133 FERC ¶ 61,108
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southern California Edison Company | Docket Nos. EL10-1-001
EL10-1-002

ORDER ON COMPLIANCE FILING AND GRANTING PARTIAL REHEARING

(Issued October 29, 2010)

1. On August 3, 2010, Southern California Edison Company (SoCal Edison) submitted a compliance filing in response to the Commission's December 17, 2009 order[1] conditionally granting SoCal Edison's petition for a declaratory order on transmission incentives (Petition). In the EITP Incentives Order, the Commission conditionally approved SoCal Edison's request for incentive rate treatment for its proposed Eldorado-Ivanpah Transmission Project (EITP), subject to the California Independent System Operator Corporation (CAISO) approving the EITP in its transmission planning process and finding that the EITP will ensure reliability or reduce the cost of delivered power by reducing congestion.[2] As discussed below, we find that SoCal Edison has not complied with the condition established in the EITP Incentives Order.

2. While SoCal Edison has not met the requirements of section 219 of the Federal Power Act (FPA)[3] and Order No. 679,[4] the Commission has well-established authority

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[1] *Southern California Edison Co.*, 129 FERC ¶ 61,246 (2009) (EITP Incentives Order).

[2] *Id.* at P 28.

[3] 16 U.S.C. § 825s (2006).

[4] *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).

under section 205 of the FPA[5] to grant policy-based incentives.[6] We find that certain incentives SoCal Edison seeks for the EITP are justified in light of a combination of policy reasons, including the following: the exigencies of the deadlines imposed by the American Recovery and Reinvestment Act (ARRA),[7] the potential that ARRA funding may foster renewable project development, the public policy benefits that the EITP will provide by integrating location-constrained renewable resources and their contribution towards meeting California's Renewable Portfolio Standard (RPS) requirements, and the scope of and risks associated with the EITP. Therefore, consistent with these public policy considerations, we grant SoCal Edison's request for inclusion of 100 percent of construction work in progress (CWIP) for the EITP in rate base and recovery of 100 percent of prudently-incurred abandoned plant costs if the EITP is cancelled for reasons beyond SoCal Edison's control. We conclude that policy reasons do not support granting a return on equity (ROE) adder of 150-basis points for the EITP, although SoCal Edison may retain the 50 basis point adder for participation in a regional transmission organization.

3. Consistent with denying SoCal Edison's requested 150-basis point ROE adder, we also grant the rehearing request of the Public Utilities Commission of the State of California's (CPUC), which sought rehearing of the Commission's conditional grant of ROE incentives in the EITP Incentives Order.[8] This order does not address any of the other requests for rehearing or clarification of the EITP Incentives Order; these will be addressed in a subsequent order.

I. Background

4. On October 1, 2009, SoCal Edison filed the Petition, requesting Commission approval of certain rate incentive treatments for its proposed EITP. SoCal Edison asked for rate incentives under FPA section 219 and Order No. 679.

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[5] 16 U.S.C. § 824d (2006).

[6] *See, e.g., Pacific Gas & Elec. Co.*, 123 FERC ¶ 61,067, at P 32 (2008) (citing Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 21 n.37); *SoCal Edison Co.*, 133 FERC ¶ 61,107 (2010).

[7] "An act making supplemental appropriations for job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and State and local fiscal stabilization, for the fiscal year ending September 30, 2009, and for other purposes." Preamble, Pub. L. No. 111-5 (2009).

[8] CPUC's January 18, 2010 Rehearing Request, Docket No. EL10-1-001.

5. The proposed EITP involves the following key features: building a new substation in the Ivanpah Dry Lake area in southern California; removal of 35 miles of the Eldorado leg of the existing Eldorado-Baker-Cool Water-Dunn Siding-Mountain Pass 115 kV line; and constructing a new 35-mile double-circuit 220 kV transmission line and towers between the proposed Ivanpah substation and SoCal Edison's existing Eldorado substation.

6. SoCal Edison estimates that the total cost for the EITP will be between $430 million and $480 million. SoCal Edison states that the EITP will significantly improve the reliability of CAISO's bulk power transmission system and reduce the cost of power to customers by reducing transmission congestion on the CAISO-controlled grid. The estimated in-service date for the EITP is mid-2013.

7. In its Petition, SoCal Edison requested authorization to recover the following incentives: (1) an ROE adder of 150-basis points for the EITP, in addition to the 50-basis point ROE adder previously granted by the Commission for SoCal Edison's participation in CAISO; (2) inclusion of 100 percent of CWIP for the EITP in rate base; and (3) recovery of 100 percent of prudently-incurred abandoned plant costs if the EITP is cancelled or abandoned for reasons beyond SoCal Edison's control (abandoned plant approval). SoCal Edison also requested that the Commission declare the EITP facilities to be network facilities, eligible to be rolled into SoCal Edison's Commission-jurisdictional transmission revenue requirement.

8. In its Petition, SoCal Edison argued that the EITP will provide regional benefits by fostering the development of location-constrained resources in the Ivanpah Dry Lake area, which, according to SoCal Edison, has the potential to be a vital center for solar generation. SoCal Edison further contended that the EITP is necessary to enable these resources to be developed and integrated into the CAISO-controlled grid.

II. <u>The EITP Incentives Order</u>

9. In the EITP Incentives Order, the Commission found that SoCal Edison was not entitled to the rebuttable presumption provided by Order No. 679 that the EITP is needed to maintain reliability or reduce congestion because the EITP had not received approval through the CAISO transmission planning process or received construction approval from the relevant state authorities.[9] Consequently, in order to obtain incentives under FPA section 219 as implemented by Order No. 679, SoCal Edison had to provide a factual record sufficient to support a finding that the EITP is needed to maintain reliability or reduce congestion. The Commission found that the support SoCal Edison proffered,

[9] EITP Incentives Order, 129 FERC ¶ 61,246 at P 27.

affidavits from several project managers, economists and engineers and three Interconnection System Impact Studies, was insufficient to meet the section 219 requirements.[10] In reaching its determination, the Commission noted that these interconnection studies were less comprehensive than other studies submitted in prior cases where the Commission found the applicant had met the statutory requirements.[11] The Commission explained that the studies submitted by SoCal Edison "focused on only three of the generators that the EITP is intended to serve" and "offer[ed] no indication of the broader impacts that the EITP will have on the CAISO system."[12]

10. However, the Commission nevertheless conditionally approved SoCal Edison's requested incentives because it found that "the CAISO's transmission planning process may adequately consider the reliability and congestion-relieving impacts of the EITP."[13] Accordingly, the Commission directed SoCal Edison to submit a filing within 30 days of the approval or disapproval of the EITP in the CAISO planning process. The Commission further required that:

> [I]f the EITP is approved in the CAISO's planning process, SoCal Edison must provide in this filing evidence not only that the EITP was approved in the CAISO's planning process, *but also that the transmission planning process included a finding that the EITP will ensure reliability or reduce the cost of delivered power by mitigating congestion*, consistent with Order No. 679-A.[14]

11. In the EITP Incentives Order, the Commission authorized continuation of SoCal Edison's 50-basis point ROE adder for participation in CAISO and conditionally granted SoCal Edison an additional 100-basis point ROE adder, resulting in a 150-basis point adder for the EITP. The Commission did not conditionally approve the full 200-basis point adder SoCal Edison sought because it found that, while the EITP may present a degree of risk to SoCal Edison, an additional 50-basis point adder would be excessive

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[10] *Id.* P 27 and n.36.

[11] *Id. (*citing *Green Power Express*, 127 FERC ¶ 61,031, at P 41 (2009); *Tallgrass Transmission, LLC*, 125 FERC ¶ 61,248, at P 42 (2008); *Pioneer Transmission LLC,* 126 FERC ¶ 61,281 (2009)).

[12] *Id.* P 26.

[13] *Id.* P 27.

[14] *Id.*

when considered alongside the Commission's conditional grant of CWIP and abandoned plant approval.[15]

12. In evaluating the Petition, the Commission found that the EITP would provide the following regional benefits: enabling the development of up to 1400 MW of renewable resources in the Ivanpah Dry Lake area, a potentially vital center for solar generation; allowing these new resources to be integrated into the CAISO-controlled grid; and providing assistance in meeting California's RPS targets.[16]

III. SoCal Edison's Compliance Filing

13. On August 3, 2010, SoCal Edison submitted a filing to satisfy the condition established in the EITP Incentives Order, i.e., to show that CAISO has approved the EITP in its transmission planning process. SoCal Edison states that CAISO has completed the large generator interconnection study process for the EITP and confirmed that the EITP will provide reliability benefits and congestion reduction for nearly 2,000 MW of planned renewable generation in the Ivanpah Dry Lake region of California.[17] In addition, SoCal Edison contends that the executed large generator interconnection agreements (LGIA) relied upon in the interconnection study process further satisfy the condition in the EITP Incentives Order.

14. SoCal Edison asks for an expeditious ruling on its compliance filing to remove uncertainty concerning the rate treatment for the EITP. SoCal Edison further states that it is prepared to provide upfront financing for the EITP if the Commission unconditionally grants SoCal Edison rate incentives, particularly the abandoned plant approval incentive to remove the regulatory and financial risk to SoCal Edison in the event it moves forward with the EITP project, but the project is cancelled for reasons outside of SoCal Edison's control.[18]

15. SoCal Edison states that Brightsource Energy (Brightsource) is the sponsor of three utility-scale solar thermal generating projects and that Brightsource has advised SoCal Edison that an expeditious ruling from the Commission on the incentive rate questions is critical to its financing plans for those projects. According to SoCal Edison,

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[15] *Id.* P 79-80.

[16] EITP Incentives Order, 129 FERC ¶ 61,246 at P 40.

[17] SoCal Edison, August 3, 2010 Filing to Satisfy Condition Established in Order on Petition for Declaratory Order (SoCal Edison Compliance Filing) at 2.

[18] *Id.* at 3.

because Brightsource needs to complete its financing arrangements with the U.S. Department of Energy under the ARRA, it is essential to Brightsource that the Commission act as soon as possible or those projects will be potentially threatened if Brightsource is unable to complete its ARRA financing arrangements.[19]

A. So Cal Edison's Proposed Solution to the "Chicken and Egg" Dilemma

16. In its filing, SoCal Edison states that the EITP is a part of an aggressive infrastructure expansion campaign intended to enlarge, improve and reinforce the CAISO transmission grid to maintain reliable service to customers at the lowest reasonable cost and to provide increased access to renewable generation resources.[20] SoCal Edison states that the proposed EITP is a part of SoCal Edison's transmission expansion campaign and reiterates its contention that the EITP will provide substantial benefits to California and the West by fostering the development of location-constrained renewable solar generation.

17. SoCal Edison states that without the EITP, it could only reliably interconnect 80 MW of new generating capacity to its transmission network in the Ivanpah Dry Lake area. According to SoCal Edison, the EITP will be capable of delivering up to 1,400 MW of new generating capacity from generation resources located near the California-Nevada border to load in California. SoCal Edison states that eleven requests in the interconnection queue for the area to be served by the EITP are for solar generation totaling 1,920 MW of new generation.[21]

18. SoCal Edison states that it proposes to provide upfront financing for the EITP as a means to break what SoCal Edison describes as a "chicken and egg" issue associated with developing transmission and renewable generation in the Ivanpah Dry Lake area. SoCal Edison explains that, unless the transmission provider elects to provide upfront financing, the CAISO's *pro forma* LGIA would require an interconnection customer to pay the upfront costs of all network upgrades and recover the expenditures through credits to its transmission charges once the generator's facilities are in service. SoCal Edison estimates that the costs of transmission upgrades connected with the EITP are approximately $430 to $480 million. SoCal Edison asserts that the risk associated with providing such a large amount of upfront financing in connection with a project that may fail or be delayed due to the regulatory process or the cancellation of other generation

[19] *Id.* at 3-4.

[20] *Id.* at 4.

[21] *Id.* at 6.

projects, combined with other risks associated with developing new solar generation, creates a situation in which an individual interconnection customer may be unable or unwilling to provide upfront financing for the necessary network upgrades.[22]

19. Specifically, SoCal Edison states that it is willing to provide upfront financing for network upgrades associated with the EITP as a means of resolving this “chicken and egg” dilemma described above. According to SoCal Edison, its willingness to provide upfront financing is contingent upon SoCal Edison receiving what it describes as appropriate protections and a compensatory rate of return for taking on the risks associated with financing the projects.[23] SoCal Edison states that in order to effectuate its proposed solution, it must obtain unconditional Commission approval for the rate incentives conditionally approved in the EITP Incentives Order, particularly abandoned plant approval.[24]

B. SoCal Edison’s Compliance Showing

20. To demonstrate that it has complied with the EITP Incentives Order condition requiring that the EITP receive approval in the CAISO transmission planning process, SoCal Edison submits three executed LGIAs.[25] According to SoCal Edison, by executing these three LGIAs, CAISO has “approved” the associated network upgrades as needed to reliably interconnect the affected generation and thereby satisfied the condition set forth

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[22] *Id.* at 7.

[23] *Id.*

[24] *Id.* at 7-8.

[25] SoCal Edison has filed with the Commission LGIAs among itself, CAISO and (1) Solar Partners I, LLC, (2) Solar Partners II, LLC and (3) Solar Partners III, LLC. The Solar Partners I LGIA was accepted by the Commission in an order on rehearing and compliance filing issued on August 23, 2010 as *Southern California Edison Co.*, 132 FERC ¶ 61,150 (2010). The Solar Partners II and Solar Partners VIII (identified by SoCal Edison as Solar Partners III) LGIAs filed in Docket Nos. ER10-2089-000 and ER10-2091-000 were accepted for filing. *See* Unpublished Letter Order issued under authority delegated to Director, Division of Electric Power Regulation – West, September 23, 2010 in Docket No. ER10-2089-000 and Unpublished Letter Order issued under authority delegated to Director, Division of Electric Power Regulation – West, September 23, 2010 in Docket No. ER10-2091-000.

in the EITP Incentives order.[26] SoCal Edison states that the EITP does not require approval by the CAISO Board or management, as is the case with non-interconnection transmission planning approval.[27]

21. SoCal Edison states that CAISO's system impact studies performed in connection with the interconnection requests have found that, absent new construction, due to reliability problems and congestion, the total amount of new generation that could be integrated in the Ivanpah Dry Lake area would be limited to approximately 80 MW. According to SoCal Edison, the interconnection studies supporting the three LGIAs demonstrate that the EITP includes the network upgrades that could most efficiently and effectively remedy the reliability problems associated with adding the new generation and that will relieve the congestion caused by adding that new generation.[28]

22. SoCal Edison further asserts that the CAISO interconnection study process satisfies the requirement under Order No. 679 that in order to obtain transmission rate incentives, an applicant must demonstrate that the facilities for which incentives are sought will either ensure reliability or reduce the cost of delivered power by reducing transmission congestion consistent with the standards set forth in FPA section 219.

23. In support of SoCal Edison's statement that the CAISO interconnection study process satisfies the requirements of Order No. 679 and FPA section 219, SoCal Edison notes that the Commission has previously accepted large generator interconnection procedures (LGIP) studies to support transmission rate incentives under Order No. 679. Specifically, SoCal Edison states that it submitted an LGIP study performed by CAISO in

[26] SoCal Edison notes that the three signed LGIAs do not trigger the need for the EITP in its entirety. The three signed LGIAs trigger the need for a double circuit line with only one of the circuits to be installed and energized initially. Secondly, these three LGIAs do not trigger the need for the installation of the third 220/115 kV transformer bank at the Ivanpah Substation. SoCal Edison requests that the Commission confirm the grant of incentives for the entire EITP in our order in this docket, with the approval of incentives on the second circuit and the third transformer bank contingent on either CAISO approval of additional LGIAs triggering the need for those elements of the EITP, or an order by the CPUC to install these facilities as part of the initial construction of the EITP. *See* SoCal Edison Compliance Filing at n.8.

[27] SoCal Edison Compliance Filing at 8-9.

[28] *Id.* at 11.

support of its request for rate incentives for a series of transmission upgrades needed to integrate renewable wind energy projects in the Tehachapi region.[29]

24. SoCal Edison further states that in adopting standardized large generator interconnection procedures and LGIAs in Order No. 2003, the Commission emphasized that a principal purpose was to maintain reliability when large generators are interconnected to the grid.[30] Based on SoCal Edison's statements regarding the effect of Order No. 2003, SoCal Edison states that approval of the EITP through CAISO's generator interconnection process reflects a determination that the EITP facilities are necessary to maintain reliability on the CAISO-controlled grid when the new generation is interconnected.[31]

25. Furthermore, SoCal Edison asserts that the CAISO's LGIP is a fair and sufficiently open process. SoCal Edison states that the Commission has affirmed, in approving CAISO's variations from the *pro forma* LGIP, that CAISO's management of its LGIP is sufficiently independent from participating transmission owners, including SoCal Edison.[32]

26. SoCal Edison also argues that the network upgrades associated with the EITP are not the type of projects that would be submitted for approval under a request window as part of CAISO's current transmission planning process. SoCal Edison states that at present the only interconnection projects that must be submitted through a request window are "Location Constrained Interconnection Facilities under Section 24.1.3 not identified by the CAISO as part of Interconnection Studies performed under the LGIP set forth in Appendix U or Appendix Y."[33] SoCal Edison states that because the EITP is a

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[29] *Id.* at 14 (*citing Southern California Edison Co.*, 123 FERC ¶ 61,293 (2008)).

[30] *Id.* at 15 (*citing Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007)).

[31] *Id.* at 16.

[32] *Id.* at 18-19 (*citing Cal. Indep. Sys. Operator Corp.*, *et al.*, 112 FERC ¶ 61,009, at P 26 (2005)).

[33] *Id.* at 20 (*citing* http://www.caiso.com/2457/2457dfb45f2c0.pdf (CAISO tariff excerpt)).

network facility eligible for inclusion in SoCal Edison's transmission revenue requirement, it is not a Location Constrained Resource Interconnection Facility and does not have to be submitted through the request window.

27. Finally, SoCal Edison requests that, even if the condition set forth in the EITP Incentives Order has not yet been satisfied, the Commission should unconditionally grant SoCal Edison the incentives it requested at this time as a matter of policy. SoCal Edison argues that the incentives are necessary to ensure that the development of renewable resources in California and Nevada is not deterred because of the continuation of the conditional nature of the Commission's incentives authorization.[34]

28. In support of the argument that the Commission should unconditionally authorize the requested EITP rate incentives on policy grounds, SoCal Edison points to the fact that the Commission has previously granted rate incentives on policy grounds even when it found that the section 219 requirements had not been fully satisfied. SoCal Edison cites *Pacific Gas & Electric Company* (*PG&E*)[35] as an example of a situation in which the Commission, despite finding that PG&E had not met the section 219 requirements, allowed PG&E to recover prudently incurred abandonment costs as a policy-based incentive.

29. SoCal Edison states that, given the risks facing the EITP, the company cannot guarantee to the generators in the interconnection queue that SoCal Edison will be able to provide upfront financing for the EITP without an assurance that its shareholders will be protected in the event the project is cancelled. SoCal Edison contends that if it is unable to commit to financing for the EITP, generators may be unable to secure financing and advance their projects. SoCal Edison reiterates its statements that this is the "chicken and egg" problem facing transmission and location-constrained renewable generation. SoCal Edison analogizes its situation to that of PG&E, emphasizing the Commission's rationale for granting PG&E abandonment costs despite its failure to meet the section 219 requirements: "[T]he recovery of abandonment costs is an effective means of encouraging transmission development by reducing the risk of non-recovery….[W]e expect that the recovery of these costs will help PG&E to finance the Project and attract and maintain co-sponsors willing to develop the Project."[36]

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[34] *Id.* at 23-24.

[35] 123 FERC ¶ 61,067 (2008).

[36] *Id.* at 24-25 (*citing PG&E*, 123 FERC ¶ 61,067 at P 10).

30. SoCal Edison argues that, even if the Commission does not find that the LGIAs and associated studies satisfy the section 219 standards, the Commission can and should resolve the chicken and egg problem described in SoCal Edison's compliance filing by granting recovery of the conditionally approved incentives as a matter of Commission policy.[37]

IV. Notice of Filing and Responsive Pleadings

31. Notice of SoCal Edison's Compliance Filing was published in the *Federal Register*, 75 Fed. Reg. 48,323 with protests and interventions due on or before August 24, 2010. Green Energy Express, LLC (Green Energy) filed a timely motion to intervene. The Western Independent Transmission Group (WITG) filed a motion to intervene and limited protest. Protests were filed by the Six Cities,[38] Modesto Irrigation District (Modesto), the California Municipal Utilities Association (CMUA), the Sacramento Municipal Utility District (SMUD), the Transmission Agency of Northern California (TANC) and the M-S-R Public Power Agency and the City of Santa Clara, California (MSR/Santa Clara). The Northern California Power Agency (NCPA) filed a protest and comments. CAISO filed comments and Brightsource filed comments in support and a request for expedited action.[39]

32. SoCal Edison and Brightsource filed responses to the protests. The Six Cities filed a motion for leave to respond and response to the comments by CAISO and Brightsource. And WITG filed a motion for leave to respond and response to SoCal Edison and Brightsource's answers.

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[37] *Id.* at 26 (*citing Southern California Edison Co.*, 112 FERC ¶ 61,014, at P 61, *reh'g denied,* 113 FERC ¶ 61,143 (2005), in which, prior to Order No. 679, the Commission authorized 100 percent recovery of prudently-incurred abandoned plant costs associated with a project to connect renewable generation).

[38] The Six Cities are Anaheim, Azusa, Banning, Colton, Pasadena and Riverside, California.

[39] Brightsource, as parent entity to Solar Partners I, LLC, Solar Partners II, LLC and Solar Partners VIII, LLC, is the developer and plans to own and operate the three solar thermal generating plants that have executed LGIAs with SoCal Edison and CAISO, comprising the basis upon which SoCal Edison asserts that CAISO has approved the EITP and that SoCal Edison has complied with the conditions required by the EITP Incentives Order.

V. Discussion

A. Procedural Matters

33. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

34. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers filed by SoCal Edison, Brightsource, Six Cities and WITG because they have provided information that assisted us in our decision-making process.

B. Protests and Answers

35. The protests and comments all focus on one primary theme. The protesters do not believe that SoCal Edison has satisfied the condition set forth in the EITP Incentives Order because in their view the LGIP is not a substitute for CAISO's transmission planning process. Accordingly, the protesters request that the Commission reject SoCal Edison's compliance filing and require SoCal Edison to obtain approval of the EITP in CAISO's transmission planning process before unconditionally granting the rate incentives conditionally approved in the EITP Incentives Order.

36. TANC states that CAISO's LGIP is separate and distinct from CAISO's transmission planning process. TANC states that the generator interconnection process focuses on if and how the current transmission grid can accommodate the proposed generator, rather than on development of the transmission grid as a whole.[40] As a result, TANC argues that approval of a transmission interconnection does not demonstrate that a project ensures reliability or reduces the cost of power by reducing transmission congestion.

37. TANC further argues that SoCal Edison's completion of the LGIP does not provide an analysis that is fundamentally similar to the analysis in studies that the Commission has accepted to demonstrate compliance with FPA section 219. For example, TANC states that SoCal Edison provides an erroneous comparison with the Commission's approval of SoCal Edison's request for rate incentives associated with the development of wind generation in the Tehachapi area. TANC points out that in the case of Tehachapi, SoCal Edison had obtained siting approval from the Public Utilities

[40] TANC Protest at 7-8.

Commission of the State of California (CPUC), in addition to approval by CAISO under an open transmission planning process that afforded stakeholder participation.[41]

38. Finally, TANC argues that SoCal Edison's compliance filing constitutes a collateral attack on the EITP Incentives Order because SoCal Edison seeks a Commission finding that it has complied with the condition specified in the EITP Incentives Order despite not having obtained approval of the EITP in CAISO's transmission planning process. TANC states that if SoCal Edison was dissatisfied with the requirement that it obtain approval of the EITP in CAISO's transmission planning process, or if SoCal Edison believed the LGIP to be the appropriate CAISO approval process, then SoCal Edison should have sought rehearing of the EITP Incentives Order on that issue.[42]

39. NCPA's protest is essentially similar to that of TANC. In addition, NCPA argues that even if the Commission were to allow SoCal Edison the particular incentives already conditionally approved for the EITP, the Commission should make clear as a policy matter that network upgrades approved solely through the generator interconnection process, rather than through an open transmission planning process, will not be eligible for transmission rate incentives of any kind as a routine matter.[43]

40. Six Cities' protest also makes the point that the LGIP is not a regional transmission planning process and argues that SoCal Edison's compliance filing does not provide evidence that the EITP has been approved in CAISO's transmission planning process as required by the EITP Incentives Order. Six Cities state that CAISO's transmission planning process was established in response to Commission Order No. 890,[44] while CAISO's generation interconnection process was developed in order to

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[41] *Id.* at 11-12 (*citing Southern California Edison Co.*, 121 FERC ¶ 61,168 at P 20, 33 (2007) and SoCal Edison Petition for Declaratory Order in Docket No. EL07-62 at 22 (May 18, 2007)).

[42] *Id.* at 12-13.

[43] NCPA Protest at 9.

[44] Six Cities Protest at 11 (*citing Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008) *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009)).

comply with the separate requirements established by the Commission in connection with Order No. 2003.[45]

41. In addition, Six Cities argue that as part of the EITP Incentives Order, the Commission has previously rejected the studies provided by SoCal Edison in support of SoCal Edison's compliance filing and argues that SoCal Edison has provided no new evidence along with SoCal Edison's compliance filing.[46]

42. Finally, Six Cities argue that policy reasons do not support authorizing SoCal Edison to recover transmission incentives for the EITP because by entering into LGIAs, developers have obligated themselves to fund the necessary network upgrades.[47] Six Cities also state that in *PG&E*, the Commission only authorized recovery of prudent pre-commercial costs and abandoned plant costs, finding that PG&E's request for an ROE adder and recovery of CWIP costs were premature.[48]

43. MSR/Santa Clara also argue that SoCal Edison's reliance on CAISO's approval of three LGIAs under CAISO's LGIP does not satisfy the EITP Incentives Order condition that SoCal Edison obtain approval of the EITP in CAISO's transmission planning process. MSR/Santa Clara emphasize that it does not believe CAISO's LGIP meets the requirements to demonstrate that the EITP will either reduce congestion or improve reliability in the context of the FPA section 219 requirements as implemented under Order No. 679.[49]

44. MSR/Santa Clara state that the major deficiency in considering approval under the LGIP in the context of Order No. 679 is that the LGIP is not a fair and open regional planning process. MSR/Santa Clara submit a series of issues that would be addressed by CAISO's transmission planning process but are left unanswered when approval is solely under the LGIP. Specifically, MSR/Santa Clara state that approval under the LGIP does not identify what alternatives CAISO studied in place of the EITP, the costs of those other projects, or what impact the EITP has on the overall CAISO system. MSR/Santa Clara also argue that the LGIP does not address how the EITP impacts other planned or

[45] *Id.* (citation omitted).

[46] Six Cities Protest at 18-19.

[47] *Id.* at 20-21.

[48] *Id.* at 22 (*citing PG&E*, 123 FERC ¶ 61,067 at P 36, 37, 40).

[49] MSR/Santa Clara Protest at 4-6.

proposed projects being considered or studied in the regional planning process, or how the EITP was selected for approval instead of other projects under consideration in the regional planning process.[50]

45. MSR/Santa Clara also note that the Commission's decision in Docket No. ER10-732 (regarding SoCal Edison's LGIA with Solar Partners I, LLC) addresses the issue raised for clarification by MSR/Santa Clara on rehearing of the EITP Incentives Order. MSR/Santa Clara points out that in the Commission's order conditionally approving an LGIA between SoCal Edison and Solar Partners, LLC, the Commission reiterated that the incentives approved in the EITP Incentives Order were conditioned upon approval under the CAISO transmission planning process.[51]

46. Finally, MSR/Santa Clara argue that SoCal Edison could resolve the "chicken and egg" problem with financing for renewable generation without Commission approval of SoCal Edison's requested rate incentives for the EITP. MSR/Santa Clara suggest that SoCal Edison unilaterally waive the condition to upfront funding of network upgrades in LGIAs that give SoCal Edison unconditional abandoned plant approval.[52]

47. WITG's protest is also primarily based on the argument that CAISO's LGIP is not a comprehensive, transparent and open regional transmission process, and therefore does not satisfy the condition specified in the EITP Incentives Order.[53] WITG states that CAISO's revised transmission planning process and treatment of LGIP-based network upgrades are currently being addressed before the Commission right now.[54]

48. WITG also argues that because CAISO interprets the LGIP as being exclusively reserved for incumbent participating transmission owners, treating approval of the EITP

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[50] *Id.* at 12-13.

[51] *Id.* at 15-16 (*citing Southern California Edison Co.*, 131 FERC ¶ 61,016, at P 21-22 (2010) (citations omitted)).

[52] *Id.* at 18-19.

[53] WITG Protest at 11.

[54] WITG cites Docket Nos. ER10-1401 (CAISO's revised transmission planning process) and EL10-76 (Green Energy Express's Petition for Declaratory Order regarding CAISO's revised transmission planning process), noting that these dockets are related to CAISO's proposed revised transmission planning process and further comments that the complexity of the issues presented has resulted in the Commission convening a technical conference in Docket No. ER10-1401-000.

under CAISO's LGIP as a substitute for approval in the transmission planning process would be discriminatory towards non-incumbent transmission developers.[55] Based on its concern for possible discriminatory effects that could ensue from allowing approval under CAISO's LGIP to act as a substitute for approval under CAISO's transmission planning process, WITG argues that the Commission should delay taking action on SoCal Edison's compliance filing pending the outcome of Docket Nos. ER10-1401 (CAISO's revised transmission planning process) and EL10-76 (Green Energy Express's Petition for Declaratory Order regarding CAISO's revised transmission planning process).

49. SMUD, Modesto and CMUA each argue that the approval of LGIAs under CAISO's LGIP does not satisfy the condition specified in the EITP Incentives Order and request that the Commission reject SoCal Edison's compliance filing.

50. CAISO's comments confirm that CAISO has executed the three LGIAs identified by SoCal Edison in its compliance filing. CAISO states that by executing the LGIAs it has approved the need for the portions of the EITP described in those LGIAs.[56]

51. CAISO further states that once an LGIA is executed, the network upgrades identified in it are considered by CAISO to be needed and are incorporated into CAISO's base case modeling assumptions for transmission planning studies for the next annual planning cycle. In the case of the EITP, CAISO states that the execution of the three LGIAs establishing the need for network upgrades will lead to CAISO's treatment of those upgrades as presumed to be constructed for purposes of future transmission planning.[57]

52. CAISO states that the modeling assumptions for future transmission planning studies will presume the existence of the EITP network upgrades in determining the need for additional transmission facilities to meet CAISO's planning standards in the next annual cycle. Finally, CAISO states that it wishes to make clear that CAISO considers the EITP to be among those transmission facilities that are important to accommodate the

[55] WITG Protest at 12.

[56] CAISO states that, as noted above, the three executed LGIAs do not trigger the need for all EITP network upgrades. CAISO supports the imposition of a condition that recovery of the costs of abandoned plant for the portions of the EITP that are not triggered by the three LGIAs should be contingent on CAISO execution of LGIAs that include those additional facilities.

[57] CAISO Comments at 2.

delivery of energy from renewable and other resources to enable California to meet a 33 percent RPS goal.[58]

53. Brightsource's comments in support of SoCal Edison's compliance filing states that the LGIP is a seamless part of CAISO's transmission planning process and is the only means available for CAISO approval of transmission upgrades and projects when they are intended to support policy objectives, such as renewable energy supply, until such time as the Commission acts on CAISO's tariff amendments comprising its revised transmission planning process.[59] Brightsource further states that the EITP is now a part of the base case that CAISO will use for transmission planning and that the EITP will be subject to no further CAISO approvals.

54. Brightsource states that the Ivanpah Solar Generating Electricity System has been selected by the Department of the Interior as a priority fast-track project and is one of only two large-scale solar projects that have received loan guarantees from the Department of Energy.[60]

55. Finally, Brightsource emphasizes that it is scheduled to close on financing for the project in Fall 2010 in order to meet ARRA deadlines[61] and that Brightsource's first plant has a planned in-service date for the fourth quarter of 2012 in order to meet delivery obligations under Brightsource's power purchase agreement with PG&E. Brightsource states that the question of whether SoCal Edison will fund more than $400 million of network upgrades associated with the EITP facilities is a significant obstacle to Brightsource's ability to complete its financial closing.[62]

56. SoCal Edison's answer emphasizes its view that CAISO's LGIP and transmission planning process are separate but integrated planning processes for approving construction of transmission facilities within CAISO's footprint. SoCal Edison reiterates its position that CAISO's LGIP is fair and open, stating that the LGIP is administered by an independent organization, is open to participation by any system that is affected by the proposed project, results in an LGIA that is filed with the Commission and subject to

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

[59] Brightsource Comments at 3.

[60] *Id.* at 7.

[61] To meet ARRA deadlines, among other requirements, Brightsource states that it must start construction before the end of 2010.

[62] *Id.* at 8.

challenge, and that the LGIP considers and evaluates projects for reliability and/or congestion.[63]

57. SoCal Edison's answer emphasizes that the circumstances presented by this proceeding are driven by the timing requirements under the ARRA. SoCal Edison states that, because it has satisfied the nexus requirement, SoCal Edison would qualify to receive the rate incentives approved in the EITP Incentives Order upon receipt of a Certificate of Public Convenience and Necessity from the CPUC. However, due to the timing requirements of the ARRA, SoCal Edison states that it is essential to receive unconditional approval of the transmission rate incentives, particularly the abandoned plant approval incentive, so that SoCal Edison can commit to upfront funding of network upgrades. According to SoCal Edison, this situation is necessary in order to allow Brightsource to secure financing and begin construction in accordance with ARRA deadlines.[64]

58. Brightsource's answer reiterates its statement that the CAISO LGIP is the only process currently available for CAISO approval of projects intended to support policy objectives such as increasing renewable energy supply.[65] Brightsource further notes CAISO's statement that the EITP is considered to be among the transmission facilities that are important to accommodate the delivery of energy from renewable and other resources to enable California to meet its RPS goals. Brightsource emphasizes the urgency necessary in order to complete its financing and meet ARRA deadlines.[66]

59. WITG's answer argues that SoCal Edison and Brightsource mischaracterize WITG's protest in their answers. WITG states by way of clarification that it takes the position that CAISO approval of the EITP in the LGIP does not satisfy section 219 of the FPA.[67] WITG further argues that its position is consistent with the CAISO tariff, contrary to SoCal Edison's arguments. Finally, WITG argues that the CAISO tariff, as construed in CAISO's transmission planning business practice manual, requires that

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[63] SoCal Edison Answer at 6-7.

[64] *Id.* at 8-9.

[65] Brightsource Answer at 2.

[66] *Id.* at 6.

[67] WITG Answer at 4.

network upgrades identified through CAISO's interconnection studies must be processed through the transmission planning request window.[68]

C. **CPUC's Request for Rehearing**

60. In addition, the CPUC requested rehearing of the EITP Incentives Order regarding the Commission's grant of ROE incentives.[69] The CPUC argues that the Commission's grant of a 100-basis point ROE adder in the EITP Incentives Order was arbitrary and capricious and improperly applied the nexus test required under Order No. 679-A. The CPUC states that the nexus test requires that incentives must be tailored to address the demonstrable risks and challenges faced by an applicant in undertaking the project and that applicants must provide sufficient explanation and support to allow the Commission to evaluate each element of the package [of incentives] and the interrelationships of the elements of the package.[70]

61. The CPUC states that the EITP Incentives Order failed to evaluate each element of the package – in particular, the ROE element – and also failed to analyze the interrelationships among the three incentives. The CPUC notes that the Commission determined that SoCal Edison demonstrated a nexus between the recovery of abandoned plant and CWIP incentives and its planned investment. However, for the ROE adder incentive, the CPUC states the Commission never identified particular risks or challenges nor made any link between the incentive sought and the investment made. The CPUC argues that rather than granting SoCal Edison a smaller ROE adder than it requested, the Commission needed to provide a justification for the 100 basis point ROE adder.

D. **Commission Determinations**

62. As discussed below, the Commission finds that SoCal Edison has not complied with the condition established in the EITP Incentives Order. However, for policy reasons associated with ARRA funding, location-constrained renewable resources and California's RPS requirement, pursuant to FPA section 205, we grant SoCal Edison's request for inclusion of 100 percent CWIP for the EITP in rate base and recovery of 100 percent of prudently-incurred abandoned plant costs if the EITP is cancelled for reasons

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[68] *Id.* at 4-5.

[69] The CPUC did not request rehearing on any issues other than the Commission's grant of ROE incentives.

[70] CPUC Request for Rehearing at 4; citing Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 21.

beyond SoCal Edison's control. We also grant the CPUC's request for rehearing concerning our conditional approval of a 150-basis point ROE adder for the EITP, and find that policy reasons do not support this adder, although SoCal Edison may retain the 50-basis point adder for participation in a regional transmission organization that the Commission previously granted.

63. In the EITP Incentives Order, the Commission conditionally approved SoCal Edison's request for incentive treatment of its proposed EITP, subject to CAISO approving the EITP in its transmission planning process and finding that the EITP will ensure reliability or reduce the cost of delivered power by reducing congestion.[71] Specifically, not only did the Commission require that the EITP receive approval in the CAISO transmission planning process, but also that the transmission planning process include a finding that the EITP will ensure reliability or reduce the cost of delivered power by mitigating congestion, consistent with Order No. 679-A.[72]

64. On compliance, no party disputes that the EITP has *still* not been approved in the CAISO transmission planning process. Instead, SoCal Edison relies on the LGIP to satisfy the condition in the EITP Incentives Order, i.e., in lieu of receiving explicit approval in the CAISO transmission planning process and an express finding by that process that the EITP will ensure reliability or reduce the cost of delivered power. Given these facts, we find that SoCal Edison has not met the conditions stated in the EITP Incentive Order. Furthermore, on compliance, SoCal Edison has not presented sufficient additional evidence from which the Commission could conclude that the EITP would improve reliability or reduce the cost of delivered power by reducing transmission congestion. Consequently, we find that SoCal Edison has not met the requirements necessary to obtain transmission incentives under FPA section 219, as implemented by Order No. 679.

65. At the outset, we note that the three executed LGIAs presented on compliance are the same ones that were the subject of the interconnection system impact studies submitted along with SoCal Edison's Petition for Declaratory Order. In the EITP Incentives Order, we found that those interconnection system impact studies were not sufficiently comprehensive to satisfy the FPA section 219 requirement in the absence of an applicant qualifying for the rebuttable presumption under Order No. 679.[73] The execution of LGIAs based on those same interconnection system impact studies does not

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[71] EITP Incentives Order, 129 FERC ¶ 61,246 at P 28.

[72] *Id.*

[73] *Id.* P 27.

change our conclusion. Nor do the affidavits submitted along with SoCal Edison's Compliance Filing provide sufficient additional information to alter our conclusion in the EITP Incentives Order that they were inadequate to support a determination that the EITP meets the requirements of FPA section 219.[74]

66. We find that SoCal Edison's reliance in its Compliance Filing on the LGIP is insufficient to satisfy the requirements of Order No. 679 because, in and of itself, the LGIP does not constitute the kind of open and transparent regional process contemplated by Order No. 679 for the purpose of qualifying for a rebuttable presumption that the requirements of FPA section 219 have been satisfied. In this case, as all parties agree, the LGIAs were not considered as part of the CAISO transmission planning process.

67. Further, the interconnection studies conducted under the LGIP are limited in scope and conducted outside the comprehensive and system-wide CAISO transmission planning process. We also note that the LGIP does not provide for the same type of public comment period or discussion regarding the regional impact or benefits of a proposed interconnection on neighboring systems; rather, third parties are informed of a generator's interconnection request by CAISO only when CAISO determines that the proposed interconnection would impact the third party's systems.

68. For these reasons, we find that SoCal Edison's compliance filing does not demonstrate compliance with the condition specified in the EITP Incentives Order. We are unable to find that SoCal Edison has demonstrated that the EITP will ensure reliability or reduce the cost of delivered power by reducing transmission congestion, as those terms were contemplated in FPA section 219 and Order No. 679.

69. However, we take note that SoCal Edison has requested that, even if the condition set forth in the EITP Incentives Order has not been satisfied, the Commission should unconditionally grant SoCal Edison the incentives it requested at this time as a matter of policy. In making this request, SoCal Edison states that, given the risks facing the EITP, SoCal Edison cannot guarantee to the generators in the interconnection queue that SoCal Edison will be able to provide upfront financing for the EITP without an assurance that its shareholders will be protected in the event the project is cancelled.

70. In further arguing that the Commission should unconditionally grant it the requested incentives as a matter of policy, SoCal Edison notes that if it is unable to commit to financing for the EITP, the generators may be unable to secure financing and advance their projects. According to SoCal Edison, this is the "chicken and egg" problem facing transmission and location-constrained renewable generation. Based on

[74] *Id.* at n.36.

SoCal Edison's request and recognizing that the timing of SoCal Edison's request is driven by the time constraints imposed by the ARRA, we will consider SoCal Edison's request for transmission rate incentives as a matter of policy.

71. Prior to issuing Order No. 679, we recognized our inherent authority to approve rate incentives when they would promote the Commission's policies.[75] The Commission has exercised this authority and approved requests for abandoned plant recovery to encourage the construction of transmission facilities needed to interconnect new generation.[76] In exercising this authority before the existence of Order No. 679, when determining whether it was just and reasonable to grant recovery of 100 percent of abandoned plant costs, we considered, among other factors, whether the incentive encourages the development of much-needed transmission facilities, improves the performance of the grid by increasing the transfer capability of the grid and providing reliability benefits to the grid, and is intended to increase the supply of energy to the grid.[77] Further, outside the context of incentives granted pursuant to FPA section 219, we have considered whether the project helps to access renewable energy to meet state RPS requirements.[78]

72. We note that Order No. 679 did not extinguish, and in fact expressly preserved, this pre-existing Commission authority:

> We also note that the Commission retains its discretion to provide policy-based incentives. As the courts have said, even prior to our new authority in section 219, the Commission's incentive rate determinations "involve matters of rate design . . . [and] policy judgments [that go to] the core of [the Commission's] regulatory responsibilities." *Maine Public Utilities Commission v. FERC*, 454 F.3d 278, 288

[75] *See, e.g., Southern California Edison Co*., 112 FERC ¶ 61,014, *reh'g denied*, 113 FERC ¶ 61,143 (2005) (100 percent abandoned plant recovery granted for transmission facilities required for wind project interconnection); *San Diego Gas & Elec. Co.*, 98 FERC ¶ 61,332, *reh'g denied*, 100 FERC ¶ 61,073 (2002) (Commission to allow full recovery of abandoned transmission project costs where appropriate).

[76] *See, e.g., PG&E*, 123 FERC ¶ 61,067 (2008); *Southern California Edison Co*., 112 FERC ¶ 61,014 (2005).

[77] *Southern California Edison Co.*, 113 FERC ¶ 61,143 at P 12.

[78] *Id.*; *see also PG&E,* 123 FERC ¶ 61,067 at P 33-34.

> (D.C. Cir. 2006). *See also Permian Basin Area Rate Cases*, 390 U.S. 747 (1968).[79]

73. Thus, even though we do not approve SoCal Edison's requested incentives under Order No. 679, we are nevertheless empowered to consider them under our inherent authority under section 205 of the FPA to allow rate treatments that promote public policy goals. The Commission applied this approach in a 2008 case involving PG&E, stating:

> As we noted in Order No. 679-A, our authority to grant policy-based incentives is well established and exists in addition to our policy under Order No. 679. . . . Based on this authority, we believe that there is a significant policy objective in finding that just and reasonable rates can include incentives to utilities . . . that develop multi-regional and multi-national transmission projects. Because of the size, scope and complexity of these projects, many companies may be unwilling and unable to spend significant sums of money to assess whether the project would ensure reliability and/or reduce congestion. In addition, there is an important policy objective in encouraging companies to explore new ways of finding and delivering renewable resources.[80]

74. In addition, we have made clear that when we consider such incentive requests, our policy is to review each request for incentives on its own merits and on a case-by-case basis. Thus, in granting the CWIP and abandoned plant incentives requested by SoCal Edison, we emphasize that our actions are limited to the unique circumstances presented in this docket.[81]

75. As discussed, the Commission has recognized the important public policy in favor of promoting new renewable generation.[82] The EITP represents a significant investment

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[79] Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 21 n.37.

[80] *See PG&E*, 123 FERC ¶ 61,067 at 33.

[81] *Id.* P 39 (citations omitted).

[82] *See., e.g., Southern California Edison Co.*, 112 FERC ¶ 61,014, *reh'g denied*, 113 FERC ¶ 61,143 (wind projects); *PG&E*, 123 FERC ¶ 61,067; *Southern California Edison Co.*, 123 FERC ¶ 61,293 (integration of Canadian and Pacific Northwest renewable power); *see also PacifiCorp*, 125 FERC ¶ 61,076, at P 45 (2008) (location-

(continued…)

that would deliver significant amounts of otherwise location-constrained renewable energy from the Ivanpah Dry Lake area to California customers. We also find that access to these proposed renewable resources will contribute towards meeting California's RPS goals.

76. In addition to the aforementioned public policy considerations, we are cognizant of the risks and uncertainties relevant to the development of the EITP. SoCal Edison has demonstrated that it will have exposure to uncertainties arising from future unforeseen circumstances during this time period. SoCal Edison is proposing to expend substantial monies prior to obtaining all necessary approvals, thereby exposing itself to the risk that the proposed generation that the EITP is being developed to serve may not materialize.

77. As to that issue, the EITP must receive over 35 approvals from multiple jurisdictions, including at least eight Federal permits, at least fifteen permits from state and local agencies within California, and at least twelve permits from state and local agencies within Nevada. In summary, the EITP faces substantial financial, regulatory, environmental and siting challenges.

78. Adding to these concerns, we are aware of the time pressures faced by the solar developers here that are seeking financial incentives under the ARRA, which requires that these developers' generation projects commence construction by the end of this year.

79. Therefore, although we find that SoCal Edison has not complied with the condition set forth in the EITP Incentives Order and does not qualify for the rebuttable presumption available under FPA section 219, we will unconditionally grant the requested CWIP and abandoned plant incentives, as detailed *infra*. Our decision to grant these incentives is based on our public policy evaluation under section 205 of the FPA of all the unique facts and circumstances presented here, including: the exigencies of the deadlines imposed by the ARRA, the potential that the ARRA funding may foster renewable project development, the public policy benefits that the EITP will provide in terms of the integration of location-constrained renewable resources and their contribution to meeting California's RPS requirements, and the scope of and risks associated with the EITP.

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constrained renewable resources); *Green Power Express*, 127 FERC ¶ 61,031, at P 46 (2009); (same); *Green Energy Express*, 129 FERC ¶ 61,165, at P 62 (2009) (remote, location-constrained solar resources).

1. Abandoned Plant Incentive

80. As we have discussed, it is appropriate to consider the abandoned plant cost recovery incentive in the context of our public policy evaluation. We confirmed in the EITP Incentives Order that we have previously found that granting 100 percent of prudently-incurred costs if a project is cancelled or abandoned for reasons outside the entity's control as an incentive is an effective means of encouraging transmission development by reducing the risk of non-recovery of costs.[83] And in the EITP Incentives Order, we specifically found that SoCal Edison has demonstrated a nexus between the recovery of prudently-incurred abandonment costs and its planned investment in the EITP.[84]

81. In the EITP Incentives Order, we further found that granting the abandonment incentive would encourage completion of the EITP and give SoCal Edison the necessary incentive to develop the project, notwithstanding the risk that factors beyond the company's control could prevent the completion of the project. We noted that the fact that SoCal Edison must obtain at least 35 regulatory approvals for the EITP, involving multiple jurisdictions, increases the possibility that the project might be subject to forced abandonment.[85]

82. SoCal Edison's pleadings indicate that the abandoned plant incentive is the critical lynchpin incentive associated with SoCal Edison's commitment to upfront funding of network upgrades necessary to complete the EITP.[86]

83. The three LGIAs entered into among SoCal Edison, Brightsource[87] and CAISO provide that SoCal Edison will upfront fund network upgrades, contingent upon SoCal Edison obtaining unconditional approval of the abandoned plant incentive.[88]

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[83] EITP Incentives Order, 129 FERC ¶ 61,246 at P 67 (*citing* Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 163).

[84] *Id.*

[85] *Id.* P 68.

[86] *See* SoCal Edison Compliance Filing at 3, 7, 21 and 23. SoCal Edison answer at 9.

[87] Brightsource participates in the LGIAs through its affiliates, Solar Partners I, LLC, Solar Partners II, LLC and Solar Partners VIII, LLC.

[88] We note that the LGIAs have been accepted by the Commission. *See Southern California Edison Co.*, 132 FERC ¶ 61,150 (2010), Unpublished Letter Order issued

(continued…)

Brightsource has stated that the contingency related to SoCal Edison's commitment to upfront fund network upgrades and the associated uncertainty regarding responsibility to pay for more than $400 million of network upgrades poses a significant obstacle to Brightsource's financial closing, which in turn imperils Brightsource's ability to commence construction of its projects.[89]

84. We also find that the deadlines imposed by the ARRA, as discussed above, pose a further risk to the completion of the EITP, unless we grant SoCal Edison's request for unconditional approval of the abandoned plant incentive at this time. We are not persuaded by those parties arguing that the "chicken and egg" problem raised by SoCal Edison can be alleviated by requiring individual developers to fund network upgrades of the magnitude required for the EITP to be constructed or by requiring SoCal Edison to waive its requirement of unconditional abandoned plant approval as a pre-condition to upfront funding of network upgrades.

85. Accordingly, we will unconditionally grant SoCal Edison's abandoned plant incentive at this time, in order to encourage the construction of the EITP, a transmission project needed to interconnect new generation that will provide increased access to renewable generation and assist in meeting California's RPS goals. As discussed above, we do not grant this unconditional abandoned plant incentive pursuant to FPA section 219 or the standards set forth in Order No. 679. Rather, this incentive authorized by this order, is granted as a matter of public policy pursuant to the Commission's core regulatory responsibilities.

86. The approval of abandoned plant incentive for installing and energizing the second 220 kV circuit and the third 220/115 kV transformer bank at the Ivanpah substation is conditioned upon either CAISO approval of future LGIAs triggering the need for such facilities or an order by the CPUC to install these facilities as part of the initial construction of the EITP.[90]

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under authority delegated to Director, Division of Electric Power Regulation – West, September 23, 2010 in Docket No. ER10-2089-000 and Unpublished Letter Order issued under authority delegated to Director, Division of Electric Power Regulation – West, September 23, 2010 in Docket No. ER10-2091-000.

[89] Brightsource Comments at 8.

[90] This treatment is consistent with SoCal Edison's requested treatment in its Compliance Filing at n.8 and CAISO's Comments at n.2.

87. Finally, we will not determine the justness and reasonableness of SoCal Edison's abandoned plant recovery, if any, until SoCal Edison seeks such recovery in a section 205 filing.[91]

2. CWIP Incentive

88. We believe that it is reasonable to consider, when appropriate, the inclusion of CWIP in rate base in the context of a public policy evaluation of a request for rate incentives.[92] Such a rate treatment helps to provide upfront regulatory certainty, rate stability, and improved cash flow, reducing the pressures on an applicant's finances caused by investing in transmission projects.[93]

89. In the EITP Incentives Order, we found that the cost and timing for completing the EITP will put pressure on SoCal Edison's finances and that granting 100 percent CWIP in rate base as an incentive will help ease this pressure by providing upfront certainty, improved cash flow, and reduced interest expense. Considering the relative size of SoCal Edison's investment in the EITP, as compared to its current transmission rate base, we find authorization of the CWIP incentive to be appropriate to assist in the construction of new transmission facilities.[94]

90. The EITP Incentives Order found that SoCal Edison is eligible to recover 100 percent of CWIP in rate base, contingent on the EITP's approval in CAISO's transmission planning process. Our acceptance of SoCal Edison's proposal to recover 100 percent of CWIP in rate base was also conditioned upon SoCal Edison fulfilling the Commission's requirements for CWIP inclusion for these transmission facilities in a future filing under section 205 of the FPA. In such future filing, we directed SoCal Edison to include the CWIP for the EITP in the stand-alone balance account mechanism previously approved by the Commission.[95]

91. The conditions that led us to conditionally approve the CWIP in rate base incentive in the EITP Incentives Order continue to apply as we consider which incentives are appropriate for policy reasons. Due to the exigent ARRA deadlines and our

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[91] *See* Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 165-166.

[92] *Cf. id.* at P 29, 117.

[93] *Id.* P 115.

[94] EITP Incentives Order, 129 FERC ¶ 61,246 at P 53.

[95] *Id.* P 55.

unconditional grant of the abandoned plant incentive, SoCal Edison will likely be obligated to commit funds for the upfront funding of the EITP network upgrades at an earlier date than would otherwise have been the case. The resultant pressure on SoCal Edison's finances from EITP-based expenditures will likely be as great as we estimated they would be in the EITP Incentives Order.

92. As a result, we find that the same considerations that led us to unconditionally grant SoCal Edison's abandoned plant incentive as discussed above warrant also unconditionally granting SoCal Edison the 100 percent of CWIP in rate base incentive at this time as well.

93. As is the case with the grant of abandoned plant approval, the approval of 100 percent of CWIP in rate base for installing and energizing the second 220 kV circuit and the third 220/115 kV transformer bank at the Ivanpah substation is conditioned upon either CAISO approval of future LGIAs triggering the need for these facilities, or an order by the CPUC to install these facilities as part of the initial construction of the EITP.[96]

94. Accordingly, we grant SoCal Edison's requested 100 percent of CWIP in rate base at this time, conditioned upon SoCal Edison's fulfilling the Commission's CWIP requirements for transmission facilities in its future section 205 filing.

95. We note that, as is the case with the grant of the abandoned plant incentive, this grant of 100 percent CWIP in rate base is not made pursuant to the requirements of FPA section 219, as implemented by Order No. 679. Rather, this grant of 100 percent CWIP in rate base is made pursuant to the Commission's long-standing regulatory authority, based on public policy considerations.

3. <u>ROE Adder Incentive</u>

96. We previously granted SoCal Edison a 50 basis-point ROE adder for its participation in CAISO,[97] and we will continue to do so here. However, we will reject any additional ROE adders for the EITP.

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[96] This treatment is consistent with SoCal Edison's requested treatment in its Compliance Filing at n.8 and CAISO's Comments at n.2.

[97] *See* November 2007 Order, 121 FERC ¶ 61,168 at P 158. The Commission has also approved the 50 basis-point adder for ISO participation in other cases. *See, e.g., Green Power Express*, 127 FERC ¶ 61,031 at P 85; *Tallgrass Transmission, LLC, et al.*, 125 FERC ¶ 61,248, at P 58 (2008).

97. We note that this case involves generator interconnections and related network upgrades under executed LGIAs. We find that the risks to SoCal Edison are less than would exist for other more speculative transmission projects. The risk that the generators will not be developed is reduced here because, as discussed above, the generators have already executed their LGIAs and they have been accepted for filing by the Commission. Further, SoCal Edison has mitigated some of the risk inherent in its upfront financing of the Projects through milestone and other procedures included in the LGIAs.[98]

98. Given that SoCal Edison has not satisfied the condition set forth in the EITP Incentives Order, we are deciding this matter based on our previously stated public policy considerations. Based on our discretion in evaluating requests for rate incentives in the context of our public-policy evaluation of the facts presented in the record, other than the 50 basis-point adder previously granted by the Commission for SoCal Edison's participation in CAISO, we find that no additional ROE adders are appropriate for the EITP.

99. Consequently, for these reasons we also grant the CPUC's request for rehearing and deny SoCal Edison's requested additional ROE adder beyond the 50-basis points previously approved for continued CAISO membership.[99]

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[98] *See* SoCal Edison Petition for Declaratory Order, filed October 1, 2009 in Docket No. EL10-1-000 at 8-9. The risk that the projects will not come to fruition is further reduced by the LGIAs required security postings. For example, Appendix A, section 9 of each of these LGIAs requires the interconnection customer to post financial security in the amount of $1,119,000 to secure the construction of interconnection facilities and section 10 requires an additional posting of financial security in the amount of $391,650 to secure the estimated income tax liability associated with the interconnection facilities. *See* Appendix A, sections 9 and 10, LGIAs attached to SoCal Edison's transmittal letters in Docket Nos. ER10-732-000, ER10-2089-000, and ER10-2091-000.

[99] We disagree, however, with the CPUC's assertions in its rehearing request that the EITP Incentives Order was arbitrary and capricious, improperly applied the nexus test under Order No. 679-A, or failed to adequately explain the risks and challenges associated with the conditional grant of a reduced ROE adder of 100-basis points. The EITP Incentives Order contains detailed discussions of the EITP's scope and effect, as well as the various risks and challenges facing the EITP; and appropriately applied the nexus test under Order No. 679-A.

<u>The Commission orders</u>:

(A) SoCal Edison's request is granted regarding the CWIP and abandoned plant cost recovery incentives for the reasons discussed in the body of this order.

(B) The CPUC's request for rehearing of the EITP Incentives Order is hereby granted, as discussed in the body of this order.

(C) SoCal Edison's request is denied regarding additional ROE incentive adders, as discussed in the body of this order.

(D) SoCal Edison is directed to submit a filing within 30 days of CAISO execution of LGIAs triggering the need for the third 220/115 kV transformer bank at the Ivanpah substation and installation and energization of the second 220 kV circuit of the double circuit line, or an order by the CPUC to install these facilities as part of the initial construction of the EITP; as discussed in the body of this order.

By the Commission. Commissioner Moeller concurring with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Southern California Edison Company — Docket Nos. EL10-1-001, EL10-1-002

(Issued October 29, 2010)

MOELLER, Commissioner, *concurring:*

Today's decision reverses our earlier determination to grant a transmission incentive of 100-basis points because the applicant failed to meet the conditions placed on the approval in the Commission's order on Petition for Declaratory Order,[1] namely meeting the requirements of Federal Power Act (FPA) section 219 and Order No. 679. However, because the project faces significant risks and challenges in meeting California policy goals and time constraints imposed by the American Recovery and Reinvestment Act, we appropriately grant, under section 205 of the FPA, abandoned plant and CWIP incentives. These incentives will help build transmission lines to deliver renewable energy to consumers in California and will help protect ratepayers from the risk of stranded investment if the project is abandoned for reasons beyond the applicant's control.

This nation continues to have a critical need for appropriately placed and sized infrastructure projects to meet both reliability and public policy needs. Accordingly, I remain mindful that incentives play an important role and I will continue to determine the merits of each request on an individual basis.

Philip D. Moeller
Commissioner

[1] *Southern California Edison Co.*, 129 FERC ¶ 61,246 (2009).