

130 FERC ¶ 61,117
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Green Energy Express LLC

Docket No. EL09-74-001

ORDER DENYING REHEARING

(Issued February 18, 2010)

1. In this order, we deny rehearing of the Commission's November 23, 2009 order in the above-captioned proceeding.¹ The November 23 Order conditionally granted transmission rate incentives pursuant to section 219 of the Federal Power Act (FPA)² and Order No. 679³ to Green Energy Express LLC (Green Energy) for its proposed transmission project (Project).⁴ As discussed herein, we deny Green Energy's request for rehearing of the November 23 Order and uphold our conclusion that Green Energy failed to demonstrate that its Project satisfies the requirements of FPA section 219 by either reducing the cost of delivered power by reducing transmission congestion or ensuring reliability. We also uphold the November 23 Order's decision to condition Green Energy's requested abandoned cost recovery incentive on approval of the Project in the California Independent System Operator Corporation's (CAISO) transmission planning process.

¹ *Green Energy Express LLC*, 129 FERC ¶ 61,165 (2009) (November 23 Order).

² 16 U.S.C. § 824s (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 The Project consists of: (1) an approximately 70-mile, double circuit 500 kV transmission line; (2) a new 500 kV/230 kV substation; and (3) a fast-acting phase shifter. *See* November 23 Order, 129 FERC ¶ 61,165 at P 3.

I. Background

2. On September 9, 2009, Green Energy filed a petition for declaratory order (Petition) requesting the following transmission rate incentives for the Project: (1) deferred recovery of pre-commercial expenses; (2) inclusion of 100 percent construction work in progress in rate base; (3) abandoned plant cost recovery; (4) a return on equity (ROE) adder of 50 basis points for participating in a qualifying Transmission Organization; (5) an ROE adder of 100 basis points in recognition of Green Energy's status as an independent transmission company; (6) an ROE adder of 50 basis points to otherwise compensate for the unique risks and challenges faced by the Project and Green Energy's investors; and (7) a hypothetical capital structure of 50 percent debt and 50 percent equity.

3. The November 23 Order found that, while the Project would be eligible for incentives under Order No. 679, Green Energy did not make a satisfactory demonstration that its Project satisfied the section 219 requirement of either reducing the cost of delivered power by reducing congestion or ensuring reliability.⁵ Therefore, the November 23 Order conditioned granting the incentives on approval of the Project in the CAISO's planning process, and directed Green Energy to submit a filing within 30 days of approval or disapproval of the Project in the CAISO's planning process. In accordance with Order No. 679-A, the November 23 Order required Green Energy to show that, if the Project were approved in the CAISO's planning process, such process evaluated whether the Project reduced congestion or ensured reliability.

II. Request for Rehearing

4. In its rehearing request, Green Energy asserts that the Commission erred in two respects. First, Green Energy argues that the Commission erred in finding that the Petition failed to demonstrate that the Project satisfied section 219's requirement that it either reduce the cost of delivered power by reducing congestion or ensure reliability. Second, Green Energy contends that, even if the Commission had correctly concluded that the Project failed to meet the section 219 requirement, it erred in conditioning the abandoned cost recovery incentive on approval of the Project in the CAISO's planning process.

⁵ As we noted in the November 23 Order, the Project was not eligible for section 219's rebuttable presumption that these requirements were satisfied as a result of being approved in the applicable regional planning process or having received siting approval from the relevant state authority. *See* November 23 Order, 129 FERC ¶ 61,165 at P 30.

A. Whether the Commission Correctly Concluded that Green Energy Failed to Satisfy FPA Section 219's Requirement

5. Green Energy argues that its Petition and the two engineering studies included in the Petition clearly demonstrated the economic and reliability benefits of the Project and were consistent with the nature of submissions provided in earlier rate incentive proceedings. Green Energy states that its economic analysis explains that the Project has been designed to allow for the transfer of up to 2,000 MW from renewable generation resources (primarily solar) in remote locations in eastern Riverside County, California to load centers in southern California. According to Green Energy, the energy supplied by these low-operating cost solar resources could be used to replace and reduce dispatch of costly fossil-fired thermal generation plants. Green Energy states that the economic analysis indicated that the gross savings to consumers would be \$81.6 million to \$169 million annually if the Project is constructed. In addition, Green Energy states that its gross savings estimate did not take into account additional benefits from the use of advanced technologies.

6. Further, Green Energy explains that the economic analysis conducted by ZGlobal Inc. (ZGlobal) used an energy forecasting and analysis tool to perform a security-constrained unit commitment analysis for resources and loads on the CAISO-controlled grid. Based on those results, ZGlobal calculated marginal costs for energy, congestion, losses, and other economic components. In addition, Green Energy explains that it used the CAISO's approved Transmission Economic Assessment Methodology, which was developed in a stakeholder process and has been used in prior cases to evaluate the need for economic transmission projects. Green Energy states that, using a 2015 base case, the analysis assumed an additional level of renewable energy production based on projections by the California Energy Commission, and assumed that certain planned, large transmission projects are constructed and in service.

7. Green Energy also contends that congestion costs are driven by transmission loading that prevents the transfer of power produced from the most efficient generating units. In its economic analysis, Green Energy found that the Project would result in substantial savings by allowing loads in southern California to be served by low operating cost renewable generation resources rather than higher cost fossil fuel generation resources. Green Energy recites the estimated cost savings that it set forth in the Petition.

8. Green Energy argues that, despite this data and the detailed explanation of the assumptions underlying the economic analysis, the November 23 Order found, without explanation, that the analysis was inconclusive as to whether the Project would reduce transmission congestion. Green Energy notes that the November 23 Order's only specific criticism concerned the four-week sample period used in the economic analysis. However, Green Energy contends that the November 23 Order never explains why the estimate in the economic analysis is inconclusive while finding that applicants in other

rate incentive proceedings had “clearly demonstrated” the economic benefits of their projects. For example, Green Energy argues that the applicant in *Pioneer Transmission, LLC*⁶ had conceded that its economic studies did not calculate the precise level of congestion savings because certain generator pricing data was unavailable and, as a result, a wide range of possible outcomes was studied. Thus, Green Energy contends, the applicant in *Pioneer* presented data that was no more clear or conclusive than what was demonstrated in this case.

9. With regard to the November 23 Order’s criticism of Green Energy’s use of the four-week sample period in the economic analysis, Green Energy explains that ZGlobal selected a one-week sample from each season in order to conservatively incorporate seasonal sensitivity into its analysis. Green Energy argues that, by incorporating shoulder and off-peak seasonal energy cost assumptions, the analysis ensures that economic savings are not overstated by modeling peak periods only. Green Energy argues that the study provided by Pioneer Transmission, the applicant in *Pioneer*, was limited to projected conditions of a single summer peak period, which would normally be expected to overstate both congestion and reliability benefits.

10. Green Energy also argues that the November 23 Order erred in finding that the applicant in *Green Power Express, LP*⁷ made a persuasive case that its project satisfied section 219 through the submission of materials that included an engineering affidavit and an outside study. Green Energy contends that the ZGlobal analysis was an outside study that it had commissioned, similar to what had been submitted in *Green Power Express*, and that the entire study represents an engineering analysis that used a Western Electricity Coordinating Council (WECC) power flow base case to show the impact of the Project on the grid and the resulting estimated economic benefits.

11. In addition, Green Energy argues that the November 23 Order fails to acknowledge the beneficial reliability impacts supported by the Project, and instead provides only a conclusory statement that the Commission had evaluated the studies and find that they do not provide the necessary support. Green Energy explains that its Petition included the testimony of Mr. Philip G. Harris, one of the company’s principals, who testified that the Project would install an advanced technology phase-angle regulating transformer at a new substation. Green Energy states that, according to Mr. Harris, this would allow power flow to be redirected to the new 500 kV line, reduce loading on the existing Eagle Mountain-Julian Hinds-Mirage transmission line, and give

⁶ 126 FERC ¶ 61,281 (2009), *order on reh’g*, 130 FERC ¶ 61,044 (2010) (*Pioneer*).

⁷ 127 FERC ¶ 61,031 (2009) (*Green Power Express*).

the CAISO more granular control over the AC network in the Eagle Mountain-Devers area.

12. Moreover, Green Energy states that its feasibility analysis undertook extensive power flow and contingency analyses of the Project, using the most recently available WECC power flow data representing a power system configuration for 2015 as the base case. Green Energy further explains that the analysis modeled the impact of the Project on transmission in the vicinity of the Project, studying 36 facilities under N-1 contingencies, consistent with North American Electric Reliability Corporation standards, and assuming increased renewable generation resources, consistent with publicly available CAISO interconnection queue data. According to Green Energy, this information shows that the Project is capable of reliably delivering up to 2,000 MW of renewable generation resources from eastern Riverside County to load centers in southern California. Green Energy asserts that resource flow will be redirected to the Project's 500 kV transmission line, thereby providing affirmative reliability benefits by reducing loadings on existing, weaker lower-voltage facilities, notably the Eagle Mountain-Julian Hinds-Mirage 230 kV line.

13. Green Energy asserts that the Commission unduly relied upon comments filed by Southern California Edison Company (SoCal Edison) that the Project could have detrimental reliability impacts on the Metropolitan Water District of Southern California (Metropolitan) system. Further, Green Energy argues that the November 23 Order erred by using Green Energy's commitment to work with the CAISO, Metropolitan, and SoCal Edison to address any potential reliability impacts that the Project may cause as evidence that the Project would harm reliability. Green Energy states that this conclusion could discourage project sponsors from coordinating with other parties to address potential issues, and notes that it would be disingenuous for a project sponsor to suggest that a proposed transmission project would have no definite impact on reliability.

14. Green Energy also argues that regional and independent studies underscore the need for the Project, pointing out that these studies indicate that new transmission infrastructure will be necessary to achieve California's ambitious energy and environmental goals, including new infrastructure in eastern Riverside County. Green Energy points out that the inclusion of a fast-acting phase shifter will redirect flows to more robust portions of the CAISO grid, allowing for the delivery of up to 2,000 MW of renewable resources over the Project. Citing *Pioneer* and *Tallgrass Transmission, LLC*,⁸ Green Energy argues that the Commission has affirmed that the benefit of facilitating the integration and delivery of low-cost renewable resources supports a determination that an applicant has met its FPA section 219 burden.

⁸ 125 FERC ¶ 61,248 (2008) (*Tallgrass*).

15. Finally, Green Energy points out that the Commission never issued it a deficiency letter indicating that the economic and feasibility studies were insufficient, noting that the Commission had previously issued such a letter to the applicant in *Pioneer*.⁹

Commission Determination

16. Green Energy states that the Commission erred in finding that Green Energy did not demonstrate that the Project satisfies the requirements of section 219. Green Energy argues that the evidence it provided in support of the Project was equal or superior to support provided by several projects which were granted rate incentives. However, regardless of whether some aspects of Green Energy's supporting evidence may be similar to analysis provided by other transmission projects that were unconditionally granted incentives, the totality of evidence supplied by Green Energy was insufficient for the Commission to conclude that the Project ensured reliability or reduced the cost of delivered power by reducing congestion. Further, as discussed below, a comparison of Green Energy's supporting evidence to other applicants' supporting evidence reveals that the other applicants that received unconditional incentives in those other proceedings provided more robust support. Under Order No. 679, we must examine each request for incentives on its own merits,¹⁰ and, taken as a whole, the evidence provided by Green Energy fails to persuade us that the Project satisfies the requirements of section 219. Accordingly, the Commission properly conditioned the requested rate incentives.

1. Green Energy Failed to Demonstrate that the Project Would Reduce the Cost of Delivered Power by Reducing Congestion

17. Green Energy compares the economic analysis it provided in support of the project to that provided by Pioneer Transmission, LLC (Pioneer Transmission) in the *Pioneer* proceeding and states that the estimate of project benefits was "no more clear or conclusive" than what was demonstrated by Green Energy.¹¹ This, however, is not the case. To demonstrate the congestion-related and other economic benefits of the Project, Green Energy provided an economic analysis detailing various cost savings provided by the Project, including congestion cost savings. However, the Commission finds that the cost savings alleged by Green Energy are speculative, not transparent, and inconclusive.

⁹ Green Energy Rehearing Request at n.64.

¹⁰ See, e.g., Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 43 ("[O]ur case-by-case approach insures that the incentives granted will be tailored to particular circumstances.").

¹¹ Green Energy Request for Rehearing at 12.

18. First, the congestion savings of \$1,042,457 for the four-week sample period estimated by the economic analysis¹² are based on data that are too volatile to conclude that the project will result in real congestion cost savings, and we are concerned that the data selected for use in the analysis may skew these results. For example, if the dates of August 8, 2015 and August 9, 2015 in the sample period had congestion cost numbers similar to August 12, 2015 and August 13, 2015, the analysis would show that the line actually *increased* congestion across the four-week sample period. Alleging congestion cost savings that can be so radically affected by small variations in the sample data does not constitute convincing evidence that the Project will reduce the cost of delivered power by reducing congestion. We are not prescribing any particular test that Green Energy must use; however, it is important, particularly given the volatility of the data that were submitted, that Green Energy provide a range of results so we can be assured that Green Energy is not simply picking the best results to show any amount of congestion cost savings. In its rehearing request, Green Energy explains that it chose the four-week sample “to conservatively incorporate seasonal sensitivity into its analysis, i.e., by incorporating shoulder and off-peak seasonal energy cost assumptions the analysis ensures that that economic savings are not overstated by modeling peak periods only.”¹³ However, this only provides information as to the overall methodology without an explanation of why Green Energy selected the specific dates it did and whether selecting other dates during each season would yield different results.

19. Second, the Commission is concerned that Green Energy’s proposed transmission line would actually increase congestion during the summer period when congestion costs are highest. Specifically, Green Energy’s analysis shows that congestion costs in August with the Project would be \$21,847,135, which is nearly \$1.4 million more than the base case without the Project.¹⁴ As Green Energy acknowledges in its criticism of the Pioneer Transmission analysis,¹⁵ the summer period is when transmission lines are expected to have their greatest benefit, since electricity usage is generally at its peak during this time. Green Energy’s own analysis finds the Project would actually appear to contribute to congestion problems in the summer period, as noted above.¹⁶ Yet, Green Energy

¹² See Petition, Exh. PGH-4 at 24.

¹³ Green Energy Rehearing Request at 12.

¹⁴ See Petition, Exh. PGH-4 at 24.

¹⁵ Green Energy Rehearing Request at 12 (arguing that using a single summer peak period would be expected to overstate congestion and reliability benefits on a seasonally adjusted basis).

¹⁶ See Petition, Exh. PGH-4 at 24.

presents this finding without explaining how this apparent increase in congestion during the critical summer peak period satisfies section 219's direction that an applicant demonstrate that a project for which it seeks incentives reduces the cost of delivered power by reducing congestion.

20. Third, we have significant concerns about Green Energy's analysis showing alleged cost savings in addition to congestion cost savings. We note that while these additional benefits are helpful in our evaluation of whether a particular project should receive incentives, the Commission cannot rely on these additional savings by themselves to unconditionally grant incentives if an applicant still cannot show that its project meets the statutory requirement of reducing the cost of delivered power by reducing congestion (or ensuring reliability).¹⁷ Regardless, even if we relied on these alleged cost savings, Green Energy has not explained those cost savings in adequate detail, and thus we are unable to conclude that Green Energy's final savings numbers for these items are reasonable. For example, Green Energy extrapolates the energy and production cost savings that it derived from its four-week sample over the entire year, resulting in approximately \$882.9 million in energy cost savings and approximately \$748.6 million in production cost savings on an annual basis.¹⁸ However, Green Energy has not explained why it is reasonable to simply extrapolate the estimated four-week savings over the entire year. The basic assumptions used to calculate the asserted cost savings also need to be fully supported, especially in light of our concerns regarding Green Energy's use of the four-week sample period, as discussed in this order. Moreover, Green Energy does not explain why it subtracted production cost savings from energy cost savings in calculating its total yearly savings.¹⁹ Without an explanation addressing why Green Energy used the assumptions and methodology it did in arriving at the estimated cost savings, we cannot credit these purported additional cost savings to support the proposition that the Project would reduce the cost of delivered power by reducing congestion.

21. Finally, Green Energy argues that the Commission was incorrect in criticizing its analysis based on the four-week peak period it chose, noting that Pioneer Transmission submitted an analysis based on a single summer peak period. However, the Commission's criticism must be placed in its proper context. The only evidence Green Energy provided to support the claim that the Project reduced the cost of delivered power by reducing congestion were the congestion cost data from a four-week sample period. As discussed above, the basis for the four weeks selected by Green Energy is not clear

¹⁷ See, e.g., Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 49; 18 C.F.R. § 33.35(d) (2009).

¹⁸ See Petition, Exh. PGH-4 at 32.

¹⁹ See *id.*, Transmittal Letter at 14.

(other than choosing a week during each season) and not based on relevant electrical conditions (e.g., focusing on peak summer conditions when congestion issues are more likely to arise), and we are concerned that the dates selected may skew the results. As we note above, the data provided by Green Energy produced results that were too volatile to reasonably conclude that the Project would result in cost savings over the entire year based on this narrow four-week window of data. In contrast, Pioneer Transmission based its findings on a peak summer period, which is relevant in assessing whether its project reduced congestion. In addition, Pioneer Transmission provided detailed congestion data demonstrating the clear reduction in congestion. As explained above, we must evaluate each component of evidence provided in the context of all the other support provided for the value of the project. Pioneer Transmission's congestion cost savings data reinforced an already robust case, while Green Energy's four-week savings data did not provide sufficient evidence to demonstrate reliable cost savings.

2. Green Energy Failed to Demonstrate that the Project Would Ensure Reliability

22. Similarly, Green Energy's reliability analysis is not sufficiently robust to enable the Commission to find that the project ensures reliability. In attempting to show that the Project would ensure reliability, Green Energy presents the following general arguments: (1) that the Project's fast-acting phase shifter will "enable CAISO to have more granular system control over the AC network in the Eagle Mountain – Devers area";²⁰ and (2) that if 2,000 MW of generation is installed in eastern Riverside County, Green Energy's line will be able to transmit this power without exceeding the emergency rating of the Eagle Mountain- Julian Hinds – Mirage junction.²¹ However, these factors by themselves do not provide sufficient footing on which the Commission can find that the Project ensures reliability as required by section 219 and Order No. 679.

23. Green Energy's feasibility study sets forth only one set of assumptions upon which Green Energy makes its case. Specifically, the feasibility study only considers the contingencies of the proposed Project design under a scenario where 2,000 MW of generation is built.²² This limited approach does not permit us to find that the Project

²⁰ *Id.*, Exh. PGH-1 at 8.

²¹ *See id.*

²² *See id.*, Exh. PGH-2 at 7-8. While the study looks at the reliability impact of the Project if it used a transformer instead of a phase shifter under scenarios with other, lower levels of generation, this does not address the issue we have raised because the Project ultimately did not include a transformer. *See id.* It appears that Green Energy's rationale for including this analysis was to demonstrate that the phase shifter would be more effective than a transformer as part of the Project's design.

would ensure reliability. By contrast, in *Green Power Express*, the applicant's filing included exhibits describing in significant detail the various cases it tested at different levels of generation.²³ Similarly, in *Tallgrass*, the applicant's filing included Southwest Power Pool, Inc.'s (SPP) Extra High Voltage Overlay study that created four future cases and ran four sensitivity analyses.²⁴ Because Order No. 679 requires us to review applications for rate incentives on a case-specific basis, we do not expect Green Energy to replicate studies conducted by other applicants. However, the limited information provided by Green Energy precludes us from verifying Green Energy's assertions that its Project will provide reliability benefits resulting from its fast acting phase shifter and from its ability to reliably transmit renewable generation.

24. Specifically, while Green Energy's study provides an analysis based on certain expected levels of generation using CAISO generator interconnection queue information,²⁵ Green Energy should have provided an analysis of the Project's impact on reliability with less and more of the expected generation being built, so as to address the likelihood that the expected generation portfolio may change as projects are removed from and added to the queue. The addition of transmission lines under these circumstances may also have the unintended consequence of harming system reliability (e.g., through redirection of power flows that would otherwise travel on other lines in the region). However, because Green Energy only provides a single set of assumptions to support its conclusion, its study does not take into account this important variable. Again, while Green Energy is not required to provide the same analysis that has been presented in other cases, it must, however, provide sufficient supporting evidence that demonstrates that its results are reasonable. Green Energy failed to do this.

25. Moreover, although Green Energy argues that its analysis evaluates contingencies under certain conditions (e.g., N-1 contingencies at specified facilities located at some junctions),²⁶ it only provides the Commission with results at a few select junctions,²⁷ and fails to provide an analysis of the wider area that may be impacted by the Project. If we are to reasonably conclude that the Project would ensure reliability under section 219,

²³ See Green Power Express LP's filing in Docket No. ER09-681-000 at Exhs. GPE-500 and GPE-515 (Feb. 9, 2009).

²⁴ See Tallgrass Transmission, LLC's filing in Docket No. ER09-35-000, Exh. TGT-102 (Oct. 3, 2008).

²⁵ See Green Energy Request for Rehearing at 14.

²⁶ See *id.*

²⁷ See Petition, Exh. PGH-2 at Appendix A.

then we need additional analysis that supports Green Energy's position or an explanation of why such additional analysis is not required.

26. Further, Green Energy misconstrues our statement in the November 23 Order in arguing that the Commission would discourage parties from coordinating their efforts to minimize potential reliability impacts. The Commission cannot ignore potentially unresolved reliability issues. We also disagree that the November 23 Order erroneously relied on SoCal Edison's comments. Green Energy's rehearing request contends that its earlier answer in this proceeding, in which it addressed SoCal Edison's comments, was discussing potential distribution-level impacts on the Metropolitan system.²⁸ However, this is not clear from statements in Green Energy's answer. Green Energy's answer expressly stated that it would work with Metropolitan and others to address reliability impacts and that "based on its analyses to date Green Energy Express believes any reliability issues can be resolved in a cost-effective manner through limited system improvements (e.g., certain breaker upgrades)."²⁹ Green Energy further explained that the "Project is not being advanced primarily as one that enhances reliability."³⁰ In light of these statements, we reasonably concluded that the Project may cause detrimental reliability impacts and thus does not satisfy the section 219 requirement. We find nothing in Green Energy's rehearing request that provides clear evidence to refute this point.

27. In response to the reliability concerns noted in the November 23 Order, Green Energy contends that for "projects that have not completed – or, in some cases, even begun – regional planning processes, the Commission cannot reasonably expect that all reliability issues will have been identified and resolved."³¹ We agree that, as established

²⁸ See Green Energy Rehearing Request at 15-16. We note that, although Green Energy discusses potential *distribution*-level impacts, the lines in question are 230 kV and it is not clear to us whether this indicates that there are potential reliability impacts on the Metropolitan *transmission* system. For reliability purposes, transmission lines above 100 kV are generally considered by the Commission to be part of the Bulk-Power System unless they are radial in nature. See, e.g., *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693 at P 51, 77, FERC Stats. & Regs. ¶ 31,242, *order on reh'g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

²⁹ See *Motion for Leave to Answer and Answer of Green Energy Express* at 14, Docket No. EL09-74-000 (Oct. 26, 2009) (describing concerns about the impact of the current state of the CAISO's planning process on the Project) (Green Energy Answer).

³⁰ *Id.*

³¹ Green Energy Rehearing Request at 16.

in Order No. 679, the Commission does not “require higher standards of review for projects that do not result from independent planning processes.”³² However, while we do not expect Green Energy to address every conceivable reliability issue, it is not reasonable for the Commission to make a finding that the Project ensures reliability when Green Energy has provided insufficient information for the Commission to verify that this is the case.

3. Other Issues Related to the November 23 Order’s Section 219 Findings

28. Green Energy also argues that it should receive incentives because it facilitates the needed integration of renewable resources. Green Energy has produced no specific evidence or study showing that the Project is needed to integrate renewable resources, so the Commission cannot use this as a supplementary justification to approve incentives before the Project has been approved in the CAISO’s planning process. Green Energy does cite certain regional studies that it argues indicate the need for the Project,³³ but those studies only generally discuss the potential for renewable resource development in parts of California, including eastern Riverside County, and the necessity of infrastructure to deliver those resources. Those studies do not lead to the conclusion that this specific Project is necessary. For example, Green Energy cites to the Renewable Energy Transmission Initiative Phase 2A Final Report (RETI Report) in support of its contention that it referenced independent and regional studies indicating the need for new transmission infrastructure to facilitate the integration and delivery of renewable energy.³⁴ However, the RETI Report did not include the Project in its evaluation of projects in Riverside County.³⁵

29. We are also not persuaded by Green Energy’s citation to language in *Pioneer* and *Tallgrass* indicating that “the Commission has affirmed that the benefit of facilitating the integration and delivery of low-cost renewable resources supports a determination that an

³² Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 49.

³³ See Green Energy Rehearing Request at 17.

³⁴ See *id.*; see also Petition, Transmittal Letter at 11-12.

³⁵ See RETI Report at 3-72 (Sept. 22, 2009), available at <http://www.energy.ca.gov/2009publications/RETI-1000-2009-001/RETI-1000-2009-001-F-REV2.PDF>. The RETI Report’s exclusion of the Project had no bearing on our determination in the November 23 Order that Green Energy failed to satisfy section 219. We discuss the issue here in response to Green Energy’s argument that this study supported its claim that the Project was necessary.

applicant has met its section 219 burden.”³⁶ The Commission has emphasized the importance of transmission projects that integrate and deliver renewable resources, and the Commission has the discretion to grant incentives for policy reasons, as discussed below.³⁷ An applicant seeking incentives under section 219 and Order No. 679, however, is still generally required to provide evidence demonstrating that a project reduces the cost of delivered power by reducing congestion or ensures reliability, as required under section 219 and Order No. 679,³⁸ and as was presented by the applicants in *Pioneer* and *Tallgrass*.³⁹

30. Finally, with respect to Green Energy’s criticism that we never issued a deficiency letter, the Commission is not required to issue deficiency letters to applicants when their applications and supporting documentation are inadequate. The burden is on the applicant to demonstrate that its submissions are adequate to satisfy section 219 and Order No. 679 in the first instance.⁴⁰ While the Commission may, in some cases, issue a deficiency letter, it remains in our discretion to do so, and applicants should not have an expectation that the Commission will issue such letters.

B. Whether the November 23 Order’s Determination to Condition the Abandoned Cost Recovery Incentive on Approval in the CAISO’s Planning Process Should be Upheld

31. Green Energy argues that the Commission erred in conditioning the abandoned cost recovery incentive on approval in the CAISO’s planning process, even assuming that

³⁶ Green Energy Rehearing Request at 17-18.

³⁷ See P 35-36, *infra*.

³⁸ Order No. 679 observed that “[w]hile the promotion of renewable energy projects supports other policy and regulatory objectives, we will not adopt separate rate-based incentives for renewable energy projects.” Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 52.

³⁹ For example, in *Tallgrass* we noted that “with SPP’s proposed high voltage overlay, lower voltage facilities will be relieved of their congestion resulting in a reduction in the cost of delivered power.” *Tallgrass*, 125 FERC ¶ 61,248 at n.35. See also, e.g., Tallgrass Transmission, LLC’s filing in Docket No. ER09-35-000, Exhs. TGT-100, TGT-102 (Oct. 3, 2008).

⁴⁰ See, e.g., Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 55 (stating that an applicant must fully support its rate request and demonstrate “that its request for incentives satisfies section 219 and the requirements of this Final Rule”).

Green Energy had not met its burden under FPA section 219. Green Energy argues that significant federal and state policy objectives would be furthered by the development of the Project, and that it was arbitrary and capricious for the Commission to condition the abandoned cost recovery incentive on approval in the CAISO's planning process when such approval is a classic example of a development risk beyond the control of the applicant.

32. In support of its position, Green Energy cites to *Pacific Gas & Electric Company*,⁴¹ where we granted the abandoned cost recovery incentive without condition to Pacific Gas & Electric Company (PG&E), although PG&E's project had not satisfied section 219. Green Energy asserts that there are strong policy reasons for granting the abandoned cost recovery incentive without condition. Generally, Green Energy states that this incentive is an effective means to encourage project completion by helping to reduce the risks presented by regulatory and permitting issues, among other things, by providing applicants with some degree of certainty as their projects move forward. Thus, argues Green Energy, if the basic objective of the abandoned cost recovery incentive is to be realized, it is nonsensical for the Commission to deny granting the incentive based on the fact that one of the least certain hurdles that a project faces, i.e., approval in the regional planning process, has not yet been passed.

33. Green Energy also raises specific concerns regarding the CAISO's planning process, reiterating points that it had submitted in its answer to the CAISO's comments earlier in this proceeding.⁴² Green Energy alleges that, since that time, the CAISO's planning process has become even more uncertain. Green Energy cites the CAISO's plan to introduce a separate track in its planning process for transmission projects necessary to integrate and deliver renewable energy in order to meet California's Renewable Portfolio Standard. Green Energy asserts that this has introduced new uncertainty into the CAISO's planning process, including with regard to the Project.

Commission Determination

34. We deny rehearing on this issue. At the outset, we note that in Order No. 679-A, we pointed out that in some cases we have conditioned the abandoned cost recovery incentive on approval in a regional planning process.⁴³ Thus, contrary to Green Energy's

⁴¹ 123 FERC ¶ 61,067 (2008) (*PG&E*).

⁴² See Green Energy Answer at 13-17.

⁴³ See Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 106 (*citing American Elec. Power Serv. Corp.*, 116 FERC ¶ 61,059 (2006), *order on reh'g*, 118 FERC ¶ 61,041 (2007)).

contention that it would be “nonsensical” for the Commission to condition the abandoned cost recovery incentive as a matter of policy, we have in fact conditioned incentives requested by an applicant, including the abandoned cost recovery incentive, based on our evaluation of the facts and circumstances presented.⁴⁴ As we have made clear in numerous decisions, incentive rates are necessarily fact-specific inquiries.⁴⁵

35. With respect to *PG&E*, it is true that we granted the abandoned cost recovery incentive without condition to PG&E for a proposed transmission project even though PG&E had not satisfied section 219’s requirement that its project reduce congestion or ensure reliability. However, *PG&E* is distinguishable in several significant ways. First, although we granted the abandoned cost recovery incentive, we deferred consideration of certain other incentives until PG&E’s project was further developed.⁴⁶ In this case, we did not defer consideration of these other incentives, such as the requested ROE adders, to a later date, although it would have been consistent with *PG&E* to do so.⁴⁷ Second, we granted PG&E the abandoned cost recovery incentive for policy-based reasons, outside of the context of section 219 and Order No. 679. Specifically, in *PG&E* we explained:

[O]ur 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, such as PG&E, that develop *multi-regional and multi-national transmission projects*. Because of the size, scope and complexity of these projects, many

⁴⁴ See also *Southern Cal. Edison Co.*, 129 FERC ¶ 61,246 (2009) (conditioning requested incentives, including abandoned cost recovery incentive, on approval in CAISO’s planning process).

⁴⁵ See, e.g., *Southern Cal. Edison Co.*, 121 FERC ¶ 61,168, at P 46 (2007), *reh’g denied*, 123 FERC ¶ 61,293 (2008).

⁴⁶ See *PG&E*, 123 FERC ¶ 61,067 at P 40.

⁴⁷ Because Order No. 679 requires a case-specific approach, as noted above, the Commission will not necessarily grant the same requested incentives that we granted to another project simply because there are some similarities between the two. We must evaluate whether, under the circumstances presented in a particular proceeding, it is appropriate to grant, deny, condition, or (as in *PG&E*) defer to a later date consideration of each of the requested incentives. Here, for example, we found that Green Energy had provided enough information about its Project to conclude that we could conditionally grant the requested incentives rather than defer consideration of them.

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. PG&E's Project supports both of these policy objectives.⁴⁸

36. PG&E's project involved a 1,000-mile line starting at the Canadian border and traversing several states to deliver up to 3,000 MW of renewable energy to northern California, at an estimated cost of several billion dollars.⁴⁹ By contrast, Green Energy's project is an approximately 70-mile line entirely within a single state at an estimated cost of \$400 million. Moreover, Green Energy's assertion that the Project will deliver renewable energy is by itself not sufficient to convince us to exercise our discretion to unconditionally grant the abandoned cost recovery incentive as a matter of policy. To unconditionally grant this incentive when Green Energy has failed to meet the requirements of section 219 and Order No. 679 and has failed to present a convincing case that we should grant the incentive for policy reasons would undermine our framework for evaluating transmission rate incentive applications. Thus, we find because there are factual and policy differences between PG&E's project and Green Energy's Project, Green Energy's reliance on *PG&E* is unavailing. We uphold our decision to condition the abandoned cost recovery incentive granted to Green Energy.

37. With respect to Green Energy's complaints regarding the CAISO's planning process, we need not address it in the context of this proceeding. The CAISO's existing planning process has largely been approved by the Commission,⁵⁰ and its proposed separate track for transmission projects designed to integrate and deliver energy from renewable resources has not yet been filed with the Commission. Thus, Green Energy's arguments on the CAISO's existing process are essentially a collateral attack on those Commission orders addressing that process. If Green Energy believes that the existing process has been rendered unjust and unreasonable, it may file a complaint under FPA section 206.⁵¹ Alternatively, it can work within the CAISO's stakeholder process to recommend improvements to the existing planning process. Moreover, Green Energy's

⁴⁸ *PG&E*, 123 FERC ¶ 61,067 at P 33 (emphasis added).

⁴⁹ *See id.* P 2-3 (describing the size, scope, and estimated cost of PG&E's project).

⁵⁰ *See Cal. Indep. Sys. Operator Corp.*, 123 FERC ¶ 61,283 (2008), *order on reh'g and compliance*, *Cal. Indep. Sys. Operator Corp.*, 127 FERC ¶ 61,172 (2009), *order on compliance*, 130 FERC ¶ 61,048 (2010).

⁵¹ 16 U.S.C. § 824e (2006).

complaints regarding the CAISO's future proposal concerning projects designed to integrate and deliver energy from renewable resources are speculative at this stage since no filing has been made with the Commission.

38. For these reasons, the Commission denies rehearing on this issue and affirms the decision to condition the abandoned cost recovery incentive on approval in the CAISO's planning process.

The Commission orders:

Green Energy's request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.