

154 FERC ¶ 61,119  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Pacific Gas and Electric Company

Docket No. ER14-2529-001

ORDER DENYING REHEARING

(Issued February 18, 2016)

1. On September 30, 2014, the Commission issued an order accepting for filing Pacific Gas and Electric Company's (PG&E) proposed sixteenth transmission owner tariff (TO16), suspending the proposed tariff for five months to become effective on March 1, 2015, subject to refund, and establishing hearing and settlement judge procedures (TO16 Order).<sup>1</sup> Relevant here, in the TO16 Order, the Commission also accepted PG&E's request for a 50 basis point return on equity (ROE) incentive adder for its continued participation in the California Independent System Operator Corporation (CAISO),<sup>2</sup> which the California Public Utilities Commission (CPUC) challenges on rehearing. For the reasons discussed below, we deny rehearing.

**I. Background**

2. On July 30, 2014, PG&E submitted the TO16 tariff filing seeking an increase its wholesale and retail transmission revenue requirements, effective October 1, 2014. In its filing, PG&E proposed, among other things, an ROE of 11.26 percent, comprised of a

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<sup>1</sup> *Pac. Gas and Elec. Co.*, 148 FERC ¶ 61,245 (2014) (TO16 Order).

<sup>2</sup> *Id.* P 30.

base return of 10.76 percent plus a requested 50 basis point incentive adder for its continued participation in CAISO.<sup>3</sup> Finding that PG&E had not demonstrated its proposed rates to be just and reasonable, on September 30, 2014, the Commission accepted and suspended PG&E's proposed TO16 tariff filing, subject to refund, and established hearing and settlement judge procedures.<sup>4</sup> In addition, the Commission summarily granted PG&E's request for the 50 basis point ROE incentive adder for CAISO participation.<sup>5</sup>

## II. Rehearing Request

3. The CPUC seeks rehearing of the TO16 Order solely on the issue of the 50 basis point incentive adder granted to PG&E for participation in CAISO. The CPUC asserts that the Commission erred in summarily granting the incentive on three grounds. First, the CPUC claims that participation in CAISO is not voluntary for PG&E and, therefore, the incentive adder for continued participation in CAISO is unnecessary, inappropriate, and unjust and unreasonable.<sup>6</sup> The CPUC states that PG&E turned over operational control of its transmission system to CAISO on March 31, 1998, in compliance with state law and pursuant to CPUC Order,<sup>7</sup> and that PG&E cannot leave CAISO without CPUC authorization.<sup>8</sup> Therefore, the CPUC states that, because PG&E's participation in CAISO is state-mandated and involuntary, PG&E has not and cannot justify a need for an adder to incentivize continued participation.<sup>9</sup>

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<sup>3</sup> PG&E, Transmission Owner Tariff Filing, Docket No. ER14-2529-000 at Exhibit PGE-1 at 6, 25-26 (filed July 30, 2014).

<sup>4</sup> TO16 Order, 148 FERC ¶ 61,245 at PP 25-27.

<sup>5</sup> *Id.* at P 30 (citing *Pac. Gas and Elec. Co.*, 121 FERC ¶ 61,227, at P 20 (2013); *Pac. Gas and Elec. Co.*, 141 FERC ¶ 61,168, at P 24 (2012)).

<sup>6</sup> Rehearing Request at 8.

<sup>7</sup> *Id.* (citing Cal. Pub. Util. Code §§ 330m, 365 (West 2014); CPUC Decision 95-12-036, December 20, 1995, Ordering Paragraph 1).

<sup>8</sup> *Id.* at 9 (citing Cal. Pub. Util. Code § 851 (West 2014)).

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

4. Second, the CPUC argues that the Commission erred by granting a generic 50 basis point incentive adder for PG&E's participation in CAISO, contrary to the Commission's established policy. The CPUC states that, in Order No. 679,<sup>10</sup> issued pursuant to section 219 of the Federal Power Act (FPA),<sup>11</sup> the Commission announced that it would approve, when justified, requests for ROE-based incentives for public utilities that join or continue to be a member of a regional transmission organization (RTO) or independent system operator (ISO), declining to create a generic adder for such membership.<sup>12</sup> The CPUC further states that the Commission declined to make a generic finding about the duration of incentives such as the RTO/ISO adder permitted in Order No. 679.<sup>13</sup> In addition, the CPUC states that the Commission declined to specify a particular method for establishing the appropriate ROE for entities that join or maintain membership in RTOs/ISOs in Order No. 679-A.<sup>14</sup>

5. Instead, the CPUC asserts that the Commission has adopted a *de facto* rule of summarily approving a generic 50 basis point incentive adder for RTO/ISO participation.<sup>15</sup> The CPUC states the Commission has summarily granted the generic adder to PG&E since its tenth transmission owner tariff filing in 2007, subject to suspension and the zone of reasonable returns determined at hearing.<sup>16</sup> The CPUC further asserts that the Commission fully eliminated procedural safeguards with the TO16 tariff filing by determining, without hearing, that parties opposing the 50 basis

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<sup>10</sup> *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222 (2006) (Order No. 679), *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (Order No. 679-A), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

<sup>11</sup> 16 U.S.C. § 824s (2012).

<sup>12</sup> Rehearing Request at 10 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 326).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* (citing Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 88).

<sup>15</sup> *Id.* at 10.

<sup>16</sup> *Id.* at 10-11 (citing Order 679-A, FERC Stats. & Regs. ¶ 31,236 at P 88; Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 326).

point incentive adder for PG&E had presented no new evidence or circumstances to warrant reexamining whether the adder was appropriate in that proceeding.<sup>17</sup>

6. The CPUC states that the Commission has followed a trend of awarding a generic adder for participation in other RTOs as well.<sup>18</sup> Moreover, the CPUC asserts that the Commission has neither provided notice of this change in policy, nor explained how this rationale comports with the Commission's obligation to ensure just and reasonable rates. By foreclosing consideration of whether a lower ROE adder would be appropriate, the CPUC states the Commission has violated the Fifth Amendment administrative due process rights of the interested parties and section 553 of the Administrative Procedure Act.<sup>19</sup>

7. Third, the CPUC argues that summarily granting PG&E an incentive adder for participation in CAISO was arbitrary, capricious, and not the product of reasoned decision-making.<sup>20</sup> The CPUC states that several parties submitted protests objecting to PG&E's request for the 50 basis point incentive adder in the TO16 tariff filing, but the Commission did not address these arguments in the TO16 Order and, instead, summarily granted the adder.<sup>21</sup> The CPUC asserts that, at minimum, the Commission should give a close look to the facts of the TO16 tariff filing, the CPUC's protest, the protest submitted by the Transmission Agency of Northern California, and the CPUC's rehearing request, and make a *de novo* determination regarding the necessity of awarding PG&E full 50 basis point incentive adder for its participation in CAISO.

8. On August 27, 2015, PG&E filed an answer to the CPUC's rehearing request.

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<sup>17</sup> *Id.* at 12 (citing TO16 Order, 148 FERC ¶ 61,245 at P 30).

<sup>18</sup> *Id.* at 13 (citing *Pepco Holdings, Inc.*, 121 FERC ¶ 61,169, at P 16 (2007); *Va. Elec. & Power Co.*, 123 FERC ¶ 61,098, at P 54 (2008); *American Elec. Power Serv. Corp.*, 121 FERC ¶ 61,245, at P 10; *So. Cal. Edison Co.*, 121 FERC ¶ 61,168, at P 159 (2007); *Association of Businesses Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, 149 FERC ¶ 61,049, at P 200 (2014)).

<sup>19</sup> *Id.* at 14 (citing 5 U.S.C. § 553 (2012); *Tennessee Gas Pipeline Co. v. FERC*, 969 F.2d 1141 (D.C. Cir. 1992); *Bell Lines v. U.S.*, 263 F.Supp. 40 (S.D.W.Va. 1967)).

<sup>20</sup> *Id.* at 9-11, 16.

<sup>21</sup> *Id.* at 16 (citing CPUC Protest, Docket No. ER14-2529-000).

### III. Procedural Matters

9. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2015), prohibits answers to rehearing requests. Therefore, we will reject PG&E's answer.

### IV. Discussion

10. We deny the CPUC's rehearing request. We first address CPUC's reliance on PG&E's participation in CAISO now being mandatory under the state's requirements. The fact remains, though, that it is within the Commission's authority to grant incentive adders as described in Order No. 679. Order No. 679 is clear that the Commission may grant incentive adders for public utilities that join and/or continue to remain in an ISO/RTO, and does not preclude the Commission from continuing to grant such adders to PG&E in light of PG&E's initial joining, and continued membership in, CAISO. Nor does Order No. 679 require that the Commission discontinue such adders in the face of arguments like those that the CPUC has made here.

11. Further, we reject the CPUC's arguments that the Commission granted PG&E a "generic" incentive adder or that summarily granting PG&E the adder in this case was not the product of reasoned decision-making. Order No. 679 provides that an entity that can demonstrate that it has joined a Commission-approved RTO/ISO and that its membership is ongoing will be presumed eligible for the ROE incentive adder.<sup>22</sup> The Commission first granted a 50 basis point adder to PG&E under section 205 of the Federal Power Act,<sup>23</sup> and consistent with Order No. 679's requirements, PG&E demonstrated, and the CPUC concedes, that it is a member of CAISO and its membership is on-going.<sup>24</sup>

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<sup>22</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222 at PP 327,331.

<sup>23</sup> *Pac. Gas & Elec. Co.*, 120 FERC ¶ 61,296 (2007); *see also* TO16 Order, 148 FERC ¶ 61,245 at P 30.

<sup>24</sup> We also disagree with the assertion that the Commission eliminated procedural safeguards related to the requirement that an incentive ROE remain within a Commission-approved zone of reasonableness. *See* TO 16 Order, 148 FERC ¶ 61,245 at P 30 (citing *Pac. Gas & Elec. Co.*, 144 FERC ¶ 61,227, at P 20 (2013) (granting PG&E's request for a 50 basis point adder for CAISO membership, while noting that the justness and reasonableness of PG&E's proposed ROE remained an issue of material fact)).

12. In Order No. 679, the Commission authorized an incentive for utilities to join and remain members of RTOs because these organizations benefit consumers by improving congestion management and grid reliability, spurring more efficient regional planning for transmission and generation investments, and helping to eliminate rate pancaking through regional transmission pricing.<sup>25</sup> Presently, CAISO, like other ISOs and RTOs, manages an evolving and complex transmission grid and rapidly evolving power market. As the independent system operator, CAISO's tariff requires it to provide open non-discriminatory transmission service, ensure system reliability, maintain resource adequacy, economically commit and dispatch resources to serve load, address congestion-related issues, mitigate market power, manage the transmission planning and generator interconnection processes, as well as address a variety of other issues, all of which benefit consumers. As CAISO works to fulfill its duties as the transmission organization overseeing this rapidly evolving regional power market, the transmission facilities owned by participating transmission owners, such as PG&E, and operated by CAISO continue to play a critical role in supporting CAISO's efforts to efficiently manage the transmission grid and provide benefits to customers in the entire CAISO footprint. Therefore, we find the requested 50 basis point incentive adder for PG&E's CAISO membership to be justified.

13. Further, the Commission has found that "the fact that entities request the same level of [the adder] that other entities have been granted does not mean that granting such a request makes the RTO adder the Commission's 'generic' adder."<sup>26</sup> Finally, we note that the Commission recently held that arguments opposed to granting the ISO/RTO participation incentive adder for existing RTO members constituted a collateral attack on Order No. 679-A, and that these arguments ignored the economic and reliability benefits of RTO membership.<sup>27</sup> We find that the CPUC's assertion here is of the same vein and we therefore reject it.

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<sup>25</sup> See Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 312; see also *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,024 (1999), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Pub. Util. Dist. No. 1 v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

<sup>26</sup> *Midcontinent Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,269, at P 14 (2015).

<sup>27</sup> *Association of Businesses Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, 149 FERC ¶ 61,049, at P 200 (2014).

The Commission orders:

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

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.