power are higher, on a per-MW basis, than most, if not all, fossil generation alternatives.

24. In response to SoCal Edison's argument that there is no evidence of any generation projects that have requested interconnection to the Project, Green Energy asserts that neither section 219 nor Order No. 679 require such a showing and that it would be unduly discriminatory to require that showing for independent transmission

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<sup>31</sup> An N-1 condition refers to the loss of the largest facility on a system operator's transmission system.

developers. Green Energy contends that the structure of the CAISO's large generator interconnection procedures do not provide entities that are not Participating Transmission Owners with the same level of information about pending interconnection requests that are made available to incumbent Participating Transmission Owners.

25. Finally, Green Energy urges the Commission to reject SoCal Edison's arguments regarding the reliability impacts of the Project. Although SoCal Edison claims potential impacts on the Metropolitan transmission system, Green Energy points out that Metropolitan itself stated in its intervention that it has not yet identified any adverse impacts and that these issues will need to be worked out through coordination of technical studies. Moreover, Green Energy notes that the Project is not being advanced primarily as one that ensures reliability. Nonetheless, Green Energy argues, the Petition included power flow and contingency studies showing that the Project will allow for better management of power flows across the CAISO-controlled system. Green Energy asserts that it has discussed technical issues associated with the Project with Metropolitan and SoCal Edison, and believes that any reliability issues can be resolved in a cost-effective manner through limited system improvements.

**d. Commission Determination**

26. In Order No. 679, the Commission stated that an applicant for transmission rate incentives must demonstrate that the facilities for which it seeks incentives satisfy the requirements of FPA section 219 by either ensuring reliability or reducing the cost of delivered power by reducing transmission congestion.<sup>32</sup> The Commission established a rebuttable presumption that a project is eligible for incentives under section 219 if it: (1) results from a fair and open regional planning process that considers and evaluates projects for reliability and/or congestion and is found to be acceptable to the Commission; or (2) has received construction approval from an appropriate state commission or state siting authority.<sup>33</sup> The Commission also stated that it will consider incentive requests for projects that are still undergoing consideration in a regional planning process, but may make any requested incentive rate treatment contingent on the project being approved under the regional planning process.<sup>34</sup>

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<sup>32</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 57-58.

<sup>33</sup> *Id.* P 57-58. In Order No. 679-A, the Commission clarified the operation of this rebuttable presumption by noting that the authorities and/or processes on which it is based (i.e., a regional planning process, a state commission, or siting authority) must, in fact, consider whether the project ensures reliability or reduces the cost of delivered power by reducing congestion. Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 49.

<sup>34</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222 at n.39.

27. In this case, we find that Green Energy has not demonstrated that the Project will ensure reliability or reduce the price of delivered power by reducing congestion.<sup>35</sup> Green Energy has included the economic and feasibility studies it supplied to the CAISO in support of the Project. However, we have evaluated these studies and find that they do not provide the Commission with the necessary support to determine whether the Project ensures reliability or reduces the price of delivered power by reducing congestion. Indeed, as SoCal Edison notes, there could be reliability issues caused by the Project, with respect to the potential impacts on Metropolitan's system. Although Green Energy requests that we reject SoCal Edison's arguments, Green Energy itself notes the potential for detrimental reliability impacts of the Project in its answer.<sup>36</sup>

28. With respect to congestion, Green Energy submitted a study attempting to detail how the Project will reduce the cost of delivered power by reducing congestion.<sup>37</sup> However, the study provides minimal and inconclusive details as to whether the Project would reduce transmission congestion.<sup>38</sup> While Green Energy's study details projected savings with regards to congestion revenue and marginal cost of losses,<sup>39</sup> the presentation of the data makes it unclear if the projected cost savings are an accurate representation given the somewhat arbitrary nature of the four-week sample period. The sample period selected shows that the congestion revenue from the week in August would increase by as much as it decreases in November, which suggests that the number provided for congestion revenue savings is highly sensitive to the four-week period

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<sup>35</sup> As discussed herein, Green Energy is not entitled to section 219's rebuttable presumption, since the Project has not been considered by the CAISO's planning process and has not received construction approval.

<sup>36</sup> *See, e.g.*, Green Energy Answer at 29 (stating that Green Energy has discussed potential reliability impacts associated with the Project with SoCal Edison and Metropolitan, and stating that Green Energy "welcomes the opportunity to work on these issues with" the CAISO, SoCal Edison, and Metropolitan, in conjunction with the CAISO's technical review).

<sup>37</sup> *See* Petition, Exh. PGH-4, "Economic Analysis Supporting the Proposed Green Energy Express 500 kV Transmission Line; An Economic Transmission Project Submission to the California Independent System Operator."

<sup>38</sup> For example, while Green Energy states that its studies perform power flow analyses to support its conclusions, the studies themselves do not contain sufficient detail for the Commission to verify Green Energy's claims regarding the Project's congestion (or reliability) benefits.

<sup>39</sup> Petition, Exhibit PGH-4 at 24.

selected. With such a narrow time period, it is not feasible for the Commission to evaluate whether the Project will reduce the cost of delivered power by reducing congestion. Green Energy provided no other support to demonstrate how and where congestion would be reduced in order to satisfy section 219.<sup>40</sup>

29. We have granted requests for rate incentives for projects that were not relying on section 219's rebuttable presumption in previous filings where those projects had not been reviewed in the relevant regional planning process. However, in those cases, the applicants clearly demonstrated reliability or congestion concerns that the proposed project would address and supported such assertions with comprehensive and clear data, as well as internal and, in several cases, external studies. For example, in *Green Power Express*,<sup>41</sup> we found the project met the section 219 requirement based on the studies the applicant submitted that showed the impact of the proposed transmission project on the existing network, including an engineering affidavit, and that demonstrated the project's ability to relieve congestion on DOE-identified congested paths. In addition, the applicant in that proceeding submitted an outside study by the Brattle Group that confirmed the applicant's own results. In *Pioneer Transmission, LLC*,<sup>42</sup> we found that the applicant had provided sufficient information to demonstrate the project's reliability and congestion benefits, such as comprehensive power flow analyses that the Commission could use to verify the applicant's contention that its project ensured reliability or reduced the cost of delivered power by reducing congestion. Finally, in *Tallgrass Transmission, LLC*,<sup>43</sup> we similarly concluded that the applicant had satisfied the section 219 requirement based on both the data presented in the filing and as a result of the project's similarity to other transmission projects studied by the Southwest Power Pool, the relevant regional transmission organization. By contrast, Green Energy has not provided the Commission with the necessary support to determine whether the Project

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<sup>40</sup> We agree with Green Energy that section 219 and Order No. 679 do not require a cost-benefit analysis. Order No. 679, FERC Stats. & Regs. ¶ 31,222, at P 59 and Order No. 679-A, FERC Stats. & Regs. ¶ 31,236, at P 35-40. We are not requiring such an analysis from Green Energy; however, to the extent that section 219's rebuttable presumption does not apply, an applicant for rate incentives must demonstrate that a project reduces the cost of delivered power by reducing congestion or ensures reliability.

<sup>41</sup> 127 FERC ¶ 61,031 at P 41.

<sup>42</sup> 126 FERC ¶ 61,231, at P 37 (2009), *reh'g pending (Pioneer)*.

<sup>43</sup> 125 FERC ¶ 61,248, at P 42 (2008), *reh'g pending (Tallgrass)*.

ensures reliability or reduces the price of delivered power by reducing congestion. Accordingly we cannot find that the Project satisfies the section 219 requirement.<sup>44</sup>

30. Green Energy is also not yet entitled to a rebuttable presumption that the Project satisfies the requirements of section 219, since it has not been approved in the CAISO's planning process or received construction approval from the relevant state authorities. However, because the CAISO's planning process may adequately consider the reliability and congestion-relieving impacts of the Project, the Commission will conditionally approve the incentives requested by Green Energy. We direct Green Energy to submit a filing within 30 days of the approval or disapproval of the Project in the CAISO's planning process. If the Project is approved in the CAISO's planning process, Green Energy must provide in its filing evidence not only that the Project was approved in the CAISO's planning process, but also that the planning process included a finding that the Project will ensure reliability or reduce the cost of delivered power by mitigating congestion, consistent with Order No. 679-A.<sup>45</sup>

### **3. Nexus Test**

#### **a. Green Energy's Proposal**

31. Green Energy argues that the Project faces a number of unique obstacles. Green Energy states that it is a stand-alone start-up company with no ratepayer revenues upon which to draw to cover development or initial construction costs, and contrasts the Project's status with those projects being developed by traditional investor owned utilities or their affiliates. Green Energy states that the Commission has recognized that certain projects cannot go forward unless independent developers are given some upfront assurances of minimal levels of recovery. Moreover, Green Energy argues that given the unique financial, regulatory, and other risks associated with the Project, the incentives and assurances must meet the minimum expectations of investors and lenders. Green Energy states that it has already expended significant amount of money on initial feasibility, economic, and routing studies, which were often requested or required by the CAISO. Green Energy explains that it has no means to recover these costs or otherwise source any revenues for continued development of the Project through a tariff structure. Thus, states Green Energy, it can only move forward with further development of the Project if it can obtain additional capital investment and construction financing.

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<sup>44</sup> Our decision here does not preclude Green Energy from submitting additional support in a new proceeding to satisfy these section 219 requirements.

<sup>45</sup> See Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 49. See also *Central Me. Power Co.*, 125 FERC ¶ 61,182, at P 57 (2008) (directing further filing) (*Central Maine*).

32. Green Energy also explains that it has been funding all development costs of the Project to date, without outside financing or other source of capital investment or revenues, and asserts that it will require significant capital investment from other equity investors to be able to continue to develop the Project. Green Energy states that it has had discussions with prospective investors in the Project and is currently in late-stage negotiations with a potential investor for the direct or indirect acquisition of Green Energy's membership interests. However, according to Green Energy, the equity investor's final investment in Green Energy will depend on Green Energy's ability to obtain upfront cost recovery assurances and rate incentives.

**b. Commission Determination**

33. In addition to satisfying section 219's requirement that a project ensure reliability or reduce the cost of delivered power by reducing congestion, an applicant must demonstrate that there is a nexus between the incentive sought and the investment being made. In Order No. 679-A, the Commission clarified that the nexus test is met when an applicant demonstrates that the total package of incentives requested is "tailored to address the demonstrable risks or challenges faced by the applicant."<sup>46</sup>

34. As part of the evaluation of whether the incentives requested are tailored to address the demonstrable risks or challenges faced by the applicant, the Commission has found the question of whether a project is "routine" to be particularly probative. In *BG&E*, the Commission provided guidance on the factors that it will consider when determining whether a project is routine.<sup>47</sup> The Commission stated that it will consider all relevant factors presented by the applicant, including evidence on: (1) the scope of the project (e.g., dollar investment, increase in transfer capability, involvement of multiple entities or jurisdictions, size, effect on region); (2) the effect of the project (e.g., improving reliability or reducing congestion costs); and (3) the challenges or risks faced by the project (e.g., siting, long lead times, regulatory and political risks, specific financing challenges, other impediments). The Commission also explained that when an applicant has adequately demonstrated that the project for which it requests an incentive is not routine, that applicant has shown, for purposes of the nexus test, that the project faces risks and challenges that merit an incentive.<sup>48</sup>

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<sup>46</sup> Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 40.

<sup>47</sup> *Baltimore Gas & Elec. Co.*, 120 FERC ¶ 61,084, at P 52-55 (2007), *order denying reh'g*, 123 FERC ¶ 61,262 (2008) (*BG&E*).

<sup>48</sup> *Id.* P 54.

35. Green Energy has presented evidence on the Project's scope, effect, and risks and challenges. Based on this evidence, we conclude that Green Energy has adequately demonstrated that the Project is not routine. It represents a significant investment of approximately \$400 million in a transmission project by an independently owned transmission company to deliver up to 2,000 MW of otherwise location-constrained renewable resources in eastern Riverside County, California over 70 miles to load centers in southern California. Access to these renewable resources will assist load serving entities in meeting California's RPS goals. The Commission has found that, in addition to other considerations, construction of transmission facilities designed to provide access to these types of remote resources is not routine.<sup>49</sup> In addition, the Project must receive siting approval from several agencies, including the CPUC and the BLM. Finally, Green Energy has demonstrated that the Project has a long lead-time, since it is not expected to be in-service until sometime in 2013. For these reasons, we find that the Project is not routine.

36. Nonetheless, we must still examine the specific incentives requested by Green Energy and whether the total package of incentives is tailored to address the risks and challenges faced by the Project. This examination is made immediately below.

#### **4. Specific Incentives and the Total Package of Incentives**

37. Green Energy seeks the following specific rate incentives: (1) deferred recovery of pre-commercial expenses; (2) inclusion of 100 percent of CWIP in rate base; (3) abandoned plant recovery; (4) an ROE adder of 50 basis points for participation in a qualifying Transmission Organization; (5) an ROE adder of 100 basis points in recognition of Green Energy's status as a transco; (6) an ROE adder of 50 basis points to otherwise compensate for the unique risks and challenges facing the Project and Green Energy's investors; and (7) a hypothetical capital structure of 50 percent equity and 50 percent debt until the Project is placed in service.

38. We conditionally grant Green Energy's request for these incentives, conditioned on Green Energy submitting a filing that meets the criteria discussed above as to the CAISO's planning process. We also conclude that Green Energy has demonstrated that the total package of incentives, as conditioned, is tailored to the risks and challenges faced by the Project.

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<sup>49</sup> *PacifiCorp*, 125 FERC ¶ 61,076, at P 45 (2008).

**a. Deferred Recovery of Pre-Commercial Expenses**

**i. Green Energy's Proposal**

39. Green Energy states that Order No. 679 permits transmission project applicants to seek deferred cost recovery through the creation of a regulatory asset, noting that the Commission has found that this incentive provides projects with upfront regulatory certainty and facilitates financing on favorable terms. According to Green Energy, the Commission has recognized the necessity of this cost recovery mechanism given the lengthy development and construction lead times for transmission projects. Green Energy asserts that it is facing this same type of lengthy and costly development and construction process in connection with the Project. Green Energy states that it intends to file and pursue applications to permit the Project with appropriate federal, state, and local authorities within a few months after receiving final CAISO approval. However, it does not expect a final decision on its state application until some time in 2011 and will not be able to complete construction until the middle of 2013. Thus, Green Energy believes that a regulatory asset is needed to compensate for the cost and risk associated with the lengthy permitting and construction period. In addition, Green Energy argues that the incentive is appropriate because the Project's pre-commercial, start-up, and development costs that would otherwise be chargeable to expense in the period incurred, are not recoverable in current rates, and are of the type for which future recovery is probable.

40. Specifically, Green Energy seeks deferred cost recovery through a regulatory asset that will include all prudently incurred start-up and development costs incurred to date, as well as all pre-commercial costs going forward to the extent that any such expenses are not included in rate base as CWIP. Green Energy plans to amortize these costs over a five-year term. According to Green Energy, the regulatory asset will include costs associated with initial studies prepared for or required by the CAISO, efforts to establish the rate incentives sought in the Petition, obtaining necessary approvals from the CAISO and relevant governmental authorities, and education and outreach to interested parties on the Project's merits. Green Energy states that these costs may include (but are not limited to) attorney and consultant fees, entity formation costs, administrative expenditures, taxes (other than income taxes), travel costs, other expenses related to corporate structure, and costs related to technical studies (including those required by regulatory entities and regional planning processes). Finally, Green Energy states that the Commission has approved deferred recovery of similar costs, with the caveat that the prudence of these costs must be demonstrated when the applicant seeks to implement recovery through a FPA section 205<sup>50</sup> filing.

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<sup>50</sup> 16 U.S.C. § 825d (2006).

**ii. Commission Determination**

41. We grant Green Energy's request for authorization to establish the regulatory asset, conditioned and effective upon the Project being approved in the CAISO's planning process, as discussed above. Granting this incentive will allow Green Energy to defer recovery of pre-construction costs, as well as start-up and development costs, and recover them later. We find the incentive is tailored to Green Energy's risks and challenges because this incentive will provide it with added up-front regulatory certainty and can reduce interest expense, improve coverage ratios, and facilitate the financing of the Project on reasonable terms. We agree with Green Energy that establishing this regulatory asset to recover pre-commercial costs will help compensate it for the risks associated with the long-lead time necessary for constructing the Project, including its efforts to pursue federal, state, and local regulatory permitting and siting approvals. More generally, granting this incentive encourages development of more transmission infrastructure, thereby fulfilling the goals of section 219.<sup>51</sup> At the same time, we recognize that Green Energy should not begin recovering these costs until such time that it demonstrates that the Project will ensure reliability or reduce the price of delivered power by reducing congestion.

42. We will not determine the justness and reasonableness of Green Energy's recovery of pre-commercial expenses, if any, until Green Energy seeks such recovery in a section 205 filing. We have previously held that entities receiving this incentive must demonstrate that the costs were prudently incurred and just and reasonable in a subsequent section 205 filing.<sup>52</sup>

**b. CWIP**

**i. Green Energy's Proposal**

43. Green Energy explains that the Commission has authorized the inclusion of 100 percent of prudently-incurred, transmission-related CWIP in rate base, and has recognized that this incentive can spur transmission investment, provide upfront regulatory certainty to lenders and investors, stabilize rates, improve cash flows, and ease pressure on applicants' finances caused by transmission development projects. Green Energy argues that the return on CWIP would allow it to begin generating cash to service debt and reduce the required amount of external capital.

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<sup>51</sup> See, e.g., *Green Power Express*, 127 FERC ¶ 61,031 at P 61.

<sup>52</sup> See, e.g., *id.*

**ii. Commission Determination**

44. In Order No. 679, the Commission established a policy that allows utilities to include, where appropriate, 100 percent of prudently-incurred transmission-related CWIP in rate base.<sup>53</sup> The Commission stated that this rate treatment will further the goals of section 219 by providing up-front regulatory certainty, rate stability, and improved cash flow, reducing the pressures on an applicant's finances caused by investing in transmission projects.<sup>54</sup> We find that Green Energy has shown a nexus between the proposed CWIP incentive and its investment in the Project. The Project will cost approximately \$400 million and is not expected to go into service until mid-2013. The cost and timing for completing the Project will put pressure on Green Energy's finances. Granting the CWIP incentive will help ease this pressure by providing upfront certainty, improved cash flow, and reduced interest expense. We believe it will also assist Green Energy with financing. We further find that allowing Green Energy to recover 100 percent of CWIP in its rate base will result in better rate stability for customers. As we have previously explained, without CWIP in rate base, a new project has no direct effect on consumer prices until it begins being used to provide service.<sup>55</sup> If the Commission does not allow Green Energy to recover CWIP in rate base, all of the Project's borrowing costs will be accrued over several years, and then capitalized after the Project goes into service, along with a return of the investment cost through depreciation expense. Such a process will increase consumers' bills more significantly than if the Commission were to allow CWIP to be included in rate base.<sup>56</sup> Accordingly, we find that the Project is eligible to recover 100 percent of CWIP in rate base contingent on the Project's approval in the CAISO's planning process, as discussed above.

**c. Abandoned Cost Recovery**

**i. Green Energy's Proposal**

45. Green Energy also seeks a rate incentive that would allow it to recover prudently-incurred costs if the Project is abandoned due to forces outside of its control. Green Energy asserts that the Commission has recognized that the risks are particularly

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<sup>53</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 29, 117.

<sup>54</sup> *Id.* P 115.

<sup>55</sup> *See, e.g., Green Power Express*, 127 FERC ¶ 61,031 at P 67; *ITC Great Plains, LLC*, 126 FERC ¶ 61,223, at P 82 (2009) (*ITC*); *American Elec. Power Serv. Corp.*, 116 FERC ¶ 61,059, at P 59 (2006), *order on reh'g*, 118 FERC ¶ 61,041, at P 27 (2007).

<sup>56</sup> *See, e.g., Green Power Express*, 127 FERC ¶ 61,031 at P 67.

compelling for projects designed to deliver energy produced by renewable resources, citing the uncertainty of final development of the interconnecting generation projects. Thus, in this case, Green Energy argues that the abandoned plant incentive is particularly appropriate because the Project will interconnect otherwise location-constrained renewable generation resources that currently are in early planning and development stages. Green Energy also notes that the Project faces potential changes in federal tax policy for renewable generation, energy markets, and capital markets.

**ii. CAISO Comments**

46. The CAISO contends that Green Energy should not be allowed abandoned plant cost recovery if the Project is abandoned because the CAISO determines that the Project is not needed. The CAISO argues that it is important that the Commission clarify this aspect of the abandoned plant incentive since it does not consider competing proposals when considering whether to grant incentives, and could approve incentives for multiple projects intended to address the same regional needs. The CAISO states that the Commission should either condition the granting of abandonment authority on a finding by the Commission that a project is needed in the CAISO's planning process or find that the inclusion of a project in the CAISO's transmission plan is not a factor beyond the applicant's control.

47. Further, the CAISO argues that if such a clarification is not made, the Commission would encourage speculative transmission projects not associated with renewable generation currently in the generation queue, and which do not meet an identifiable need. The CAISO states that this would increase costs to ratepayers and unduly clog the CAISO's planning process. The CAISO also notes that the recovery of abandonment costs by a proposed project would conflict with the CAISO's Transmission Control Agreement. The CAISO states that if a transmission project is approved by the CAISO's planning process, the developer can become a Participating Transmission Owner and file a transmission owner tariff to recover revenue requirements through the Transmission Access Charge. The CAISO states that there is no mechanism for recovering costs for an entity that does not qualify as a Participating Transmission Owner. The CAISO states that if the Project is not approved in the CAISO's planning process, it has no ability to become a Participating Transmission Owner and would have no ability to recover costs under the CAISO tariff.

**iii. Green Energy's Answer**

48. Green Energy opposes the CAISO's request that the abandoned cost recovery incentive not apply if the reason for abandonment was that the CAISO determined the Project was not needed. According to Green Energy, the Commission has been clear that approval of a proposed transmission project is not a prerequisite for seeking and

obtaining the abandoned cost recovery incentive,<sup>57</sup> and that the CAISO has not cited to any precedent holding otherwise.<sup>58</sup>

49. In addition, Green Energy points to its own experience in the CAISO's planning process as evidence of the risk and uncertainty inherent in that process. Green Energy explains that pursuant to section 24.1.1 of the CAISO's tariff, project sponsors have the right to submit a proposed transmission project as an economic addition or upgrade through a "Request Window" and timely submitted the economic analysis requested by the CAISO. According to Green Energy, the CAISO unilaterally decided to convert the Project, as well as others, from "economic" projects under section 24.1.1 to requests for "Economic Planning Studies," which Green Energy states is a substantively different category of request under the CAISO's planning process. Although Green Energy states that these actions may not be consistent with the CAISO's tariff, it also explains that its main point is that there is significant development risk and associated costs imposed on project sponsors as a result of the CAISO's implementation of its planning process.

50. Green Energy also disagrees that granting the abandoned cost recovery incentive will conflict with the CAISO's tariff or the Transmission Control Agreement. While the provisions cited by the CAISO require the CAISO to have control over a Participating Transmission Owner's eligible facilities, Green Energy asserts that they have no bearing on a project sponsor's ability to recover prudently-incurred development costs in a section 205 filing. Green Energy points out that the Commission has rejected similar arguments in the past.

51. Finally, Green Energy objects to the CAISO's contention that its planning process would be clogged up by speculative projects if the abandoned cost recovery incentive was approved. Green Energy argues that this assertion is a collateral attack on section 219 and Order No. 679, and notes that the Commission has expressly rejected arguments

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<sup>57</sup> Green Energy cites to *Green Power Express*, 127 FERC ¶ 61,031, and *Tallgrass*, 125 FERC ¶ 61,248, among other orders, where the Commission has granted this incentive for projects that had not yet been approved in the relevant planning process.

<sup>58</sup> Green Energy dismisses the CAISO's reliance on *Central Maine*, 125 FERC ¶ 61,182, in which the Commission conditioned the grant of incentives on the project being approved in the ISO New England planning process. Green Energy argues that *Central Maine* was different because the applicant there had argued that it presumptively qualified for benefits because it had been included in ISO New England's Regional System Plan.

that granting the abandoned cost recovery incentive would encourage future speculative projects not analyzed by a regional planning process.<sup>59</sup>

#### iv. Commission Determination

52. We grant the requested incentive, conditioned upon the Project being approved in the CAISO's planning process as discussed above. In Order No. 679, the Commission found that the abandoned cost recovery incentive is an effective means to encourage transmission development by reducing the risk of non-recovery of costs.<sup>60</sup> We find that Green Energy has demonstrated a nexus between the recovery of prudently incurred costs associated with abandoned transmission projects and its planned investment. Thus, we will grant Green Energy's request for recovery of 100 percent of prudently-incurred costs associated with abandonment, provided that the abandonment is a result of factors beyond Green Energy's control, which must be demonstrated in any subsequent section 205 filings for recovery of abandoned plant.<sup>61</sup>

53. We find that this incentive will be an effective means to encourage the Project's completion. Green Energy has demonstrated there could be factors outside of its control that could prevent the Project from being completed. The Petition explains that the Project is intended to deliver otherwise location-constrained renewable resources currently in the early planning and development stages.<sup>62</sup> As Green Energy notes, it faces the risk of changes in tax policy, energy markets, and capital markets that may impact whether the planned renewable generation will be built. In addition, based on information provided in the Petition, Green Energy faces risks in the permitting process, since it needs to secure various approvals from federal, state, and/or local municipal bodies.<sup>63</sup> These factors introduce a significant element of risk; authorizing this abandoned cost recovery incentive will help ameliorate this risk by providing Green Energy with some degree of certainty as it moves forward.

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<sup>59</sup> Green Energy cites to *Green Power Express*, 127 FERC ¶ 61,031, in support of this argument.

<sup>60</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 163.

<sup>61</sup> *Id.* P 165-66.

<sup>62</sup> Petition, Transmittal Letter at 26.

<sup>63</sup> *See, e.g.*, Petition, Exh. PGH-3, "Preliminary Routing Evaluation: Eagle Mountain to Devers 500kV Transmission Project," at 8 (providing an overview of Green Energy's permitting evaluation).

54. We emphasize that conditioning this incentive, as well as the other incentives requested by Green Energy, on approval in the CAISO's planning process is limited to the circumstances presented in this docket. As we have stated in a number of incentive orders, we review requests for incentives on a case-by-case basis.<sup>64</sup> While Green Energy correctly notes that we approved rate incentives for other projects that had not yet received approval in the relevant planning process, we find that those cases are distinguishable. As noted above, we found that the applicants in the *Green Power Express*, *Pioneer*, and *Tallgrass* proceedings satisfied section 219 through the applicants' own submissions, although their projects had not yet been approved in the relevant planning process. By contrast, we find that Green Energy has not satisfied the section 219 requirement that its Project ensures reliability or reduces the price of delivered power by reducing congestion through the information it provided in its Petition.<sup>65</sup> For this reason, we condition the abandoned cost recovery incentive on the Project being approved in the CAISO's planning process. We find that this condition, which is applicable to all of the incentives we are granting herein, addresses the CAISO's concern with respect to the abandoned plant incentive in this case.

55. Finally, we will not determine the justness and reasonableness of Green Energy's abandoned plant recovery, if any, until Green Energy seeks such recovery in a section 205 filing. Order No. 679 specifically reserves the prudence determination for the later section 205 filing that every utility is required to make if it seeks abandoned plant recovery.<sup>66</sup>

**d. ROE Adder for Participation in a Transmission Organization**

**i. Green Energy's Proposal**

56. Green Energy explains that if the Project's development moves forward, it will become a Participating Transmission Owner under the CAISO's tariff and will turn over operational control of the Project to the CAISO. Green Energy states that it would

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<sup>64</sup> See, e.g., *Green Power Express*, 127 FERC ¶ 61,031 at P 75 (stating that the Commission "will consider transmission incentive requests on a case-by-case basis"); *ITC*, 126 FERC ¶ 61,223, at P 44 (2009) ("As for whether the projects deserve incentives because there are competing projects, we reiterate that it is the Commission's policy to review each request for incentives on its own merits and on a case-by-case basis.").

<sup>65</sup> See P 29, *supra*.

<sup>66</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 165-66.

therefore be eligible for a 50-basis point ROE adder for participating in a transmission organization, in accordance with FPA section 219 and Order No. 679.

**ii. Commission Determination**

57. Green Energy has stated that it intends to turn over operational control of the Project to the CAISO, and that it will become a Participating Transmission Owner. In Order No. 679, we stated that we would authorize incentive-based rate treatment for public utilities that are or will continue to be members of Transmission Organizations.<sup>67</sup> Therefore, provided that the Project receives approval in the CAISO's planning process, Green Energy takes all the necessary steps to turn over operational control of the Project to the CAISO and become a Participating Transmission Owner, and Green Energy's overall ROE is within the zone of reasonable returns, to be determined when it makes its future section 205 filing, we find that Green Energy is eligible for this incentive.

**e. ROE Adder for Transco Formation**

**i. Green Energy's Proposal**

58. Green Energy notes that Order No. 679 indicates that the Commission will provide incentive rate treatment for transco formation.<sup>68</sup> Green Energy states that the Commission has frequently provided an incentive for transco formation in the form of a 100-basis point ROE adder. Green Energy explains that it is a stand-alone transmission company that will sell transmission service at wholesale, with no generation assets, no franchised service territory, and no retail customers. Green Energy also points out that its sole business is the development, financing, and construction of the Project (and possibly future related transmission projects). Because its business structure is consistent with the Commission's definition of a transco, Green Energy asserts that it is eligible for a 100-basis point ROE adder.

**ii. Commission Determination**

59. Green Energy is correct that we have encouraged the formation of transcos, finding that their unique combination of a for-profit business model and a sole focus on developing transmission assets would help remedy the need for transmission investment.

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<sup>67</sup> Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 86. *See also Green Power Express*, 127 FERC ¶ 61,031 at P 85; *Tallgrass*, 125 FERC ¶ 61,248 at P 58.

<sup>68</sup> In Order No. 679, the Commission defined a transco as a stand-alone transmission company that has been approved by the Commission and that sells transmission service at wholesale and/or on an unbundled retail basis. *See* Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 201.

In this case, we find that Green Energy is a transco.<sup>69</sup> Green Energy is a stand-alone entity, the sole purpose of which is to develop the Project. Accordingly, we will grant it the 100-basis point ROE incentive adder that we have provided for transco formation in other rate incentive proceedings,<sup>70</sup> conditioned on the Project being approved in the CAISO's planning process, as discussed above, and subject to Green Energy's overall ROE being within the zone of reasonable returns, to be determined when it makes its future section 205 filing.

f. **ROE Adder for Overall Risks and Inclusion of Fast-Acting Phase Shifter**

i. **Green Energy's Proposal**

60. Green Energy seeks an additional 50-basis point adder to its ROE to reflect the overall siting, permitting, regulatory, technical, and financing risks associated with the Project, including the incorporation of a new fast-acting phase shifter, which Green Energy contends significantly adds to the expense of the overall Project but which has been explicitly requested by CAISO operators. Although Green Energy argues that it could be eligible for the requested adder just by incorporating this advanced technology, it states that it is only seeking an overall adder of 50 basis points to compensate for the bundle of risks associated with the Project.

ii. **Commission Determination**

61. In Order No. 679-A, the Commission found that the most compelling case for incentive ROEs are "new projects that present special risks or challenges, and not routine investments made in the ordinary course."<sup>71</sup> We find that Green Energy's demonstration as to the overall bundle of risks and challenges associated with the Project satisfies this standard.

62. Green Energy is developing a transmission line to interconnect 2,000 MW of otherwise potentially stranded renewable energy resources in southern California. The Project will also require an estimated investment of \$400 million. As noted above, the Commission has recognized that the construction of transmission facilities designed to provide access to remote renewable resources is not routine.<sup>72</sup> These circumstances

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<sup>69</sup> *See id.*

<sup>70</sup> *See, e.g., Green Power Express*, 127 FERC ¶ 61,031 at P 86; *ITC*, 126 FERC ¶ 61,223 at P 93.

<sup>71</sup> Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 60.

<sup>72</sup> *PacifiCorp*, 125 FERC ¶ 61,076 at P 45.

present special financial risks for Green Energy, especially considering its status as a start-up transmission company. Accordingly, in recognition of these circumstances as part of the bundle of siting, permitting, technical (including the incorporation of a new fast-acting phase shifter), and financing risks and challenges faced by the Project, we grant the requested 50-basis point ROE adder, conditioned on the Project being approved in the CAISO's planning process as discussed above, and subject to Green Energy's overall ROE being within the zone of reasonable returns, to be determined when it makes its future section 205 filing.

**g. Hypothetical Capital Structure**

**i. Green Energy's Proposal**

63. Finally, Green Energy requests authorization to use a hypothetical capital structure of 50 percent debt and 50 percent equity during the development and construction of the Project.

**ii. Commission Determination**

64. Contingent on the Project receiving approval in the CAISO's planning process as discussed above, we will allow Green Energy to use a hypothetical capital structure of 50 percent debt and 50 percent equity until such time that the Project is placed in service. We conclude that Green Energy has demonstrated a nexus between the requested incentive and the risks and challenges faced by the Project. Specifically, Green Energy is a stand-alone start-up company that lacks an actual capital structure, and will receive no revenues beyond those received from the operation of the Project. Given the estimated cost of the Project, Green Energy will need to raise significant levels of new debt and equity capital. Approval of the hypothetical capital structure will allow Green Energy flexibility in financing its project to allow for prevailing market and regulatory conditions, which should lower the overall cost of capital.<sup>73</sup>

**h. Total Package of Incentives**

65. As we have stated above, the total package of incentives requested must be tailored to address the demonstrable risks or challenges faced by the applicant. This test is fact-specific and requires the Commission to review each application on a case-by-case

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<sup>73</sup> See, e.g., *Potomac-Appalachian Transmission Highline*, 122 FERC ¶ 61,188, at P 55 (2008). See also Order No. 679-A, FERC Stats. & Regs. ¶ 31,236, at P 93 (finding that hypothetical capital structures "can be an appropriate ratemaking tool for fostering new transmission in certain relatively narrow circumstances").

basis. The Commission has in prior cases approved multiple rate incentives for particular projects.<sup>74</sup>

66. Despite the CPUC's argument that Green Energy has not satisfied Order No. 679-A's requirement that an applicant show that the total package of incentives requested will address the risks faced by a transmission project, we find that the total package of incentives, as conditioned, is tailored to address the demonstrable risks and challenges faced by Green Energy in developing the Project. Green Energy has convinced us that it faces significant risks and challenges in developing and constructing the Project. Therefore, we find that it is eligible for the incentives that we are granting herein.

The Commission orders:

(A) Green Energy's Petition is conditionally granted, subject to the Project being approved in the CAISO's planning process, as discussed in the body of this order.

(B) Green Energy is directed to submit a filing within 30 days of the CAISO's approval or disapproval of the Project in its planning process, as discussed in the body of this order.

By the Commission. Commissioner Kelly is dissenting in part with a separate statement attached.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>74</sup> See, e.g., *Green Power Express*, 127 FERC ¶ 61,031, at P 89 (finding that 100 percent CWIP, deferred recovery of pre-construction costs, abandonment recovery, and ROE incentives were tailored to the unique challenges faced by the project); *ITC*, 126 FERC ¶ 61,223, at P 61 (finding that applicant demonstrated a sufficient nexus between the risks of the project and the requested incentives, which included abandoned plant recovery, 100 percent of CWIP, deferred recovery of pre-construction costs, and ROE incentives).

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Green Energy Express LLC

Docket No. EL09-74-000

(Issued November 23, 2009)

KELLY, Commissioner, *dissenting in part*:

This order addresses a petition for declaratory order filed by Green Energy Express LLC in which Green Energy Express requests approval of certain transmission rate incentives for its proposed transmission project. Green Energy Express requests a suite of incentives, including 100 percent construction work in progress (CWIP), abandoned plant recovery and three separate return on equity (ROE) adders, totaling 200 basis points.

I dissent from the decision to approve the requested 50 basis point ROE adder that is separate and distinct from ROE adders for RTO participation and independent Transco status. Green Energy Express states that these additional 50 basis points are designed to compensate for several factors, such as “the unique risks and hurdles faced by Green Energy Express as an independent transmission developer.”<sup>1</sup> However, Green Energy Express fails to demonstrate the need for this adder, and its attempted justification—limited to a single paragraph within an affidavit—lacks important detail about the nature of the risks and challenges that the project faces. This is contrary to Order No. 679-A, which provides that the incentive sought “must be tailored to address the demonstrable risks and challenges faced by the applicant in undertaking the project.”<sup>2</sup> Additionally, the requested 50 basis points for risks faced as an independent transmission developer appear to overlap with the 100 basis point adder requested “for Green Energy Express' independent transco status.” In short, there is no acceptable ground for granting this 50 basis point adder and to do so will unacceptably raise the cost of transmission to consumers.

For these reasons, I dissent in part.

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Sudeen G. Kelly

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<sup>1</sup> Green Energy Express September 9, 2009 Petition for Declaratory Order, Docket No. EL09-74-000, Exhibit No. PGH-1 at 12.

<sup>2</sup> Order No. 679-A at P21.