133 FERC ¶ 61,107
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 No. EL10-81-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued October 29, 2010)

1. On August 4, 2010, Southern California Edison Company (SoCal Edison) filed a petition for declaratory order (Petition) pursuant to Rule 207 of the Commission's Rules of Practice and Procedure.[1] SoCal Edison requests Commission approval of certain incentive rate treatments for the proposed Lugo-Pisgah Transmission Project (Lugo-Pisgah) and the Red Bluff Substation Project (Red Bluff) (collectively, Projects) under Federal Power Act (FPA) section 219[2] and Order No. 679.[3]

2. In this order, we find that SoCal Edison has not satisfied the requirements of FPA section 219 and Order No. 679. For example, SoCal Edison is not entitled to the rebuttable presumption established in Order No. 679 that the Projects would improve reliability or reduce the cost of delivered power by reducing transmission congestion because the Projects have been neither reviewed through California Independent System Operator Corporation's (CAISO) transmission planning process nor approved by an appropriate state commission or state siting authority.

3. However, the Commission's authority to grant policy-based incentives is well-established under section 205 of the FPA[4] and exists in addition to our implementation of

[1] 18 C.F.R. § 385.207 (2010).

[2] 16 U.S.C. § 825s (2006).

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

[4] 16 U.S.C. § 824d (2006).

FPA section 219 through Order No. 679. We find that certain of the incentives that SoCal Edison requests for the Projects are justified in light of a combination of policy reasons including the exigencies of the deadlines imposed by the American Recovery and Reinvestment Act (ARRA),[5] the potential that the ARRA funding may foster renewable project development, the public policy benefits that the Projects will provide in terms of the integration of location-constrained renewable resources and their contribution to meeting California's Renewable Portfolio Standard (RPS) requirements, and the scope of and risks associated with the Projects. Therefore, consistent with these public policy considerations, we grant SoCal Edison's requests for recovery of 100 percent construction work in progress (CWIP) and recovery of 100 percent of prudently-incurred abandoned plant costs if either Project is cancelled or abandoned for reasons beyond SoCal Edison's control.

I. Background

A. Description of the Projects

4. The proposed Lugo-Pisgah Project involves the following key features: (1) a new Pisgah 500/220 kV Substation; (2) 220 kV and 500 kV substation facilities at the existing CAISO-controlled Lugo Substation; (3) approximately sixty-seven miles of new 500 kV alternating current transmission line, utilizing single circuit towers, between the new Pisgah 500/220 kV Substation and existing CAISO-controlled Lugo Substation; (4) installation of telecommunication facilities; and (5) use of a special protection system.

5. SoCal Edison states that the Lugo-Pisgah transmission corridor has been identified as a key path for the transfer of renewable generation from resources located in the sparsely populated Mojave Desert to population centers in Southern California. SoCal Edison also states the Lugo-Pisgah project will support the interconnection of at least 1,400 MW of new renewable generation. SoCal Edison estimates that the total cost for the Lugo-Pisgah project will be approximately $740 million. The estimated in-service date for the Lugo-Pisgah project is 2017.

6. Red Bluff is a proposed substation to be constructed near Desert Center, California involving the following key features: (1) a new Red Bluff 500/220 kV Substation; (2) a new transmission loop to the existing CAISO-controlled Devers-Palo Verde 500kV Transmission Line; (3) a new transmission loop to the planned CAISO-controlled

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[5] "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).

Devers-Colorado River 500 kV Transmission Line;[6] (4) installation of telecommunications facilities; and (5) use of a special protection system. SoCal Edison states that initially, the substation will be used to interconnect 1,050 MW of new renewable generation. SoCal Edison estimates that Red Bluff will cost approximately $213 million. The estimated in-service date for Red Bluff is 2013.

B. SoCal Edison's Petition and Proposed Incentives

7. SoCal Edison states that it is seeking narrowly-tailored incentive rate treatment for the Projects, consistent with Order Nos. 679 and 679-A as well as subsequent decisions implementing those orders, and that each requested incentive is rationally related to the proposed investments.[7] Specifically, SoCal Edison requests: (1) a 150-basis point adder to SoCal Edison's base return on equity (ROE) that will be applied to the Lugo-Pisgah Project and a 100-basis point adder to SoCal Edison's base ROE that will be applied to the Red Bluff Project (together, the ROE Incentive Adders), which would be in addition to the 50-basis point adder previously granted by the Commission to SoCal Edison for its CAISO participation;[8] (2) inclusion of 100 percent of CWIP for the Projects in rate base; and (3) recovery of 100 percent of prudently-incurred abandoned plant costs if either Project is cancelled or abandoned for reasons beyond SoCal Edison's control.

8. SoCal Edison also requests that the Commission declare the Project facilities to be network facilities, eligible to be rolled into SoCal Edison's Commission-jurisdictional transmission revenue requirement (TRR).

9. Finally, SoCal Edison requests that the Commission act upon its Petition within 60 days. SoCal Edison emphasizes that the Projects are under extremely aggressive licensing timelines, as the solar developers seeking interconnection to the electrical grid via interconnection to the Projects are seeking financial incentives as provided pursuant

[6] SoCal Edison states that the transmission loop to the planned CAISO-controlled Devers-Colorado River 500 kV Transmission Line is triggered by Solar Millennium's Palen Project. All of the other portions of Red Bluff are triggered by the First Solar Project.

[7] SoCal Edison is not requesting incentive ratemaking treatment for employing innovative transmission technologies; nevertheless, the Petition includes a technology statement for the Projects, as required by Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 302.

[8] *See Southern California Edison Co.*, 121 FERC ¶ 61,168, at P 158 (2007), *reh'g denied*, 123 FERC ¶ 61,293 (2008).

to the ARRA, which requires that these developers' generation projects break ground by December 31, 2010.

II. Notice of Filings and Responsive Pleadings

10. Notice of SoCal Edison's Petition was published in the *Federal Register*, 75 Fed. Reg. 49,929 (2010), with interventions and comments due on or before September 3, 2010.

11. The California Public Utilities Commission (CPUC) filed a notice of intervention and protest. Timely motions to intervene, raising no substantive issues, were filed by Desert Southwest Power, Green Energy Express and 21st Century Transmission. Timely motions to intervene, comments, and protests were filed by CAISO; Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (collectively, Six Cities); California Municipal Utilities Association (CMUA); California Department of Water Resources State Water Project (SWP); Modesto Irrigation District (Modesto);[9] the M-S-R Public Power Agency and the City of Santa Clara, CA (collectively, MSR/Santa Clara); Transmission Agency of Northern California (TANC); State Water Contractors and the Metropolitan Water District of Southern California (SWC/Metropolitan); Northern California Power Agency (NCPA); Pattern Transmission; Sacramento Municipal Utility District (SMUD),[10] and Western Independent Transmission Group (WITG). A motion to intervene out-of-time was filed by Los Angeles Department of Water & Power (LADWP).

12. Timely motions to intervene and comments in support of the Petition were filed by Calico Solar, Desert Sunlight Holdings (Desert Sunlight) and the Large-Scale Solar Association (LSA). SoCal Edison, Six Cities and Desert Sunlight filed answers on September 20, 2010. On September 29, 2010, Six Cities filed an answer to SoCal Edison's answer.

III. Discussion

A. Procedural Matters

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

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[9] Modesto supports the position of TANC.

[10] SMUD supports the positions of TANC and Six Cities.

grant the unopposed, late-filed motion to intervene of LADWP, given its interest in this proceeding, the early stage of the proceeding, and the lack of undue prejudice or delay.

14. 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 and/or answer unless otherwise ordered by the decisional authority. We will accept the answers of SoCal Edison, Six Cities and Desert Sunlight because they have provided information that assisted us in our decision-making process.

B. FPA Section 219 Analysis

1. Ensuring Reliability/Reducing Congestion

15. In Order No. 679, the Commission stated that an applicant for transmission rate incentives pursuant to FPA section 219 must demonstrate that the facilities for which it seeks incentives satisfy the requirements of FPA section 219 by either ensuring reliability or reducing the cost of delivered power by reducing transmission congestion.[11] The Commission established a rebuttable presumption that a project is eligible for incentives under section 219 if it: (1) results from a fair and open regional planning process that considers and evaluates projects for reliability and/or congestion and is found to be acceptable to the Commission; or (2) has received construction approval from an appropriate state commission or state siting authority.[12] However, the Commission has stated that a project that does not qualify for the rebuttable presumption may nevertheless satisfy the section 219 standards if the project sponsor presents a factual record supporting a finding that the project is needed to maintain reliability or reduce congestion.[13] In order to meet this requirement, a project sponsor may present detailed studies, engineering affidavits, or state siting approvals demonstrating that the section 219 criteria are met.[14]

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[11] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 57-58.

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

[13] *Id*. P 57.

[14] *See Duquesne Light Co.*, 118 FERC ¶ 61,087, at P 68 (2007); *see also Green Power Express*, 127 FERC ¶ 61,031, at P 41 (2009).

2. Nexus Between the Projects and the Incentives

16. In addition to satisfying the requirement that a project ensure reliability or reduce the cost of delivered power by reducing congestion, an applicant must demonstrate that there is a nexus between the incentive sought and the investment being made. In Order No. 679-A, the Commission clarified that the nexus test is met when an applicant demonstrates that the total package of incentives requested is "tailored to address the demonstrable risks or challenges faced by the applicant."[15]

17. As part of the evaluation of whether the incentives requested are tailored to address the demonstrable risks or challenges faced by the applicant, the Commission has found the question of whether a project is "routine" to be particularly probative. In *BG&E*, the Commission provided guidance on the factors that it will consider when determining whether a project is routine.[16] The Commission stated that it will consider all relevant factors presented by the applicant, including evidence on: (1) the scope of the project (e.g., dollar investment, increase in transfer capability, involvement of multiple entities or jurisdictions, size, effect on region); (2) the effect of the project (e.g., improving reliability or reducing congestion costs); and (3) the challenges or risks faced by the project (e.g., siting, long lead times, regulatory and political risks, specific financing challenges, other impediments). The Commission also explained that when an applicant has adequately demonstrated that the project for which it requests an incentive is not routine, that applicant has shown, for purposes of the nexus test, that the project faces risks and challenges that merit an incentive.[17]

3. SoCal Edison's Proposal and FPA Section 219

a. Reliability/Congestion and the LGIP Process

18. SoCal Edison states that its request for incentives is consistent with the requirements of FPA section 219, Order No. 679, and the subsequent Commission decisions implementing that order. SoCal Edison states the Projects here have been developed through CAISO's generator interconnection process, a process that considers and evaluates projects for reliability and/or congestion relief. SoCal Edison states the need for these Projects is demonstrated through the interconnection studies sponsored by

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[15] Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 40.

[16] *Baltimore Gas & Elec. Co.*, 120 FERC ¶ 61,084, at P 52-55 (2007), *order denying reh'g*, 123 FERC ¶ 61,262 (2008) (*BG&E*).

[17] *Id*. P 54.

CAISO in the development of Large Generator Interconnection Agreements (LGIA),[18] which are approved and executed by CAISO.[19] SoCal Edison argues that the evidence presented in its Petition demonstrates that the Projects meet the rebuttable presumption through CAISO approval of the LGIAs, which, argues SoCal Edison, confirms that the Projects are needed to remedy reliability and congestion problems that would otherwise result from the interconnection of the generation without construction of these Projects.

19. SoCal Edison states that the Commission has accepted large generator interconnection process (LGIP) studies to support transmission rate incentives under Order No. 679. SoCal Edison points to its submission of an LGIP study performed by the CAISO to support SoCal Edison's incentive rate petition for a series of transmission upgrades needed to integrate renewable wind energy projects from the Tehachapi region within the CAISO-controlled transmission grid.[20]

b. <u>Nexus Between the Projects and the Incentives</u>

20. SoCal Edison states that a nexus exists between the Projects and incentives requested because the incentives will provide SoCal Edison with increased cash flow at a time when it is financing a significant expansion and upgrade. SoCal Edison states that this is particularly true given the non-routine scope of the Projects – SoCal Edison estimates that the total combined cost for the Projects will be approximately $953 million.

21. Moreover, SoCal Edison states it faces significant commercial and licensing risks with respect to the Projects and that recovery of its costs largely depends on the actions of

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[18] SoCal Edison, CAISO and Calico Solar have executed an LGIA for 850 MW of solar generation to be interconnected on the Lugo-Pisgah project. However, in Docket No. ER10-796-000, the Commission ordered SoCal Edison to bifurcate the LGIA into two separate LGIAs since Calico Solar had agreed to fund the network upgrades in Phase I and as SoCal Edison had not yet filed its request for abandoned plant treatment for Phase II. SoCal Edison and Calico have filed rehearing requests in that docket, which remain pending. Nevertheless, according to SoCal Edison, CAISO has approved Lugo-Pisgah through execution of the LGIA. SoCal Edison, CAISO and First Solar have also executed an LGIA for 550 MW of solar generation to be interconnected on the Red Bluff project. *See* Docket ER10-2169-000, *Southern California Edison Co.*, 133 FERC ¶ 61,019 (2010).

[19] *See* 18 C.F.R. § 35.35(i)(1) (2010).

[20] Petition at 21 (citing *Southern California Edison Co.*, 123 FERC ¶ 61,293).

the generation developers. SoCal Edison states that the Projects require numerous determinations from regulatory agencies (at least 42 in total across several jurisdictions).

22. SoCal Edison next argues that the Projects are not routine in their effects. SoCal Edison states that its proposed Projects will provide substantial regional benefits by advancing the Commission's and the State of California's expressed interest in fostering development of renewable energy resources. The Projects provide a path to market for a number of potential location-constrained renewable resources and contribute to the ability of SoCal Edison and others to meet the California RPS targets. SoCal Edison states that the California RPS is one of the most ambitious renewable energy standards in the United States. The existing RPS sets a target for California's load serving entities, to utilize renewable resources in supplying 20 percent of their customers' electricity requirements. Moreover, SoCal Edison indicates that the Governor of California has issued an executive order increasing the RPS target to 33 percent by 2020, and legislation is under consideration to make that order law.[21]

23. SoCal Edison states that, in their initial configurations, the Projects will be capable of delivering at least 2,450 MW of renewable energy from solar generation resources in the Mojave Desert to loads in Southern California. Moreover, SoCal Edison has indicated that there are three proposed solar energy projects, comprising 1,650 MW of potential generation, seeking interconnection to Lugo-Pisgah. Additionally, SoCal Edison states that Lugo-Pisgah will improve the transfer capability of the generation located to the east of Pisgah Substation, allowing for delivery of additional resources interconnecting at SoCal Edison's Eldorado Substation or to the high-voltage transmission lines on either side of Pisgah Substation. SoCal Edison proffers there are 13 projects comprising 5,739 MW of generation proposing to interconnect to, or that will utilize the transfer capability provided by, Lugo-Pisgah project.[22] As for Red Bluff, there are four generation projects, comprising 2,550 MW of potential generation, seeking access to the Red Bluff project via the CAISO interconnection process, with three being solar generation facilities and one a pumped hydro facility.

[21] *Id.* at 6 (citing California Executive Order S-21-09, September 15, 2009, *available at* http://gov.ca.gov/index.php?/executive-order/13269/).

[22] According to SoCal Edison, these consist of nine solar projects, three wind projects and one combustion turbine. Petition Aff. Ex. B at 3-4.

4. Comments and Protests

a. Reliability/Congestion and the LGIP Process

24. Six Cities, MSR/Santa Clara, SWC/Metropolitan, TANC, Modesto, SWP, NCPA, SMUD, CMUA, Pattern Transmission, and WITG (collectively, Protestors) argue that SoCal Edison has not made a sufficient showing that the Projects would improve reliability, reduce congestion or reduce the cost of delivered power. Nor, argue the Protestors, has SoCal Edison sought review of the Projects through CAISO's transmission planning process or by an appropriate state authority. Thus, Protestors ask the Commission to conclude that SoCal Edison does not qualify for the rebuttable presumption in favor of incentive rates for the Projects.

25. Overall, Protestors express concern with SoCal Edison's perceived "end-run" of the comprehensive CAISO transmission planning process. Protestors argue that the LGIP is not the type of transparent and open planning process envisioned by Order No. 679. They state that a Commission decision allowing SoCal Edison to rely on approval through the CAISO's LGIP would undermine the Commission's efforts to reform RTO/ISO transmission planning processes generally and the efforts of participants in Docket No. OA08-62.[23] SMUD asserts that permitting automatic approval of incentive rates for projects resulting in LGIAs would effectively relieve project developers from making any substantive FPA section 219 showing, and would remove a critical incentive for participating in the regional transmission planning process.[24]

26. TANC maintains that an ISO/RTO approval of transmission interconnection (through an LGIP or otherwise) does not demonstrate that a project has been determined through an open and transparent regional process to ensure reliability or reduce the cost of delivered power by reducing transmission congestion.[25] TANC provides that the Commission has never held that approval of required network upgrades through an ISO/RTO large generator interconnection planning study process is sufficient to satisfy the rebuttable presumption standards.[26] Six Cities urge the Commission to rule that the

[23] MSR/Santa Clara Protest at 21.

[24] SMUD Protest at 7.

[25] TANC Protest at 13.

[26] TANC Protest at 11.

projects should not be entitled to transmission based pricing incentives until CAISO's approval of the Projects through its transmission planning process.[27]

27. Protestors argue that the LGIP and the CAISO transmission planning process are also different in scope. Protestors state that unlike a regional planning process that is focused on development of the transmission grid as a whole, the focus of the LGIP is merely on the narrow question of whether and how the current transmission grid can accommodate the proposed generator interconnection.[28] CMUA states that interconnection studies are not subject to the cost/benefit analysis that is the core function of the CAISO transmission planning process, and are therefore not a substitute for consideration as part of the CAISO transmission plan.

28. Several Protestors state that the LGIP does not provide a public comment period or engage a regional dialog on the benefits of a proposed interconnection; rather, in the LGIP, third parties are informed of a generator's interconnection request by CAISO only if CAISO determines that the proposed interconnection would impact third party systems.[29]

29. Several Protesters contend that SoCal Edison erroneously draws parallels between the Commission's treatment of the Tehachapi Transmission Project (Tehachapi) and the Projects here. They contend that while the Commission approved incentive rate treatment for the Tehachapi project, that approval was not based solely on executed LGIAs between parties, or upon an LGIP study. Rather, in the case of the Tehachapi project, the CAISO acknowledged that it had studied the interconnection of the Tehachapi generators within the context of its transmission planning process and that SoCal Edison had obtained the ultimate approval of the Tehachapi project from the CAISO board. That is not the case for the Lugo-Pisgah and Red Bluff Projects.[30] Moreover, TANC notes that unlike the Projects here, the Tehachapi project had received siting approval from the California Public Utilities Commission, which provided the Tehachapi project with an independent basis to claim a rebuttable presumption.

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[27] Six Cities Protest at 10.

[28] CMUA Protest at 7.

[29] *See, e.g.*, SMUD Protest at 6.

[30] MSR/Santa Clara Protest at 15. MSR/Santa Clara Protest also notes that LGIAs are not subject to CAISO Board approval.

30. WITG states that if the Commission grants SoCal Edison's Petition, it will endorse SoCal Edison's attempts to circumvent the regional planning process by getting approval for large-scale and very costly projects through the generation interconnection process while independent transmission owners do not have the ability to bypass the process through the execution of an LGIA. WITG maintains that such an outcome would result in undue discrimination against independent transmission owners and would undermine the Commission's efforts to level the playing field. WITG also asserts that granting the presumption based on an LGIA would cause undue harm to California ratepayers by crowding out independent transmission developers, and therefore remove from the process any downward pressure on transmission costs and customer electricity rates.[31] Similarly, NCPA offers that opening up construction of LGIP upgrades to competition could provide some ratepayer protection.

31. WITG states that in the regional transmission planning process (RTPP) case,[32] CAISO is interpreting the LGIP process as being exclusively reserved for incumbent participating transmission owners (PTO).[33] WITG argues that it would be unduly discriminatory to grant rate incentives, recoverable through the Transmission Access Charge, via a planning process applicable to a category of network transmission that only incumbents can build and own. WITG states that under the RTPP, Lugo-Pisgah and Red Bluff Projects should be classified as policy-driven projects subject to the competitive bidding process. WITG asserts that under this scenario, SoCal Edison would not have the right to build the Projects.

32. WITG also notes that it has proposed projects in both the 2008/2009 transmission planning process request windows and in both instances have followed the effective tariff. WITG and Pattern Transmission express frustration at CAISO's unexplained and persistent delay in evaluating the economic projects submitted in the request windows and note that many of the proposed projects would satisfy the same reliability and policy-driven interests as SoCal Edison's Projects, but at a reduced cost.[34]

33. Given the developing relationship between LGIP and the transmission planning process (under both the current CAISO tariff and the proposed RTPP), WITG, Pattern

[31] WITG Protest at 3.

[32] Docket No. ER10-1401-000.

[33] WITG Protest at 6.

[34] WITG Protest at 12.

Transmission and Six Cities request that the Commission defer action on SoCal Edison's Petition until the new RTPP process is approved.

34. Pattern Transmission requests that if the Commission does act on SoCal Edison's request now, it should provide that such determination does not "grandfather" the projects under the transmission planning process and does not prevent consideration of those proposals in the comprehensive planning process to be implemented through the RTPP.

35. Desert Southwest urges the Commission to take steps to ensure that projects originating out of different processes (i.e., LGIP versus transmission planning process) and from different classes of developers (i.e., incumbent PTOs versus non-incumbent independent transmission developers) are evaluated on the same basis with respect to their eligibility for the same rate incentives. Desert Southwest argues that to do otherwise would unfairly discriminate against developers that do not have access to the LGIP and are currently stalled in the CAISO transmission planning process through no fault of their own.[35]

36. CAISO states that network upgrades are determined to be needed to accommodate a generator interconnection request through the performance of generator interconnection studies. An LGIA is then executed that establishes the commitment of the parties to construct these network upgrades. CAISO confirms that once the LGIA is executed, the network upgrades identified in it are considered by CAISO to be needed and are incorporated into the modeling assumptions (base case) for transmission planning studies for the next annual planning cycle.

37. LSA requests that the Commission clarify that PTOs may rely on LGIP studies to support requests for transmission rate incentives, and that CAISO approval of network upgrades through the LGIP are eligible for the rebuttable presumption. LSA states that currently, CAISO conducts no transmission planning process that separately assesses the reliability or congestion benefits of network upgrades identified through the generator interconnection process. Accordingly, LSA maintains, the generator interconnection process is the appropriate and only possible planning process for such projects to be currently reviewed and approved by CAISO.[36]

38. Desert Sunlight opposes Pattern Transmission's and WITG's request that the Commission defer its ruling on SoCal Edison's Petition until CAISO's RTPP is finalized

[35] Desert Southwest Comments at 3.

[36] LSA Protest at 7.

and put into effect. Desert Sunlight states that it and other solar energy developers are currently seeking loan guarantees from the Department of Energy under the ARRA and assert that they cannot afford a delay in the Commission's ruling. Desert Sunlight states that requests to delay the Commission's decision in this proceeding should be denied.

b. Nexus Between the Projects and the Incentives

39. Protestors and CPUC argue that SoCal Edison's petition fails the nexus test because it provides no justification between the proposed incentives and the transmission projects. MSR/Santa Clara argue SoCal Edison's requested incentives would overcompensate it for the actual risks faced.[37]

40. TANC maintains that the Commission should carefully tailor, to the extent incentives are approved, the dollar value associated with the total package of incentives requested for the Projects to reflect SoCal Edison's actual risk and needs given that part of the goal for encouraging transmission development was to reduce cost of delivered power.[38]

41. Protesters contend that SoCal Edison created the very risk that it now asks the Commission to reward with incentives, and that the total package of incentives is not tailored to address the specific risks SoCal Edison faces.

42. MSR/Santa Clara, SWC/Metropolitan and SMUD state that the Projects are routine in nature due to their limited scope, their effect in improving reliability and congestion, and in terms of challenges or risks. MSR/Santa Clara argues that the fact that SoCal Edison requested CAISO approval through the interconnection process (rather than the transmission planning process) demonstrates that SoCal Edison considers the Projects to be limited in scope. Further, MSR/Santa Clara notes that SoCal Edison's Petition does not describe another need for these Projects other than the interconnection of these generators.[39] MSR/Santa Clara argue that interconnections do not constitute new transmission facilities per Order Nos. 679 and 679-A.[40] With regard to effect of the Projects, MSR/Santa Clara state that SoCal Edison fails to offer any evidence of reliability or congestion benefits that could result from the projects but offers evidence

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[37] MSR/Santa Clara Protest at 22.

[38] TANC Protest at 21.

[39] *Id.* at 25.

[40] *Id.* at 26.

that the projects can deliver renewable resources to the CAISO grid, which is not a justification for incentives.[41]

5. Commission Determination

43. We find that SoCal Edison has not made a sufficient independent showing under FPA section 219 that the Projects would improve reliability or reduce the cost of delivered power by reducing transmission congestion. Nor have the Projects been reviewed through CAISO's transmission planning process or approved by an appropriate state commission or state siting authority. Thus, we find that SoCal Edison also is not entitled to the rebuttable presumption established in Order No. 679.

44. We find that SoCal Edison's reliance in its Petition 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.[42] In this case, the LGIA was not considered as part of the CAISO transmission planning process, and no party argues that it was.

45. 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; 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.

46. For these reasons, we find that SoCal Edison has failed to satisfy the first prong of the FPA section 219/Order No. 679 test. Having so found, we need not make any determination with respect to the second prong – the "nexus" test – in this order.[43]

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

[42] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 57-58. Even where an applicant for incentives is not eligible for the rebuttable presumption established in Order No. 679, it can still satisfy FPA section 219 "if the project sponsor presents a factual record supporting a finding that the project is needed to maintain reliability or reduce congestion." *See supra* P 15. SoCal Edison has made no such showing.

[43] The Commission has previously granted FPA section 219 transmission rate incentives to SoCal Edison conditioned upon the approval of projects in the CAISO's

(continued…)

C. Public Policy Analysis

1. SoCal Edison's Proposal

47. Alternatively, SoCal Edison argues that in the event the Commission finds the Projects have not met the standard set forth in Order No. 679, public policy considerations nevertheless dictate that the Commission should grant SoCal Edison authority to recover 100 percent of prudently-incurred costs if either of the Projects is cancelled or abandoned for reasons beyond SoCal Edison's control.

48. In support of its public policy arguments, SoCal Edison states: (1) the Projects are not routine in either scope or effect; (2) the Lugo-Pisgah transmission corridor has been identified by the California Renewable Energy Transmission Initiative (RETI)[44] and the California Transmission Planning Group (CTPG)[45] as a key path for the transfer of renewable generation from resources located in the sparsely populated Mojave Desert to population centers in Southern California; (3) the Projects will provide substantial regional benefits by advancing the Commission's and the State of California's expressed

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transmission planning process. *See Southern California Edison Co.*, 129 FERC ¶ 61,246 (2009). Because we find here that certain of the incentives that SoCal Edison requests for the Projects are justified in light of a combination of policy reasons, without relying on FPA section 219, we also in this order do not address the potential for conditional approval of FPA section 219 incentives.

[44] RETI is a statewide initiative to help identify the transmission projects needed to accommodate California's renewable energy goals, support future energy policy, and facilitate transmission corridor designation and transmission and generation siting and permitting. RETI also assesses all competitive renewable energy zones in California and possibly also in neighboring states that can provide significant electricity to California consumers by the year 2020. *See* http://www.energy.ca.gov/reti/index.html.

[45] As explained by SoCal Edison (Petition at 25), CTPG is a California regional transmission planning organization, organized consistent with Order No. 890, (*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)), charged with developing a conceptual plan for expanding the state's electric transmission grid to provide access to renewable energy resource areas necessary to meet state energy goals. CTPG participants include CAISO, investor-owned utilities, publicly owned utilities, generation developers and many other interested stakeholders.

interest in fostering development of renewable energy resources; (4) the Projects provide a path to market for a number of potential location-constrained renewable resources; (5) the Projects contribute to SoCal Edison's and others' ability to meet the California RPS targets; and (6) the solar developers seeking interconnection to the Projects are in danger of losing their financial stimulus incentives as provided under the ARRA.

49. Regarding the ARRA stimulus incentives, SoCal Edison states that it has been informed by Calico Solar, the solar developer seeking interconnection to Lugo-Pisgah, that Calico Solar is pursuing federal stimulus funding provided by the U.S. Treasury Department and the U.S. Department of Energy (DOE), under programs implemented by ARRA. SoCal Edison explains that there are strict construction and operational deadlines associated with qualification for ARRA funding, whereby a developer must commence construction by either December 31, 2010 (for the Treasury Grant in lieu of investment tax credit program), or September 30, 2011 (for the DOE Loan Guarantee Programs).[46]

50. SoCal Edison further reports that First Solar and Solar Millennium, the solar developers seeking interconnection to Red Bluff, are also pursuing federal stimulus funding provided under ARRA.[47]

51. SoCal Edison urges that, as with any other form of project financing, the sooner that the Commission issues its order on this Petition, the sooner SoCal Edison can commit to finance network upgrades, thus providing the certainty that generators need in order to secure ARRA and other forms of project financing.[48]

2. <u>Comments and Protests</u>

52. Both Calico Solar and Desert Sunlight confirm they have applied for ARRA incentives, and urge the Commission to expeditiously grant SoCal Edison's Petition in order to secure financing and qualify for these stimulus funds.[49]

53. Desert Sunlight, LSA and Calico Solar (collectively, Independent Solar Generators) support SoCal Edison's Petition and argue that if the Commission does not grant SoCal Edison's request for 100 percent abandoned plant recovery, Independent

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[46] *See* Petition at 1, 8.

[47] *Id*. at 8, 18.

[48] *Id*. at 8.

[49] Calico Solar Comments at 2, 5; Desert Sunlight Comments at 3.

Solar Generators would be required to finance the costs of upgrades. Independent Solar Generators state that this additional financial burden would create an obstacle to their ability to finance and construct solar projects and could jeopardize the financing and construction of at least some of the proposed generation. Independent Solar Generators state that up-front financing costs can be a crippling burden for generation developers, who have high cost of capital. Independent Solar Generators argue SoCal Edison funding would be more cost-effective for ratepayers, who ultimately bear the costs, as compared to financing by independent renewable energy generators.

54. Desert Sunlight agrees with SoCal Edison and states that if the Commission finds that Order No. 679 standards are not met in this case, the Commission at least should authorize 100 percent abandoned plant recovery under its additional authority to approve rate treatments that promote public policy goals under standards that exist independent of Order No. 679.[50] Desert Sunlight argues that outside the context of Order No. 679, the Commission has allowed 100 percent abandoned plant recovery in several cases involving network transmission upgrades necessary to deliver renewable generation.[51] Desert Sunlight argues that prior to the issuance of Order No. 679, the Commission recognized that it had the authority to grant 100 percent abandoned plant recovery for transmission network upgrades on a case-by-case basis.[52]

55. Desert Sunlight points to a recent case in which Pacific Gas & Electric (PG&E) requested 100 percent abandoned plant recovery for a large transmission project that would be used to deliver new renewable energy resources. Desert Sunlight states that there the Commission found that PG&E did not satisfy the requirements to receive 100 percent abandoned plant recovery as an incentive-based rate treatment under Order No. 679.[53] However, the Commission granted PG&E's request for 100 percent abandoned plant recovery for the costs of transmission project under the Commission's "authority to grant incentives that promote particular policy objectives" which authority the Commission found to be in addition to its policy under Order No. 679.[54]

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[50] Desert Sunlight Comments at 8.

[51] *Id.* (citing *Southern California Edison Co.*, 112 FERC ¶ 61,014, *reh'g denied*, 113 FERC ¶ 61,143 (2005); *San Diego Gas & Elec. Co.*, 98 FERC ¶ 61,332, *reh'g denied*, 100 FERC ¶ 61,073 (2002); *Pac. Gas & Elec. Co.*, 123 FERC ¶ 61,067 (2008)).

[52] Desert Sunlight Comments at 8.

[53] *Id.* (citing *Pac. Gas & Elec. Co.*, 123 FERC ¶ 61,067 at P 32).

[54] *Id.* (citing Order 679-A, FERC Stats. & Regs. ¶ 31,236 at P 21 n.37).

56. Independent Solar Generators argue that the Projects are essential to interconnect and deliver 2,450 MW of new renewable generation in order to satisfy California's renewable energy standards. Independent Solar Generators state that granting 100 percent abandoned plant recovery will promote the important Commission policy goal of facilitating the development of clean, new renewable electric generation.

57. Six Cities opposes SoCal Edison's request that the Commission should grant it incentives based on public policy reasons if the Commission concludes that Order No. 679 criteria have not been meet.[55] Six Cities states that SoCal Edison offered no evidentiary support for its claims that immediate and unconditional approval of its request for incentives is necessary to support ARRA funding for interconnecting generators, and that those claims are implausible given the early stage of the Projects' development.[56]

58. Six Cities notes that irrespective of the difficulties that Desert Sunlight will have in meeting its obligation to finance the Red Bluff upgrades if SoCal Edison is not awarded 100 percent abandoned plant recovery, Six Cities attests that the Commission's normal abandoned plant policy of 50 percent / 50 percent allocation of abandoned plant cost will adequately protect SoCal Edison shareholders from abandonment risk.[57] Six Cities argues that the Commission's normal policy is adequate because the upgrades will benefit shareholders as much as transmission ratepayers. Therefore, Six Cities states that the 100 percent abandoned plant incentive as a pre-condition to SoCal Edison's up-front financing commitment is unreasonable to ratepayers and exposes them to an undue degree of risk.

59. Similarly, NCPA, TANC, and CMUA argue that SoCal Edison should not be allowed to use the promotion of renewable generation or the solar developers' urgency to adhere to time-sensitive construction deadlines in order to secure funding from investors, including the federal government via ARRA, as a "club to bludgeon" the Commission's policies for open and transparent transmission planning.[58] TANC asserts that by virtue of the pre-condition imposed by SoCal Edison itself, it is SoCal Edison that is contributing to the risk that the solar projects, which could otherwise support SoCal Edison's RPS

[55] Six Cities Protest at 5; Six Cities Answer at 7-8.

[56] Six Cities Protest at 25.

[57] *Id.* 28-33; Six Cities Answer at 8.

[58] NCPA Protest at 4-5; TANC Protest at 18; CMUA Protest at 3.

obligations, might not be developed.[59] CMUA also states that SoCal Edison's attempt to link potential failure to develop the Projects or the associated solar generation project investment to a 60-day timeframe for action by the Commission on the Petition is offensive to due process and sound policy making.[60]

3. **Commission Determination**

60. Prior to Order No. 679, we recognized our inherent authority to approve rate incentives when they would promote the Commission's policies.[61] 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.[62] In exercising this authority before the issuance 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 the 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.[63] Further, outside the context of incentives granted pursuant to FPA section 219, we have considered whether the proposed project helps to access renewable energy to meet state RPS requirements.[64]

61. Of significance, Order No. 679 did not extinguish, and in fact expressly preserved, this pre-existing Commission authority:

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[59] TANC Protest at 18.

[60] CMUA Protest at 3.

[61] *See, e.g., Southern California Edison Co.*, 112 FERC ¶ 61,014, *reh'g denied*, 113 FERC ¶ 61,143 (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 (Commission to allow full recovery of abandoned transmission project costs where appropriate).

[62] *See, e.g., Pac. Gas & Elec. Co.*, 123 FERC ¶ 61,067; *Southern California Edison Co.*, 112 FERC ¶ 61,014.

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

[64] *Id., see also Pac. Gas & Elec. Co.*, 123 FERC ¶ 61,067 at P 33-34.

> 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 (D.C. Cir. 2006). See also Permian Basin Area Rate Cases, 390 U.S. 747 (1968) (Permian).[65]

62. 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.[66]

63. 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.[67]

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

[66] *See Pac. Gas & Elec. Co.*, 123 FERC ¶ 61,067 at P 33.

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

64. As discussed, the Commission has often recognized the important public policy in favor of promoting new renewable generation.[68] Adding urgency to our public policy evaluation, the developers have stated that they have applied for ARRA funding and have urged that we grant SoCal Edison the incentives to enable the developers to qualify for the funds; SoCal Edison has also emphasized that the ARRA funding could be jeopardized if we do not grant incentives. We would be remiss in our responsibilities were we to disregard the rapidly-approaching ARRA deadlines the solar developers have stated they face, whereby they must break ground as soon as the end of this year.

65. The Projects here represent a significant investment that would deliver significant amounts of otherwise location-constrained renewable energy from the Mojave Desert. We also find that access to these proposed renewable resources will contribute towards meeting California's RPS goals.

66. In addition to the aforementioned public policy considerations, as discussed *infra*, we are cognizant of the risks and uncertainties relevant to the development of these Projects. SoCal Edison has demonstrated that since Lugo-Pisgah is not expected to be in service until 2017 and Red Bluff is not expected to be in service until 2013, it will have exposure to uncertainties arising from future unforeseen circumstances during this time period. Next, SoCal Edison is proposing to expend substantial monies prior to obtaining all necessary approvals for the Projects, thereby exposing itself to the risk that the proposed generation that the Projects are being developed to serve may not materialize.

67. As to that issue, the Projects must receive at least 42 approvals from several agencies and jurisdictions, including the CPUC, the United States Fish and Wildlife Service, the Army Corps of Engineers, and the United States Department of Interior Bureau of Land Management among many others. In summary, the Projects face numerous financial, regulatory, environmental, and siting challenges.

68. Therefore, based on our public policy evaluation under section 205 of the FPA of 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

[68] *See., e.g., Southern California Edison Co.*, 112 FERC ¶ 61,014, *reh'g denied*, 113 FERC ¶ 61,143 (wind projects); *Pac. Gas & Elec. Co.*, 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-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).

renewable project development, the public policy benefits that the Projects 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 associate with the Projects, we will grant to SoCal Edison the requested CWIP and abandoned plant incentives, as detailed *infra*.

D. The Specific Incentives Requested

1. Construction Work In Progress

a. SoCal Edison's Proposal

69. SoCal Edison contends that recovery of 100 percent of CWIP in rate base will improve SoCal Edison's cash flow at a time when it is financing a significant expansion and upgrade of its transmission system.[69] Thus, SoCal Edison states that the Projects, with a projected cost of up to $953 million, will add to the financial burdens and risks associated with its transmission investment program.

70. SoCal Edison asserts that because it is expending large amounts of capital on transmission investments over the next several years, it is important for SoCal Edison to have an increased cash flow prior to the in-service date of the Projects. SoCal Edison adds that traditional rate recovery mechanisms would not allow it to recover the costs of construction until the projects is placed into service, which could serve as a barrier to transmission investment.[70] In addition, SoCal Edison contends that unless it is permitted to recover CWIP in rate base, its investors will have to wait over seven years before receiving a return on their investment which, SoCal Edison contends, would diminish the attractiveness of this investment.[71]

71. SoCal Edison also argues that allowing it to recover 100 percent of CWIP in rate base would facilitate financing and improve its coverage ratios used by rating agencies to determine credit quality and debt ratings.[72] Accordingly, SoCal Edison states that in the

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[69] SoCal Edison anticipates investing $5.5 billion in its transmission system over the next five years to interconnect renewable resources and maintain reliability. Petition at 40.

[70] *Id.* at 41.

[71] *Id.* at 40-41.

[72] *Id.* at 41.

long term, customers benefit from smoothing out large rate increases and stronger credit ratings for the utility, because the company will be able to obtain better financing terms that will ultimately be passed on to customers.

72. SoCal Edison asserts that, given the size and scope of its transmission investment plan relative to its current rate base, there will be a significant rate increase when the Projects are completed and added to rate base. SoCal Edison therefore argues that including CWIP in rate base would phase-in the rate increase during the construction period, and will result in a lower future rate base than would occur by accruing Allowance for Funds Used During Construction (AFUDC) until the in-service dates, thereby reducing rates in the future through a lower revenue requirement over the remaining life of the project.[73]

73. Finally, SoCal Edison proposes to include the CWIP for the Projects in the stand-alone balance account mechanism previously approved by the Commission, adding that this mechanism should be appropriate for inclusion in rate base of CWIP associated with the Projects.[74] SoCal Edison states that the Commission, in approving that account mechanism, determined that SoCal Edison has established the appropriate regulatory and accounting controls, adding that those controls will insure that CWIP for the Projects will be treated appropriately.

b. Comments and Protests

74. The only incentive that Six Cities and NCPA do not oppose is recovery of 100 percent of CWIP in rate base since it will mitigate any cash flow burden. They argue that the CWIP incentive alone would mitigate all risks and that therefore no other incentive should be granted.[75] Similarly, TANC argues that granting SoCal Edison's request for abandoned plant recovery and CWIP would substantially mitigate the risk it faces with these Projects.[76]

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[73] *Id.* at 42.

[74] *Id.* at 10 (citing *Southern California Edison Co.*, 122 FERC ¶ 61,187, at P 33 (2008)).

[75] *See, e.g.*, Six Cities Protest at 2.

[76] TANC Protest at 21.

c. **Commission Determination**

75. 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.[77] Such a rate treatment helps to provide up-front regulatory certainty, rate stability, and improved cash flow, reducing the pressures on an applicant's finances caused by investing in transmission projects.[78]

76. Based on our public policy analysis *supra*, we grant SoCal Edison's request to include 100 percent of CWIP in rate base, conditioned upon SoCal Edison fulfilling the Commission's requirements for CWIP inclusion for these transmission facilities in its future section 205 filing.[79]

77. The Projects will cost up to $953 million and are not expected to go into service until 2013 (Red Bluff) and 2017 (Lugo-Pisgah). The cost and timing for completing the Projects will put pressure on SoCal Edison's finances. Granting the CWIP incentive will help ease this pressure by providing improved cash flow, which will assist SoCal Edison with its financing, and improve SoCal Edison's coverage ratios used by rating agencies to determine credit quality by replacing non-cash AFUDC with cash earnings. This, in turn, will reduce the risk of a downgrade in SoCal Edison's debt ratings. Considering the relative size of SoCal Edison's investment in the Projects, as compared to its current transmission rate base, we find that authorization of the CWIP incentive is appropriate to assist in the construction of new transmission facilities.

78. Further, SoCal Edison's inclusion of 100 percent of CWIP in its rate base will help mitigate future significant rate increases and, thus, result in better rate stability for customers. As we have previously explained, without including CWIP in rate base, a new project has no direct effect on customer rates until it begins to provide service [80] If SoCal Edison were not permitted to include 100 percent of CWIP in rate base, and assuming SoCal Edison sought inclusion of 50 percent of CWIP in rate base pursuant to

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[77] *Cf.* Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 29, 117.

[78] *Id.* P 115.

[79] *Construction Work in Progress for Public Utilities; Inclusion of Costs in Rate Base*, Order No. 298, FERC Stats. & Regs. ¶ 30,455, *order on reh'g*, Order No. 298-B, FERC Stats. & Regs. ¶ 30,524 (1983).

[80] *See, e.g., American Electric Power Serv. Corp.*, 116 FERC ¶ 61,059, at P 59 (2006), *order on reh'g*, 118 FERC ¶ 61,041, at P 27 (2007).

the Commission's regulations,[81] half of the Projects' borrowing costs will be accrued over several years, and then capitalized after the Projects go into service, along with a return of the investment cost through depreciation expense. Such a process would increase SoCal Edison's customers' bills more significantly than if the Commission were to allow the inclusion of 100 percent of CWIP in rate base.[82]

79. Accordingly, we find the Projects are eligible to recover 100 percent of CWIP in rate base. As noted above, our acceptance of SoCal Edison's proposal to recover 100 percent of CWIP in rate base is 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 direct SoCal Edison to include the CWIP for the Projects in the stand-alone balance account mechanism previously approved by the Commission.[83]

2. <u>Abandoned Plant Recovery</u>

a. <u>SoCal Edison's Proposal</u>

80. SoCal Edison seeks 100 percent recovery of its prudently incurred costs for the Projects if either or both are cancelled or abandoned for reasons outside of its control.[84] SoCal Edison states that its request for full abandonment plant recovery is tailored to the risks faced by SoCal Edison with respect to the Projects. SoCal Edison notes that the Commission has explained that recovery of abandoned plant is important when utilities "encounter investment opportunities with significant risk associated with factors beyond their control, such as developers' decisions to develop or terminate the development of potential resources or difficulty obtaining state or local siting approvals."[85]

81. As discussed *supra*, the Projects require multiple approvals, each of which, SoCal Edison contends, carries considerable risk. In addition, SoCal Edison asserts that there is

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[81] *See* 18 C.F.R. § 35.25(c)(3) (2010).

[82] *See, e.g., Green Power Express*, 127 FERC ¶ 61,031 at P 67.

[83] The Commission previously found that the CWIP ratemaking mechanism demonstrated that SoCal Edison had accounting procedures in place to prevent double recovery. *See Southern California Edison Co.*, 122 FERC ¶ 61,187 at P 31, 33.

[84] Petition at 36.

[85] *Id*. at 37 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 155).

risk that the solar resources that are the impetus for the Projects will not be developed, adding that this is a factor the Commission has previously relied upon when granting 100 percent recovery of prudently incurred costs associated with abandoned projects.[86] Moreover, SoCal Edison contends that it has agreed to provide upfront financing for the Projects, and will therefore be required to expend substantial amounts of money well before all necessary project approvals are granted.

82. Finally, SoCal Edison stresses that its willingness to finance the cost of the network upgrades that comprise the Projects is conditioned upon its receipt of a Commission order unconditionally approving the requested 100 percent abandoned plant recovery incentive. SoCal Edison therefore requests that even if the Commission does not find that SoCal Edison has shown a sufficient basis for other incentives requested in the Petition, that it should at least be granted recovery of 100 percent of its costs if either of the Projects has to be abandoned for reasons outside of SoCal Edison's control. SoCal Edison states this critical approval is necessary for it to make up-front commitments to the generators of its willingness to finance the Projects. SoCal Edison urges that if it is not granted the abandoned plant recovery incentive, the ability of these ARRA generators to meet their ARRA funding timing requirements could be jeopardized.

b. Comments and Protests

83. Protestors argue that because SoCal Edison can avoid any risk of abandoned plant costs by requiring the interconnection generators to fund the necessary upgrades, there is no justification for allowing the shifting of all risk of abandoned plant costs to transmission ratepayers. SWC/Metropolitan argues that if any abandoned plant incentive is granted, it should at least be time-constrained to the operation of the expected generation.[87]

84. Six Cities proposes that SoCal Edison should be required to adhere to the Commission's traditional policy of allocating equitably the risk of project cancellation between ratepayers and shareholders.[88] Six Cities states that to do otherwise would insulate SoCal Edison's shareholders and interconnecting generators from all risk of abandonment and would fail to appropriately incentivize project completion, while still

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[86] *See, e.g., Green Power Express* 127 FERC ¶ 61,031 at P 51; *Southern California Edison Co.*, 112 FERC ¶ 61,014 at P 61.

[87] SWC/Metropolitan Protest at 17.

[88] Six Cities Protest at 28.

permitting shareholders to receive the benefits associated with a completed project.[89] Given that SoCal Edison will directly benefit from the construction of the transmission projects and the solar facilities for which it has already executed power purchase agreements, Six Cities and SMUD argue that it is appropriate that SoCal Edison bear a portion of the abandonment risk for the project.[90]

85. MSR/Santa Clara offers that if SoCal Edison would drop its precondition that it first be granted incentives, the project developers could apparently commence construction immediately. MSR/Santa Clara states that SoCal Edison is holding these solar project developers "hostage" as it negotiates with the Commission over incentives.[91]

86. CAISO proposes that the Commission make any approval of SoCal Edison's request for recovery of abandoned plant costs conditional on CAISO's approval of the Lugo-Pisgah project and Red Bluff substation through execution of LGIAs that specify the need for these facilities as network upgrades in those LGIAs.

c. <u>Commission Determination</u>

87. As we have discussed, it is appropriate to consider the abandoned cost recovery incentive in the context of our public policy evaluation. The abandonment incentive is an effective means of encouraging transmission development by reducing the risk of non-recovery of costs.

88. For the policy reasons we have discussed *supra*, we grant SoCal Edison's request for recovery of 100 percent of prudently-incurred costs associated with abandonment of the Projects, provided that the abandonment is a result of factors beyond the control of SoCal Edison, which must be demonstrated in a subsequent FPA section 205 filing for recovery of abandoned plant.[92]

89. We find that granting the requested abandonment incentive would encourage completion of the Projects, and give SoCal Edison the necessary incentive to develop them, notwithstanding the risk that factors beyond the company's control, such as

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[89] *Id.*

[90] *Id.* 32.

[91] MSR/Santa Clara Protest at 24.

[92] *See id.* P 165-66. *See also Green Energy Express*, 129 FERC ¶ 61,165 at P 52.

inability to obtain one of the numerous required regulatory approvals, could prevent completion of the Projects. The fact that SoCal Edison must obtain at least 42 approvals for the Projects, involving multiple jurisdictions, increases the possibility that one or both of the Projects may be subject to forced abandonment. Additionally, as SoCal Edison points out, it is still uncertain whether the solar resources connecting to the Projects will ultimately be developed. As a result, there remains a great deal of risk for SoCal Edison as it pursues development and construction of the Projects. We conclude that authorizing the abandonment incentive will help ameliorate this risk by providing SoCal Edison with some degree of certainty as it moves forward.

90. 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.[93]

3. ROE Incentive Adders

a. SoCal Edison's Proposal

91. SoCal Edison requests a 150-basis point adder to its base return ROE that will be applied to the Lugo-Pisgah Project and a 100-basis point adder to its base ROE that will be applied to the Red Bluff Project. These proposed adders would be in addition to the 50-basis point adder previously granted by the Commission to SoCal Edison for its CAISO participation.[94]

92. SoCal Edison requests that the Commission grant the ROE Incentive Adders, subject to a cap at the upper end of the zone of reasonableness.[95] SoCal Edison states that in Order No. 679, the Commission acknowledged that ROE adders are often necessary for non-routine transmission projects because such projects must compete for financing within utility capital budgets.[96] SoCal Edison argues that given its aggressive

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[93] *See* Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 165-66.

[94] *See Southern California Edison Co.*, 121 FERC ¶ 61,168, at P 158 (2007) (2007 Incentive Order), *reh'g denied*, 123 FERC ¶ 61,293 (2008) (Order Denying Rehearing).

[95] *See, e.g., Tallgrass Transmission, LLC*, 125 FERC ¶ 61,248, at P 58 (2008); *Virginia Elec. and Power Co.*, 124 FERC ¶ 61,207 (2008).

[96] Petition at 38 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 91 ("We expect that an incentive ROE will make transmission projects more attractive, and therefore more likely, when transmission projects must compete for capital in vertically integrated utilities as well as in transmission and delivery utilities.")).

financial investment program, the requested ROE Incentive Adders are vital to assist SoCal Edison in financing the Projects, as it will enhance SoCal Edison's cash flow, improve SoCal Edison's financial metrics, and support SoCal Edison's overall credit quality.

93. SoCal Edison states that in order to commit such a large capital outlay for these Projects, SoCal Edison must receive a compensatory rate of return commensurate with the risks it faces in agreeing to finance these Projects in lieu of the generators. SoCal Edison states that the requested ROE Incentive Adders reasonably compensate it for the risks associated with the Projects, and increases the likelihood that SoCal Edison will be able to finance completion of the Projects in light of the unique risks and challenges described in the Petition, including those risks that are not protected by the abandoned plant or CWIP incentives.

b. Comments and Protests

94. TANC, Modesto, and CPUC oppose the request for ROE adders. CPUC states that SoCal Edison's concerns for its financial metrics and credit quality are not credible because SoCal Edison currently enjoys healthy S&P credit ratings or BBB+, a Moody's rating of A3 and a Fitch rating of A. Similarly CPUC urges the Commission to ignore SoCal Edison's arguments regarding internal competition for project funding, because the majority of SoCal Edison's base is subject to CPUC regulation and the CPUC has granted it a positive investment environment. CPUC also offers that investment in transmission is less risky than SoCal Edison's generation and distribution investments. CPUC states that investments in large transmission projects results in a larger profit than smaller distribution projects because of the large increase in rate base. CPUC provides that in California transmission investments are appealing to shareholders and investors, particularly those that are granted CWIP and abandoned plant incentives. CPUC also argues that SoCal Edison does not need ROE incentives to secure necessary capital due to internal competition for financing.[97]

95. CPUC, SWP, and TANC also argue that SoCal Edison's request for ROE adders are duplicative of the CWIP and abandoned plant incentives. They argue that granting SoCal Edison's request for abandoned plant recovery and CWIP would substantially mitigate the risk it faces with these Projects and that granting these two incentives makes SoCal Edison's further request for the ROE Incentive Adders disproportionate and redundant. CPUC and SWP argue that SoCal Edison did not provide an independent justification for ROE incentives and simply recited its justification for CWIP as its

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[97] CPUC Protest at 6.

justification for ROE adders. CPUC maintains that although SoCal Edison states the Projects face "significant cost, construction liability, project scope, prudence and capital risks even if projects are not abandoned," SoCal Edison does not provide details about those risks, and fails to explain how they are different than the risks covered by other incentives.[98] SWP requests that the Commission not grant the ROE incentive adders for the projects, but limit the ROE to SoCal Edison's underlying base ROE plus the adder previously granted for CAISO participation.

96. TANC and other Protesters assert that SoCal Edison's Petition lacks adequate detail regarding the regulatory risk it faces and has not demonstrated that its requested ROE adders meet the criteria of Order No. 679. TANC, MSR/Santa Clara, and SMUD argue that SoCal Edison will need to acquire rights-of-way for only 25 percent of the length of the expanded Lugo-Pisgah project and that SoCal Edison provides no other land acquisition details with respect to the other parts of Lugo-Pisgah, let alone any similar details for the entire Red Bluff project. MSR/Santa Clara and others note that SoCal Edison faces little regulatory and political risk considering the favorable state and federal environment for renewable projects.[99]

97. TANC states that even though SoCal Edison is not required to undertake up-front financing of the Projects, Order No. 679 was not intended to incentivize the financing of individual generators' interconnection costs.[100]

98. SWP and others note that SoCal Edison's requests for generous ROE incentives are the latest in a series of such requests by SoCal Edison and other utilities on the CAISO grid. SWP and others argue that the cumulative effect of these ROE adders is becoming onerous and extremely burdensome, as well as unjust and unreasonable for rate payers.[101] The CPUC states that SoCal Edison's ROE adders for Lugo-Pisgah and Red Bluff alone could cost ratepayers an additional $143 million and that for all of the projects, the ROE incentives could result in an additional $600 million in revenue to SoCal Edison.[102] Similarly, Six Cities cautions the Commission that in consideration of

[98] *Id.* at 7.

[99] *See, e.g.,* MSR/Santa Clara Protest at 31.

[100] TANC Protest at 20.

[101] SWP, Six Cities at 33, CPUC at 10

[102] CPUC at 10.

the cumulative burden on transmission customers, it order an equitable sharing of risks of abandonment for the Lugo-Pisgah and Red Bluff projects.[103]

c. <u>Commission Determination</u>

99. We previously granted SoCal Edison a 50 basis-point ROE adder for its participation in the CAISO.[104] Outside the context of FPA section 219, which – as discussed above – SoCal Edison has not satisfied, we decline to grant any further ROE Incentive Adders for the Projects.

100. 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 the generators have already executed, and the Commission has already accepted their LGIAs.[105]

101. Also, the security posting requirement of the LGIAs will reduce SoCal Edison's risk that the projects not coming to fruition will leave SoCal Edison financially exposed. In this case, Desert Sunlight's LGIA requires $3.8 million be posted in security by Desert Sunlight.[106] The risk of generator failure is further reduced for SoCal Edison with respect to the Pisgah Lugo line since SoCal Edison is required to fund the second phase of the project only if the generator funds the first phase. A generator that is able to fund Phase I is much more likely to be financially sound enough to enable Phase II to proceed.[107] Moreover, in both cases, the generator must meet certain milestones before SoCal Edison is required to fund the upgrades. Thus, the likelihood of generator failure is significantly reduced (along with SoCal Edison's risk) by the time that SoCal Edison

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[103] Six Cities, September 3, 2010 at 33.

[104] *See* 2007 Incentive 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).

[105] *See Southern California Edison Co.*, 131 FERC ¶ 61,071 (2010) (Calico Solar-Phase I); *Southern California Edison Co.*, 133 FERC ¶ 61,019 (Desert Sunlight); *see also supra* n.17.

[106] *See Southern California Edison Co.*, 133 FERC ¶ 61,019 at P 6.

[107] *See Southern California Edison Co.*, 131 FERC ¶61,071 at P 4.

would make any investment.[108] SoCal Edison has acknowledged as much in its Petition, stating that it has mitigated "some" of the risk inherent in its upfront financing of the Projects through milestone and other procedures included in the LGIAs.[109]

102. 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 the CAISO, we believe that no additional ROE adders are appropriate for the Projects.

E. Network Facilities and Rolled-In Rate Treatment

1. SoCal Edison's Proposal

103. SoCal Edison also requests that the Commission declare the Project facilities to be network facilities, eligible to be rolled into SoCal Edison's Commission-jurisdictional TRR. SoCal Edison asserts that the proposed Project facilities will be fully integrated with the transmission network once placed under CAISO operational control. SoCal Edison contends that, based on the seven factors used to distinguish transmission facilities from distribution facilities in Order No. 888,[110] as well as the integration criteria promulgated in *Mansfield*,[111] the Project facilities will constitute transmission facilities, rather than distribution facilities. Specifically, SoCal Edison contends that the Lugo-Pisgah facilities would be part of the looped transmission system; energy is expected to flow in both directions between the proposed new Pisgah Substation to the Lugo Substation; CAISO would be able to use the available capacity for multiple purposes; the facilities would provide transfer capability and reliability benefits to the transmission grid

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[108] *Id.; Southern California Edison Co.*, 133 FERC ¶ 61,019 at P 6.

[109] Petition at 27.

[110] Petition at 11 (citing *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,771 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002))

[111] Petition at 11 (citing *Mansfield Mun. Elec. Dep't*, 97 FERC ¶ 61,134, at 61,613-614 (2001), *reh'g denied*, 98 FERC ¶ 61,115 (2002) (*Mansfield*)).

and could be relied upon for coordinated operation of the grid; and an outage on the facilities would affect the transmission system.

104. SoCal Edison asserts the Red Bluff facilities will also be transmission facilities that will be fully integrated with the transmission network once placed under CAISO control. SoCal Edison states the Red Bluff Substation will be connected with transmission that ultimately connects two CAISO-controlled points. Like the Lugo-Pisgah facilities, SoCal Edison states that Red Bluff meets all of the criteria under the *Mansfield* test as an integrated transmission facility.

2. Comments

105. Citing no evidence, SMUD opposes this aspect of the Petition.[112] No other Commenter opposes this request.

3. Commission Determination

106. We find that as described in the Petition,[113] SoCal Edison's proposed Project facilities would constitute network facilities. None of the protesters have provided evidence to persuade the Commission that the proposed Project facilities should not be so classified.

The Commission orders:

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

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

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[112] SMUD Protest at 10.

[113] *See supra* P 4, 6.

(C) SoCal Edison's Petition is granted to classify the Project facilities as network facilities, 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 No. EL10-81-000

(Issued October 29, 2010)

MOELLER, Commissioner, *concurring:*

I concur with this decision, noting my concurrence in Docket No. EL10-1.

____
Philip D. Moeller
Commissioner