157 FERC ¶ 61,150
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Citizens Energy Corporation   Docket No. EL16-102-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued November 28, 2016)

1. On July 18, 2016, Citizens Energy Corporation (Citizens Energy) filed a petition for a declaratory order (Petition) pursuant to section 219 of the Federal Power Act (FPA)[1] and Order No. 679[2] seeking approval of transmission rate incentives for its participation in the Central Valley Power Connect transmission project (Project). In this order, we grant Citizens Energy's request for transmission rate incentives, subject to the discussion herein.

I. Background

2. In Order No. 1000,[3] the Commission required public utility transmission providers to eliminate provisions in Commission-jurisdictional tariffs and agreements that establish a federal right of first refusal for an incumbent transmission provider with respect to transmission facilities selected in a regional transmission plan for purposes

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[1] 16 U.S.C. § 824s (2012).

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

[3] *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth.* v. *FERC*, 762 F.3d 41 (D.C. Cir. 2014).

of cost allocation. In addition, the Commission required public utility transmission providers to revise their Open Access Transmission Tariffs to, among other things: (1) establish qualification criteria to determine whether an entity is eligible to propose a transmission project for selection in the regional transmission plan for purposes of cost allocation; (2) identify information a prospective transmission developer must submit in support of a transmission project proposed for selection; and (3) describe a transparent and not unduly discriminatory process for evaluating proposals for selection in the regional transmission plan for purposes of cost allocation. In response to the requirements of Order No. 1000, the California Independent System Operator Corporation (CAISO) established a process under which eligible transmission developers may submit bids to develop transmission projects that have been designated in CAISO's comprehensive transmission plan for competitive bidding.[4]

3. The Project was identified and included in the 2012-2013 CAISO Transmission Plan as necessary to address reliability concerns.[5] Citizens Energy explains that CAISO determined that the Project was necessary to address potential overload and voltage conditions in the greater Fresno area, and that the Project would support expanded utilization of the Helms Pump Storage Project for the provision of ancillary services and to integrate renewable resources.[6] The Project consists of a 68 mile long 230 kV overhead transmission line located in central California. The Project will originate northwest of the City of Bakersfield at PG&E's Gates substation and terminate north of the City of Fresno at PG&E's Gregg substation. Construction of the Project is expected to commence in 2019 and the Project is scheduled to enter commercial operation in 2020.[7]

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[4] *See Cal. Indep. Sys. Operator Corp.*, 143 FERC ¶ 61,057 (2013), *order on clarification and compliance*, 146 FERC ¶ 61,198, *order on reh'g and compliance*, 149 FERC ¶ 61,249 (2014).

[5] The Central Valley Power Connect Project was previously known as the Gates-Gregg Project at the time of the CAISO competitive solicitation process.

[6] Citizens Energy Transmittal at 15 (citing CAISO 2012-2013 Transmission Plan (dated Mar. 20, 2013), http://www.caiso.com/Documents/BoardApproved2012-2013TransmissionPlan.pdf.).

[7] *Id*. at 15, citing Ex. CEC-1 at P 32.

II. Citizens Energy's Filing

4. In its Petition, Citizens Energy requests advanced approval of its proposed rate methodology and abandoned plant cost recovery. Citizens Energy states that CAISO selected PG&E and MidAmerican Central California Transco, LLC (MidAmerican Transco), in collaboration with Citizens Energy, to develop the Project.[8] Citizens Energy states that PG&E and MidAmerican Transco are responsible for the development, design, permitting, engineering, procurement and construction of the entire Project and will bear the costs for the Project until such time as it enters commercial operation.[9] PG&E and MidAmerican Transco will each own 50 percent of the Project. Citizens Energy explains that, pursuant to the Transmission Capacity Lease Agreement (Lease Agreement) it entered into with PG&E and MidAmerican Transco,[10] Citizens Energy will have a 30-year leasehold interest in 25 percent of the Project.[11] Citizens Energy states that under the terms of the Lease Agreement, it will make one lump sum payment to PG&E and MidAmerican Transco when the Project enters commercial operation.[12] Thereafter, Citizens Energy will turn over operational control of its leasehold interest to CAISO and will recover its costs through CAISO's transmission access charge mechanism. Citizens Energy states that it has contractually committed to spend 50 percent of its after-tax profits to assist low-income consumers in the affected service areas.[13]

5. In its Petition, Citizens Energy explains that its request for advance approval of its proposed rate methodology and Abandoned Plant Incentive is vitally important to its ability to raise the capital necessary to invest in the Project. Citizens Energy proposes a rate methodology that includes: (1) a hypothetical capital structure of 50 percent debt and 50 percent equity; (2) a proxy return on equity (ROE), subject to Citizens Energy

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[8] Citizens Energy Ex. CEC-1 at P 10.

[9] Citizens Energy Transmittal at 13.

[10] *Id*. at 12-13. Citizens Energy includes the Lease Agreement in Exhibit CEC-3 to its Petition.

[11] Citizens Energy explains that its investment in the Project is structured similarly to its investment in the Sunrise Powerlink Project. *See Citizens Energy Corp.*, 129 FERC ¶ 61,242 (2009) (*Sunrise Powerlink*).

[12] Citizens Energy Transmittal at 13 (citing Ex. CEC-3, section 2.2, 2.4).

[13] *Id*. at 12.

submitting future filings pursuant to FPA section 205; (3) a 30-year levelized fixed rate for recovery of capital requirements; and (4) a formula rate to recover actual operating costs.[14] Citizens Energy's proposed cost recovery reflects transmission operation and maintenance costs, applicable overhead costs and fixed capital requirements costs.[15]

6. Citizens Energy also requests recovery of 100 percent of all prudently incurred development and project costs in order to mitigate the risks that lenders may have to bear in the event that the Project should be cancelled for reasons outside Citizens Energy's control, i.e., the Abandoned Plant Incentive. Citizens Energy acknowledges that it would be required to make a filing under section 205 of the FPA[16] in the event that it should seek Abandoned Plant recovery.[17]

III. <u>Notice of Filing and Responsive Pleadings</u>

7. Notice of Citizens Energy's filing was published in the *Federal Register*, 81 Fed. Reg. 48,781 (2016), with interventions and protests due on or before August 17, 2016.

8. The California Public Utilities Commission (CPUC) filed a notice of intervention. Timely motions to intervene were filed by PG&E, MidAmerican Transco, Southern California Edison Company, and Modesto Irrigation District. Motions to intervene and comment were filed by City of Santa Clara, California and M-S-R Public Power Agency (Santa Clara/M-S-R), California Department of Water Resources State Water Project (SWP), and the Cities of Anaheim, Azusa, Banning, Colton, Pasadena and Riverside, California (Six Cities). On August 31, 2016, Citizens Energy filed a response to the comments filed by Santa Clara/M-S-R, SWP and Six Cities, and on September 15, 2016, SWP filed a motion for leave to respond and response.

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[14] *Id*. at 2-3.

[15] *Id*. at 11 (citing Ex. CEC-2 at P 16).

[16] 16 U.S.C. § 824d (2012).

[17] Citizens Energy Transmittal at 17 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at PP 165-66).

IV. Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[18] the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure[19] prohibits an answer to a protest or an answer to an answer, unless otherwise ordered by the decisional authority. We will accept the responses filed by Citizens Energy and SWP because they have provided information that assisted us in our decision-making process.

B. FPA Section 219 Requirement

11. In the Energy Policy Act of 2005,[20] Congress added section 219 to the FPA, directing the Commission to establish, by rule, incentive-based rate treatments to promote capital investment in certain transmission infrastructure. The Commission subsequently issued Order No. 679, which sets forth processes by which a public utility may seek transmission rate incentives pursuant to section 219, including the incentives requested here by Citizens Energy. Additionally, in November 2012, the Commission issued the Transmission Incentives Policy Statement providing additional guidance regarding its evaluation of applications for transmission rate incentives under section 219 and Order No. 679.[21]

12. Pursuant to Order No. 679, an applicant may seek to obtain incentive rate treatment for a transmission infrastructure investment that satisfies the requirements of FPA section 219, i.e., the applicant must show that "the facilities for which it seeks incentives either ensure reliability or reduce the cost of delivered power by reducing transmission congestion."[22] Order No. 679 established the process for an applicant to

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[18] 18 C.F.R. § 385.214 (2016).

[19] *Id*. § 385.214(d).

[20] Pub. L. No. 109-58, § 1241, 119 Stat. 594 (2005).

[21] *See Promoting Transmission Investment Through Pricing Reform*, 141 FERC ¶ 61,129 (2012).

[22] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 76.

demonstrate that it meets this standard, 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 the project for reliability and/or congestion and is found to be acceptable to the Commission; or (2) a project has received construction approval from an appropriate state commission or state siting authority.[23]

1. Citizens Energy's Filing

13. Citizens Energy explains that the Project meets the rebuttable presumption and satisfies the transmission incentives as provided for in Order No. 679 because the Project was selected through the CAISO planning process and was included in the 2012-2013 CAISO Transmission Plan.[24] CAISO identified the Project as necessary to address reliability concerns.[25] Specifically, CAISO determined that the Project was critical for addressing potential overload and voltage conditions in the greater Fresno area, and would support expanded utilization of the Helms Pump Storage Project for the provision of ancillary services and to integrate renewable resources.[26] Citizens Energy also explains that the Project will provide a platform for further efficient expansion of the transmission grid.[27] According to Citizens Energy, CAISO estimates that the Project will provide total loss savings of $103.73 million and will have a cost benefit ratio of 55 percent.[28] Further, Citizens Energy asserts that the Commission determined that the

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[23] Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 41.

[24] Citizens Energy Transmittal at 15 (citing CAISO 2012-2013 Transmission Plan (dated Mar. 20, 2013), http://www.caiso.com/Documents/BoardApproved2012-2013TransmissionPlan.pdf.).

[25] *Id*. at 15.

[26] *Id*. at 15-16.

[27] *Id*. at 18.

[28] *Id*. at 16.

Project satisfies the section 219 requirements in response to petitions from PG&E and MidAmerican Transco, and therefore should reach the same determination here.[29]

2. Commission Determination

14. We find that Citizens Energy is entitled to the rebuttable presumption that the facility for which it seeks incentives will either ensure reliability or reduce the cost of delivered power by reducing transmission congestion. The CAISO transmission planning process, through which the Project was approved, evaluates whether identified transmission projects will enhance reliability and/or reduce congestion. Specifically, CAISO determined that the Project will provide needed reliability relief in the greater Fresno area and will offer a platform for expansion of the transmission grid.[30]

C. Order No. 679 Nexus

15. In addition to satisfying the FPA section 219 requirement of ensuring reliability and/or reducing the cost of delivered power by reducing congestion, Order No. 679 requires an applicant to demonstrate that there is a nexus between the incentive being sought and the investment being made.[31] 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."[32] Regulations under section 219 require a project-specific demonstration of the nexus between requested incentives and the risks and challenges of the project.[33]

1. Citizens Energy's Filing

16. Citizens Energy asserts that there is a nexus between the incentives it requests and the range of risks and challenges faced in constructing the Project. Citizens Energy

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[29] *Id*. at 21 (citing *Pacific Gas and Electric Co*., 148 FERC ¶ 61,195, at P 14 (2014); *MidAmerican Central California Transco, LLC*, 147 FERC ¶ 61,179, at P 24 (2014)).

[30] *Id*. at 15, 25.

[31] Order No. 679, FERC Stats & Regs. ¶ 31,222 at P 48.

[32] Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 27.

[33] 18 C.F.R. ¶ 35.35(d) (2016).

explains that although PG&E and MidAmerican Transco are responsible for developing the Project, it has been closely involved in negotiations, meetings and deliberations with PG&E and MidAmerican Transco.[34] As a result, Citizens Energy states that it has incurred significant development costs and will incur ongoing costs associated with seeking regulatory approvals of the Project, as well as costs associated with coordination and financing the Project.[35] Further, Citizens Energy explains that its share of the financing of the Project is a major capital commitment for a company of its size and, without the requested incentives, its ability to maintain adequate cash flow could be at risk. Citizens Energy also explains that it will have to compete for capital required to invest in the Project.[36] Citizens Energy asserts that its business structure and its commitment to dedicate 50 percent of its net after tax profits from this Project to low-income consumers is not routine.[37]

17. Citizens Energy states that the Project involves significant regulatory and technological risks. The Project will require the issuance of a Certificate of Public Convenience and Necessity from the CPUC, and is likely to require a license from the Bureau of Reclamation, and a range of permits from county, city and municipal utility districts.[38]

2. Commission Determination

18. We find that Citizens Energy has demonstrated that there is a nexus between the incentives it seeks and the investment being made.[39] Specifically, we find that Citizens

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[34] Citizens Energy Transmittal at 14.

[35] *Id*. at 14-15.

[36] *Id*. at 24.

[37] *Id*. at 24-25

[38] *Id*. at 25-26.

[39] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 76; *see also* Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 27.

Energy has demonstrated that its total package of requested incentives is tailored to address the demonstrable risks or challenges faced by Citizens Energy.[40]

D. Capital Cost Recovery Methodology

19. Citizens Energy states that its financing structure is similar to that commonly used by public power and cooperative utilities.[41] Citizens Energy proposes to finance its participation in the development of the Project as a stand-alone transmission project. Citizens Energy proposes a capital cost recovery based upon a hypothetical capital structure that approximates PG&E's capital structure and proposes to use PG&E's currently authorized cost of equity as a proxy for Citizens Energy's cost of equity. Citizens Energy states that its cost recovery methodology includes a revenue requirement that contains: (1) transmission operation and maintenance (O&M) expenses; (2) applicable overhead costs; and (3) capital requirements on a levelized fixed basis for 30 years. Citizens Energy states that its operating cost component (transmission O&M expenses and applicable overhead costs) will be recovered by a formula rate.[42] Citizens Energy further states that the formula rate will include an after the fact, true-up mechanism to reflect actual operating costs. The fixed capital requirements component of Citizens Energy's revenue requirement follows a cost based approach.[43] In addition, Citizens Energy explains that, pursuant to the Lease Agreement, the ultimate rate for recovery of its capital costs can be no higher than the rate PG&E could recover at the time of commercial operation of the project if PG&E held Citizens Energy's transfer capability in the Project.[44] Citizens Energy states that for purposes of determining the rate PG&E could use to recover its capital costs at the time of commercial operation of the Project if PG&E held Citizens Energy's entitlement interest, the three parties have

[40] We note that the Commission previously granted PG&E and MidAmerican Transco incentive rate treatment for the Project. *See supra* n.29.

[41] Citizens Energy Transmittal at 27 (citing *City of Vernon, Cal.*, Opinion No. 479, 111 FERC ¶ 61,092 (2005); Opinion No. 479-A, 112 FERC ¶ 61,207 (2005); Opinion No. 479-B, 115 FERC ¶ 61,297 (2006)).

[42] *Id.* at 28-30.

[43] *Id.* at 29-31.

[44] *Id.* at 28-29.

agreed to a Representative Annual Revenue Requirement that is set forth in the Lease Agreement.[45]

1. Annual Revenue Requirement Reflecting Levelized Rate

20. For its capital requirements, Citizens Energy proposes to use a fixed rate for the 30 year term of the Lease Agreement, which includes a return on rate base, amortization of the capitalized lease and development costs, and income taxes. These elements will be summed for each of the 30 years with a net present value determined for each year. Citizens Energy's capital requirements fixed rate will reflect the levelized amount for the 30 year period.[46]

21. Citizens Energy asserts that its levelized rate approach based on a hypothetical capital structure will benefit consumers in two important ways. First, Citizens Energy states that its approach will provide rate stability and protection against potential capital cost increases over time. Second, Citizens Energy explains that without the levelized approach, consumers would be charged substantially more in the early years of the Project's operation, and less in later years. [47]

22. Citizens Energy also proposes to use a formula rate to recover its O&M and applicable overhead costs. Citizens Energy's proposed operating cost formula rate approach would initially include the transmission O&M expenses and the overhead costs on a budgeted basis, and then true them up to actual expenses with an after the fact true-up adjustment. Citizens Energy asserts that its operating costs revenue requirement would ultimately reflect a flow-through of actual transmission O&M expenses and overhead costs.[48]

a. Protests

23. SWP argues that certain components of Citizens Energy's fixed rate cost recovery mechanism appear to be unjust and unreasonable and not consistent with Citizens Energy's stated intent not to charge customers more than PG&E would charge for the

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[45] *Id*. at 29 (citing Ex. CEC-2 at P 13).

[46] *Id*. at 28-29.

[47] *Id*. at 32-33.

[48] Citizens Energy Ex. CEC-2 at P 8.

Project.[49] First, SWP states that the Lease Agreement sets the cost of debt inappropriately high and should be rejected. SWP notes that Citizens Energy proposes to use an industry-wide average of 5.52 percent, in contrast to PG&E's estimated 2017 weighted average cost of debt of 5.13 percent.[50] Further, SWP asserts that Citizens Energy expects that it will be able to borrow at a five percent interest rate.

24. Second, SWP contends that Citizens Energy's example calculation of the PG&E Representative Annual Revenue Requirement, including $4 million of capitalized pre-operation costs, conflicts with Citizens Energy's claim that it would not charge rates higher than PG&E for the same project. SWP asserts that these costs should be disallowed.[51] SWP also notes that Citizens Energy's calculations may contain some errors. SWP argues that Citizens Energy's formula and underlying calculations should be open to scrutiny when Citizens Energy makes a section 205 filing to recover its costs.[52] SWP also notes that Citizens Energy proposes to recover its revenue requirement over a 30-year period, meaning that its 25 percent investment will be fully recovered after 30 years, at which time the transfer capability will revert to another owner. SWP states that the Commission should direct that after the 30 years have passed, the new owner will be prohibited from including any of the already-recovered capital costs into its own revenue requirement.[53]

25. Six Cities asserts that the Commission must examine carefully the merits of all components of Citizens Energy's proposed cost recovery. Also, Six Cities requests that the Commission not grant pre-approval or authorization for any component of or input to any formula rate to be filed by Citizens Energy, other than the specific components that the Commission explicitly addresses in its order on the Petition.[54]

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[49] SWP Protest at 8.

[50] *Id*. at 8 and n.7 (citing PG&E, Docket No. ER16-2320-000, filed July 29, 2016 (referred to as TO18), Ex. PGE-21 at 70).

[51] SWP Protest at 8.

[52] *Id*. at 9.

[53] *Id*. at 6.

[54] Six Cities Comments at 6.

b. Citizens Energy's Answer

26. Citizens Energy asserts that concerns regarding the Representative Annual Revenue Requirement are misdirected and irrelevant. Citizens Energy states that the Representative Annual Revenue Requirement is a mechanism in the Lease Agreement among Citizens Energy, PG&E and MidAmerican Transco that places a cap on the amount that Citizens Energy can charge and is not part of the proposed rate methodology that Citizens Energy seeks approval for here.[55] Citizens Energy states that it is not seeking approval in this proceeding of the Lease Agreement or the Representative Annual Revenue Requirement cap provision in that agreement. Rather, Citizens Energy states that it only seeks approval of its rate methodology as set forth in its Petition.[56]

27. In response to SWP's request that any future new owner of the Project be prohibited from including any of the already-recovered capital costs, Citizens Energy acknowledges that at the end of the 30-year lease, its portion of the Project's capital costs will be fully recovered. Therefore, Citizens Energy states that it does not object to this request.[57]

c. Commission Determination

28. We find that Citizens Energy's proposed capital cost recovery methodology using a hypothetical capital structure of 50 percent debt and 50 percent equity, and a 30-year levelized fixed rate of recovery for capital requirements is reasonable in this context. We also grant Citizens Energy's proposal to use a formula rate, subject to the submission of a FPA section 205 filing.

29. The Commission has previously approved a hypothetical capital structure of 50 percent debt and 50 percent equity for other transmission construction projects.[58]

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[55] Citizens Energy Answer at 7.

[56] *Id*. at 8.

[57] *Id*. n.7.

[58] *Sunrise Powerlink*, 129 FERC ¶ 61,242 at P 22 (citing *Trans-Elect NTD Path* 15, *LLC*, 109 FERC ¶ 61,249, at PP 26-29 (2004); *Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188, at P 55 (2008); *Tallgrass Transmission, LLC*, 125 FERC ¶ 61,248, at P 68 (2008); *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281, at P 119 (2009)).

We also have permitted other entities, such as municipals, to use a hypothetical capital structure for ratemaking purposes when they have relied upon non-equity financing to finance a project, as Citizens Energy proposes to do here.[59] In addition, we find that the 30-year levelized fixed rate of recovery of capital requirements is reasonable because it will match the benefits of the Project that are constant over time with the cost recovery.[60] Accordingly, we find that Citizens Energy's proposed levelized approach is reasonable in the context of rate recovery for a single asset and will ensure a constant revenue stream.[61]

30. Further, as SWP requests, we confirm that Citizens Energy's costs will be fully recovered at the end of the 30-year lease. For this reason, these costs cannot be recovered subsequently by any other owner of the Project.

31. Finally, the Lease Agreement and the Representative Annual Revenue Requirement that establishes a cap on the recovery of capital costs are not within the scope of this Petition. We will consider concerns regarding rates and costs when Citizens Energy submits its formula rate filing to recover its actual costs under FPA section 205.

2. Proxy Return on Equity

32. Citizens Energy proposes to use a proxy ROE of 10.4 percent which is PG&E's authorized ROE established by the CPUC. Citizens Energy asserts that this proxy is reasonable because investors are likely to view Citizens Energy as a higher risk investment than PG&E.[62]

a. Comments and Protests

33. SWP and Six Cities contest Citizens Energy's proposal to use PG&E's 10.4 percent ROE as a proxy, arguing that it was authorized by CPUC and is not Commission-authorized.[63] Six Cities argues that relying on a state-authorized ROE may have the effect of distorting the PG&E Representative Revenue Requirement that

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[59] *City of Vernon, Cal*., Opinion No. 479, 111 FERC, at P 84.

[60] *See Sunrise Powerlink*, 129 FERC ¶ 61,242 at P 23; *Morongo Transmission, LLC*, 148 FERC ¶ 61,139, at P 20 (2014).

[61] *Sunrise Powerlink*, 129 FERC ¶ 61,242 at P 23.

[62] Citizens Energy's Transmittal at 30 (citing Ex. CEC-2 at P 22).

[63] SWP Protest at 6, Six Cities Comments at 3-6.

Citizens Energy states will operate as a cap on its capital cost recovery.[64] Six Cities also asserts that Citizens Energy did not provide any support for its requested proxy ROE.[65] SWP notes that although Citizens Energy was given approval to use a proxy ROE methodology in *Sunrise Powerlink*, the Commission stated that it would "not prejudge that return on equity by approving [Citizens Energy's] proxy rate . . . at this time, but instead will review [Citizens Energy's] requested return when it makes the necessary filing to show that the rate is just and reasonable."[66] SWP contends that the Commission should make the same finding here and reject Citizens Energy's request to use a proxy ROE. Six Cities state that they do not oppose the Commission conditionally approving the proposed 10.4 percent proxy ROE, subject to a future section FPA 205 filing.[67]

34. Santa Clara/M-S-R argue that Citizens Energy has failed to explain why its ROE should be tied only to the interests of PG&E and note that PG&E's currently effective ROE is the subject of ongoing settlement and hearing procedures in PG&E's transmission owner rate case.[68] They contend that Citizens Energy more closely resembles MidAmerican Transco and, therefore, Citizens Energy should impute MidAmerican Transco's ROE of 10.3 percent instead of PG&E's 10.4 percent.[69] Santa Clara/M-S-R also state that granting Citizens Energy's request to use PG&E's ROE could establish new Commission precedent that leasehold investors in new transmission projects are entitled to recover the highest ROE of the co-developers of a project, which could result in excessive costs to customers.[70]

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[64] Six Cities Comments at 4.

[65] *Id*. at 3.

[66] SWP Protest at 7 (quoting *Sunrise Powerlink*, 129 FERC ¶ 61,242 at P 25).

[67] Six Cities Comments at 5-6.

[68] Santa Clara/M-S-R Protest at 7-8.

[69] *Id*. at 8-10.

[70] *Id*. at 10.

b. Citizens Energy's Answer

35. Citizens Energy clarifies that it only seeks Commission approval to use its proposed rate methodology, which includes a proxy ROE[71] and that all references to 10.4 percent in its filing are intended to be demonstrative placeholders only. Citizens Energy states that it is not requesting approval for any specific ROE at this time, and that it will make a FPA section 205 filing closer to when the Project enters commercial operation, expected in 2020, with full justification for whatever specific ROE figure it includes in that filing.[72]

36. With respect to Santa Clara/M-S-R's request that the Commission impute MidAmerican Transco's Commission-approved ROE of 10.3 percent to Citizens Energy instead of PG&E's 10.4 percent, Citizens Energy states that is not requesting approval of any specific ROE at this time and, therefore, these arguments are premature and not appropriate here.[73]

c. Commission Determination

37. Citizens Energy's specific ROE is not before us at this time.[74] Rather, Citizens Energy intends to rely on a proxy ROE as a demonstrative placeholder until it files to establish a specific ROE under FPA section 205. That future proceeding will evaluate the justness and reasonableness of the ROE that Citizens Energy proposes at that time. We expect if and when Citizens Energy submits that future section 205 filing, it should apply a methodology consistent with Commission precedent.

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[71] Citizens Energy Answer at 2, 3.

[72] *Id*. at 5.

[73] *Id*. at 6.

[74] *Id*. at 4 ("Citizens [Energy] is not requesting approval for any specific ROE at this time, and all references to 10.4 percent in its filing are intended to be demonstrative placeholders only." *Id*.)

E. Recovery of Abandonment Costs

1. Abandoned Plant Cost Recovery

38. Citizens Energy requests authority to recover 100 percent of prudently-incurred costs in the event the Project must be abandoned for reasons outside of its control.[75] Citizens Energy contends that its share of the Project costs, totaling around $40 million, plus development and financing costs of approximately $4 million, is a significant investment for it as a company with net assets of $67 million. Citizens Energy also asserts that it faces the very real risk that the Project could fail solely because of actions beyond its control and that the Project sponsors have not obtained all of the needed permits and local approvals to proceed with all phases of the Project. Citizens Energy asserts that each stage of the approval process present risks that the Project may be abandoned.[76] According to Citizens Energy, this incentive is an effective means to encourage the completion of the Project and that opposition to the Project, such as routing, siting or environmental legal challenges, could force a delay or even terminate the Project.[77] Further, Citizens Energy explains that, unlike a traditional utility, it does not have ongoing public utility operations to absorb the costs of changes in the decisions concerning the Project.

2. Commission Determination

39. We grant Citizens Energy's request for recovery of 100 percent of prudently-incurred costs associated with abandonment of the Project, provided that the abandonment is a result of factors beyond Citizens Energy's control. The abandonment incentive will help attract needed financing for the Project and protect Citizens Energy from further losses if the Project is cancelled for reasons outside of Citizens Energy's control. As the Commission has explained in other proceedings, the recovery of costs in

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[75] Citizens Energy explains that it is seeking this incentive only as to the portion of its investment in the Project. Citizens Energy Transmittal at 11.

[76] *Id*. at 35.

[77] *Id*. at 34-35.

the event of project abandonment is an effective means to encourage transmission development by reducing the risk of non-recovery of costs.[78]

40. We note, however, that if the Project is cancelled before it is completed, Citizens Energy would be required to make a filing under section 205 of the FPA to demonstrate that the costs were prudently incurred before it can recover any abandoned plant costs.[79] Citizens Energy must also propose in its FPA section 205 filing a just and reasonable rate to recover such costs. In such a proceeding, abandoned plant cost recovery is available for 100 percent of prudently incurred project costs expended on or after the issuance of this order.[80] We also note that Citizens Energy has represented that is has already incurred significant costs associated with the Project. In the event Citizens Energy seeks abandoned plant recovery for the period of time prior to the issuance of this order, Citizens Energy would be eligible to recover 50 percent of its prudently incurred costs.[81]

The Commission orders:

Citizens Energy's Petition is hereby granted, subject to the discussion in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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[78] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at PP 155, 163; *see also, e.g.*, *TransCanyon DCR, LLC*, 152 FERC ¶ 61,017, at P 41 (2015); *DCR Transmission, LLC*, 153 FERC ¶ 61,295, at P 42 (2015).

[79] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at PP 165-166.

[80] *PJM Interconnection, L.L.C.*, 140 FERC ¶ 61,197, at P 24 (2012); *see also New England Power Co.*, Opinion No. 295, 42 FERC ¶ 61,016, at 61,075-178, *order on reh'g*, Opinion No 295-A, 43 FERC ¶ 61,285 (1988).

[81] *See DCR Transmission, LLC*, 153 FERC ¶ 61,295 at P 42 and n.60.