

154 FERC ¶ 61,158  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;  
Cheryl A. LaFleur, Tony Clark,  
and Colette D. Honorable.

San Diego Gas & Electric Company

Docket No. EL15-103-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued March 2, 2016)

1. On September 23, 2015, San Diego Gas & Electric Company (SDG&E) filed a petition for declaratory order pursuant to section 219 of the Federal Power Act (FPA),<sup>1</sup> Order No. 679,<sup>2</sup> and Rule 207 of the Commission's Rules of Practice and Procedure<sup>3</sup> seeking authorization to recover 100 percent of all prudently-incurred development and construction costs associated with SDG&E's South Orange County Reliability Enhancement (SOCRE) project if abandoned or cancelled, in whole or in part, for reasons beyond SDG&E's control (Abandonment Incentive).<sup>4</sup> As discussed below, this order grants SDG&E's petition.

---

<sup>1</sup> 16 U.S.C. § 824s (2012).

<sup>2</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). The Commission provided additional guidance regarding the application of its transmission incentive policies in *Promoting Transmission Investment Through Pricing Reform*, 141 FERC ¶ 61,129 (2012) (2012 Policy Statement).

<sup>3</sup> 18 C.F.R. § 385.207 (2015).

<sup>4</sup> SDG&E September 23, 2015 Filing (SDG&E Filing).

## I. Background

2. SDG&E is a California public utility corporation engaged in the transmission, distribution, and sale of energy services in San Diego and Orange Counties, California, and is a participating transmission owner in the California Independent System Operator Corporation (CAISO) balancing authority area.

3. According to SDG&E, CAISO included the SOCRE project in its 2010-2011 Transmission Plan to address reliability concerns in the southern Orange County area, where customers are currently served by a single 230-kilovolt (kV) line running to the existing 138-kV Capistrano substation.<sup>5</sup> SDG&E states that the SOCRE project consists of four primary components: (1) rebuilding and upgrading the 138/12-kV 60-megavolt ampere (MVA) air-insulated Capistrano substation to a 230/138/12-kV 784-MVA gas-insulated substation (and renaming it the San Juan Capistrano substation once complete); (2) replacing a single-circuit 138-kV transmission line between SDG&E's Talega and renamed San Juan Capistrano substations with a new double-circuit 230-kV transmission line (approximately 7.8 miles long); (3) relocating several transmission line segments (approximately 1.8 miles, total) adjacent to the Talega and Capistrano substations to accommodate the proposed San Juan Capistrano Substation expansion and new 230-kV line; and (4) relocating several distribution line<sup>6</sup> segments (approximately 6 miles, total) into an underground conduit and overhead onto existing and new structures located between the Capistrano Substation and the Prima Deschecha Landfill.<sup>7</sup>

4. SDG&E states that the project is currently estimated to cost approximately \$350 million to \$400 million and would mitigate the risks of outages and improve reliability in the southern Orange County area by, among other things, providing a second independent 230-kV line at the proposed rebuilt San Juan Capistrano Substation. SDG&E states that this project directly addresses reliability concerns for the area identified in CAISO's 2010-2011 Transmission Plan.<sup>8</sup> SDG&E also states that the SOCRE project benefits consumers in the immediate vicinity of the project by using existing rights-of-way and minimizing long-term visual and environmental impacts

---

<sup>5</sup> *Id.* at 3-4.

<sup>6</sup> SDG&E defines distribution lines as electrical lines that operate at voltages below 50 kV. *Id.* at 5, n.10.

<sup>7</sup> *Id.* at 4-5.

<sup>8</sup> *Id.* at 5.

through undergrounding, and benefits all SDG&E customers by replacing existing wood structures with new steel structures to improve fire resistance.<sup>9</sup>

5. In its filing, SDG&E requests authorization to recover 100 percent of all prudently-incurred development and construction costs if the SOCRE project is abandoned or cancelled, in whole or in part, for reasons beyond SDG&E's control.<sup>10</sup> SDG&E claims that the SOCRE project meets the requirements of FPA section 219 because the SOCRE project resulted from a fair and open regional planning process that considered and evaluated projects for reliability and/or congestion and is acceptable to the Commission.<sup>11</sup> Specifically, SDG&E asserts that the Commission has previously determined that CAISO's transmission planning process is a fair and open regional process.<sup>12</sup> Furthermore, SDG&E states that as part of CAISO's 2010-2011 Transmission Plan, CAISO performed detailed studies of the southern Orange County area to evaluate its overall reliability risks, which revealed that the area is susceptible to multiple North American Electric Reliability Corporation (NERC) Category C overloads by 2020, and is increasingly at risk for service interruption due to involuntary load shedding.<sup>13</sup> SDG&E states that CAISO evaluated three alternatives and selected the SOCRE project, Alternative 3, as the most effective, feasible solution to meet the reliability needs of the southern Orange County area identified in the 2010-2011 Transmission Plan.<sup>14</sup>

---

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 2-3.

<sup>11</sup> *Id.* at 8-11.

<sup>12</sup> *Id.* at 10-11.

<sup>13</sup> *Id.* at 9. NERC Reliability Standard TPL-003-0(i)b requires transmission planners such as CAISO to ensure that their portion of the interconnected transmission system is planned such that the network may be operated to supply all projected customer demand and Firm Transmission Service in the event of the loss of two or more bulk electric systems, defined as Category C of possible contingency conditions. North American Electric Reliability Corporation, *Reliability Standards for the Bulk Electric Systems of America* 3866-3870 (Dec. 2015), <http://www.nerc.com/pa/Stand/Reliability%20Standards%20Complete%20Set/RSCompleteSet.pdf>.

<sup>14</sup> *Id.* (citing Exhibit No. SDG-2, CAISO 2010-2011 Transmission Plan at 210).

6. SDG&E also asserts that the requested Abandonment Incentive for the SOCRE project satisfies the Commission's nexus test requiring applicants to demonstrate that requested incentives are rationally related and "tailored to address the demonstrable risk or challenges faces by the applicant."<sup>15</sup> SDG&E argues that the federal, state, and local permitting processes for the SOCRE project present substantial risks and challenges, stating that the project requires, among other things, review from the United States military for the portion of the SOCRE project that will be located at Camp Pendleton, implicating the National Environmental Policy Act.<sup>16</sup> SDG&E also states that it must complete the California Public Utilities Commission's (CPUC) Certificate of Public Convenience and Necessity permitting process, which may contain the greatest level of risk and uncertainty for project commencement and completion.<sup>17</sup>

7. SDG&E states that the CPUC could approve, reject, or modify the project by, for example, imposing mitigation measures for any significant environmental impacts. Furthermore, SDG&E asserts that if the CPUC imposes environmental mitigation measures or other conditions as conditions of approving the project, such conditions may render its construction completely unachievable or unachievable within the timeframe needed to comprehensively address the reliability issues that CAISO identified in its 2010-2011 Transmission Plan.<sup>18</sup> SDG&E asserts that the requested Abandonment Incentive is tailored to these risks and challenges and is important from a financial perspective. SDG&E estimates that by the end of 2015 it will have incurred approximately \$35 million in costs toward the development of the SOCRE project.<sup>19</sup>

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

8. Notice of SDG&E's filing was published in the *Federal Register*, 80 Fed. Reg. 58,729 (2015) with interventions and protests due on or before October 23, 2015. Timely

---

<sup>15</sup> *Id.* at 11 (citing Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 115; Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 48).

<sup>16</sup> *Id.* at 12.

<sup>17</sup> *Id.* at 12-13.

<sup>18</sup> *Id.* at 14. According to SDG&E, California law requires that the CPUC's purpose and need review provide SDG&E with a realistic opportunity to energize the projects that CAISO approves in its 2010-2011 Transmission Plan, including the SOCRE project. *Id.* at 13-14.

<sup>19</sup> *Id.* at 16-17.

motions to intervene were filed by: California Department of Water Resources State Water Project; Southern California Edison Company; Northern California Power Agency; Pacific Gas and Electric Company; California Municipal Utilities Association; Modesto Irrigation District; City of Santa Clara, California, and M-S-R Public Power Agency; and Transmission Agency of Northern California. The cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (Six Cities) filed a timely motion to intervene and protest. SDG&E filed an answer to Six Cities' protest.

9. Six Cities state that they take no position on whether SDG&E has satisfied the Commission's criteria for incentives for the SOCRE project. However, if the Commission approves SDG&E's requested Abandonment Incentive, Six Cities assert that the Commission should permit SDG&E to recover: (1) 100 percent of prudently incurred costs for the SOCRE project on a prospective basis; and (2) 50 percent of previously incurred costs.<sup>20</sup> Six Cities state that SDG&E is only now interested in the requested Abandonment Incentive, four years after CAISO's initial approval of the SOCRE project, because the CPUC's approval of the project has become uncertain. Six Cities assert that SDG&E has voluntarily incurred over \$30 million in development costs before seeking incentive rate treatment from the Commission to guarantee abandoned plant recovery.<sup>21</sup> Six Cities also argue that their proposed limitation on SDG&E's incentive request is consistent with Commission precedent.<sup>22</sup> Six Cities state that applying the same finding to SDG&E's request here would be a balanced application of the Commission's incentive policy, encouraging transmission developers to file for incentive rate treatment at an early phase of project development and thereby providing both developers and ratepayers with enhanced rate certainty.<sup>23</sup> Lastly, Six Cities urge the Commission to clarify that any incentive granted to SDG&E for the SOCRE project is limited to costs incurred in connection with Regional Transmission Facilities and does not cover costs associated with portions of the SOCRE project involving the distribution system.<sup>24</sup>

---

<sup>20</sup> Six Cities Protest at 2-3.

<sup>21</sup> *Id.* at 2.

<sup>22</sup> *Id.* at 4 (citing *PJM Interconnection, L.L.C.*, 140 FERC ¶ 61,197, at PP 24, 26 (2012) (*PJM Interconnection I*) (granting applicant's request for abandoned plant cost recovery for 100 percent of the costs prudently incurred subsequent to the Commission's order authorizing the abandoned plant incentive and for 50 percent of the costs incurred prior to the order).

<sup>23</sup> *Id.* at 5.

<sup>24</sup> *Id.* at 6.

10. In its answer, SDG&E states that it is not aware of any order in which the Commission modified the Abandonment Incentive requested by the applicant, as Six Cities suggest that the Commission should do in this proceeding.<sup>25</sup> SDG&E states that Order No. 679 provides for 100 percent recovery of prudently incurred costs without regard to when a utility files to request an abandoned plant incentive or when the Commission issues an order granting the incentive.<sup>26</sup> SDG&E also states that, contrary to Six Cities' assertion, *PJM Interconnection I* addressed an instance in which an applicant affirmatively requested abandoned project cost recovery for 50 percent of previously incurred costs and does not constitute precedent for imposing an incentive different from that requested.<sup>27</sup>

11. SDG&E asserts that Six Cities appear to propose a “but for” test for incentive eligibility that assumes that the Abandonment Incentive is not warranted for costs incurred prior to receiving approval for the incentive by the Commission, which SDG&E states would be a change to the Commission's longstanding incentive policy.<sup>28</sup> SDG&E states that the Commission has already considered and explicitly rejected the proposition that incentives should not be granted unless, “but for” the incentives, the project would not be built.<sup>29</sup> SDG&E further asserts that, if granted, bifurcated cost recovery would have a chilling effect on future project development, requiring developers to seek approval for the Abandonment Incentive before expending funds on any project, regardless of size. Finally, SDG&E clarifies that the requested Abandonment Incentive would apply solely to that portion of the SOCRE project deemed to be transmission under the Uniform System of Accounts.<sup>30</sup>

---

<sup>25</sup> SDG&E Answer at 2.

<sup>26</sup> *Id.* at 5-7.

<sup>27</sup> *Id.* at 5.

<sup>28</sup> *Id.* at 7.

<sup>29</sup> *Id.* at 7 (citing *Southern California Edison Co.*, 134 FERC ¶ 61,200, at P 34 (2011)).

<sup>30</sup> *Id.* at 9.

### **III. Discussion**

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

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

13. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits answers to a protest unless otherwise ordered by the decisional authority. We will accept SDG&E's answer because it has provided us with information that assisted us in the decision-making process.

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

##### **1. Abandonment Incentive**

14. Section 219 of the FPA required the Commission to establish, by rule, incentive based rate treatments for new transmission infrastructure investment by a public utility, provided that the facilities for which it seeks incentives either ensure reliability or reduce the cost of delivered power by reducing transmission congestion.<sup>31</sup> Pursuant to section 219, in Order No. 679, the Commission established, among other incentives, that a public utility may seek to recover 100 percent of prudently incurred costs associated with abandoned transmission projects, if such abandonment is outside of the control of the utility's management.<sup>32</sup> As a means of encouraging transmission investment, the Abandonment Incentive is designed to reduce the risk of non-recovery of costs traditionally associated with project development.<sup>33</sup>

15. Order No. 679 explained the process by which an applicant may demonstrate that it has met section 219's prerequisite for incentive rate treatment, including a rebuttable presumption that the standard is met if: (1) the transmission project 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 by the Commission; or (2) a project has received construction approval from an appropriate state commission or state siting

---

<sup>31</sup> 16 U.S.C. § 824s(a) (2012).

<sup>32</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 163.

<sup>33</sup> *Id.*

authority.<sup>34</sup> In addition, an applicant must demonstrate that there is a nexus between the incentive sought and the investment being made.<sup>35</sup> Order No. 679-A, among other things, clarified that the rebuttable presumption may only be established if the relevant regional planning process or state authority, in fact, considered whether the project would ensure reliability or reduce the cost of delivered power by reducing congestion.<sup>36</sup> While the incentive sought must be rationally related to the investment proposed, Order No. 679-A also clarified that the nexus requirement does not mandate the applicant to show that, but for the incentive, the project would not be undertaken.<sup>37</sup>

## 2. Commission Determination

16. We find that SDG&E has met the rebuttable presumption that the SOCRE project is eligible for the Abandonment Incentive and may recover 100 percent of prudently incurred costs associated with the project if the SOCRE project is abandoned for reasons beyond SDG&E's control. The SOCRE project was included in CAISO's 2010-2011 Transmission Plan because CAISO determined that, when completed, the SOCRE project would be the most effective, feasible solution for addressing reliability concerns in the southern Orange County area.<sup>38</sup> The Commission has previously found CAISO's transmission planning process to be fair and open and that it satisfies Order No. 679's mandate for incentive eligibility for transmission projects included in its annual transmission plan.<sup>39</sup> No party disputes that CAISO considered reliability when selecting the SOCRE project, consistent with Order No. 679-A.

17. We find that SDG&E has also demonstrated that substantial risks exist in developing this project and that a sufficient nexus exists between those risks and the requested incentive. As the Commission has explained in other proceedings, the recovery of abandonment costs is an effective means to encourage transmission development by

---

<sup>34</sup> *Id.* P 76.

<sup>35</sup> *Id.* P 26.

<sup>36</sup> Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 49.

<sup>37</sup> *Id.* P 16.

<sup>38</sup> *See* SDG&E Filing, Exhibit No. SDG-2 at 8.

<sup>39</sup> *See, e.g., Pacific Gas and Electric Co.*, 148 FERC ¶ 61,195, at P 14 (2014).

reducing the risk of non-recovery of costs.<sup>40</sup> We agree that SDG&E faces certain environmental, regulatory, and siting risks that could lead to abandonment of the SOCRE project. In addition, as SDG&E has demonstrated, we find that approval of the abandonment incentive will protect SDG&E from further losses if the SOCRE project is cancelled for reasons outside SDG&E's control.

18. However, consistent with Six Cities' protest, we specify here that the Abandonment Incentive for the SOCRE Project is available to SDG&E for 100 percent of prudently-incurred costs expended on or after the date of this order if the SOCRE Project is abandoned for reasons beyond its control.<sup>41</sup> For the period prior to the date of this order, SDG&E is entitled to recover 50 percent of all costs prudently incurred if the SOCRE project is abandoned, consistent with Opinion No. 295.<sup>42</sup>

19. We disagree with SDG&E that Six Cities' requests that the Commission change its Abandonment Incentive policy and adopt a "but for" test for incentive eligibility. Rather, Six Cities' position is consistent with Commission precedent granting recovery of 100 percent of prudently incurred costs associated with a project's abandonment only after the date of the order granting the incentive,<sup>43</sup> which is based on the transmission incentive policy articulated in Order No. 679. In explicitly rejecting the "but for" test in Order No. 679, the Commission noted, "[t]his notwithstanding, we do require applicants to show some nexus between the incentives being requested and the investments being made, i.e., to demonstrate that the incentives are rationally related with the investments

---

<sup>40</sup> See *NextEra Energy Transmission West, LLC*, 154 FERC ¶ 61,009, at P 26 (2016).

<sup>41</sup> *DCR Transmission, LLC*, 153 FERC ¶ 61,295, at P 42 (2015) (DCR Transmission) (citing *PJM Interconnection I*, 140 FERC ¶ 61,197 at P 24; *New England Power Co.*, Opinion No. 295, 42 FERC ¶ 61,016 at 61,175-178, *order on reh'g*, Opinion No. 295-A, 43 FERC ¶ 61,285 (1988)).

<sup>42</sup> See *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,156, at P 54 (2013) (*PJM Interconnection II*).

<sup>43</sup> See *DCR Transmission*, 153 FERC ¶ 61,295 at P 42 (granting 100 percent recovery of costs prudently incurred on or after the date of the order); see also *PJM Interconnection II*, 142 FERC ¶ 61,156 at P 53 ("since that order [granting the incentive] was effective November 1, 2008, we cannot rely on it to grant recovery of prudently-incurred costs associated with abandonment prior to that date. Prior to November 1, 2008, we must rely on the Commission's pre-Order No. 679 policy, which generally limited recovery to 50 percent").

being proposed.”<sup>44</sup> Furthermore, the Commission was also clear in Order No. 679 that incentives were designed to encourage transmission investment that may not otherwise occur and that providing the option of filing a petition for declaratory order was intended to provide the applicant and interested parties with notification of incentive eligibility before project development began.<sup>45</sup>

20. Though the risks that may necessitate abandonment have been generally known to SDG&E since the project was included in the CAISO 2010-2011 Transmission Plan, it did not seek approval for the Abandonment Incentive for approximately four years. Meanwhile, SDG&E incurred approximately \$31 million “to develop a [p]roject that had the greatest likelihood of satisfying the reliability requirements of SDG&E’s customers in southern Orange County.”<sup>46</sup> Yet, SDG&E concedes that it did so “without assurance of cost recovery for these development costs.”<sup>47</sup> To now grant full recovery of these costs pursuant to the Abandonment Incentive would also be contrary to the general policy rationale that incentives are designed to encourage future transmission investments.<sup>48</sup>

21. We note that if SDG&E seeks to recover these costs through incentive-based rate treatments, it must still submit an appropriate filing pursuant to FPA section 205, at which time the Commission will evaluate the prudence of the costs SDG&E has incurred both subsequent and prior to this order in determining the justness and reasonableness of

---

<sup>44</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 48.

<sup>45</sup> *See id.* P 6 (“[t]he purpose of our Rule is to benefit customers by providing real incentives to encourage new infrastructure, not simply increasing rates in a manner that has no correlation to encouraging new investment”); *see also id.* P 77 (“[t]o provide applicants with as much flexibility as possible, the Commission will permit applicants to seek a declaratory order prior to construction of facilities to request a finding that the facilities qualify for incentive-based rate treatments”).

<sup>46</sup> SDG&E Filing at 16.

<sup>47</sup> *Id.*

<sup>48</sup> *See Incentive Ratemaking for Interstate Natural Gas Pipelines, Oil Pipelines, and Electric Utilities*, 61 FERC ¶ 61,168, at 61,589 (1992) (“[i]ncentive regulation is focused on making efficient behavior potentially more profitable for utilities because they can retain a share of the benefits of any new cost savings. Incentive regulation is not designed to reward past efficient, cost-saving behavior. To do so would violate the objective of benefitting customers.”)

its proposed associated rates.<sup>49</sup> At that time, Six Cities and other interested parties may comment on the prudence of the costs incurred.

22. Lastly, we clarify that, consistent with section 219 of the FPA and Order No. 679, the Abandonment Incentive granted to SDG&E shall only apply to the portion of the SOCRE project dedicated to transmission upgrades and not to improvements made to SDG&E's distribution system.

The Commission orders:

SDG&E's petition is hereby granted as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

---

<sup>49</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222 at PP 79-80.