

123 FERC ¶ 61,293
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Southern California Edison Company

Docket No. EL07-62-001

ORDER DENYING REHEARING

(Issued June 23, 2008)

1. This order addresses requests for rehearing or clarification of the Commission's November 16, 2007 order¹ granting Southern California Edison Company's (SCE) petition for a declaratory order. In the November 16 Order, the Commission approved the incentive rate treatment proposed by SCE for three transmission projects. As discussed below, we will deny the requests for rehearing.

I. Background

2. On May 18, 2007, as supplemented on August 16, 2007, SCE filed a petition for declaratory order requesting that the Commission approve its proposed incentive rate treatments for certain transmission projects, as consistent with Order No. 679.² Specifically, SCE proposed to invest \$2.5 billion dollars to construct three transmission projects: (1) Devers-Palo Verde II Project (DPV2 Project); (2) Tehachapi Transmission Project (Tehachapi Project); and (3) Rancho Vista Transmission Substation Project (Rancho Vista Project). In its petition, SCE requested authorization to recover the

¹ *Southern California Edison Co.*, 121 FERC ¶ 61,168 (2007) (November 16 Order).

² *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007). In section 1241 of the Energy Policy Act of 2005 (EPAct 2005), Pub L. No. 109-58, § 1241, 119 Stat 594, 961 (2005), Congress added new section 219 to the FPA, directing the Commission to establish, by rule, incentive-based (including performance-based) rate treatments. The Commission issued Order No. 679, which set forth processes by which a public utility could seek transmission rate incentives pursuant to FPA section 219, including the incentives requested by SCE.

following incentives: (1) return on equity (ROE) adders of 150-basis points for the DPV2 and Tehachapi Projects and 100-basis points for the Rancho Vista Project, for new transmission investments; (2) Construction Work in Progress (CWIP) of 100 percent during construction of the projects; (3) recovery of its abandonment costs for DPV2 and Segments 3 through 11 of the Tehachapi Project³ if these projects, or a portion thereof, are cancelled due to factors beyond SCE's control; and (4) an ROE adder of 50-basis points for SCE's participation in the California Independent System Operator Corporation (CAISO).

3. In the November 16 Order, the Commission found that SCE's proposed projects meet the rebuttable presumption of eligibility for incentive rate treatment under section 219 of the Federal Power Act's (FPA)⁴ and satisfy the nexus requirement, consistent with Order Nos. 679 and 679-A. Accordingly, the Commission granted the petition for declaratory order, approving the incentive rate treatments for the proposed three Projects, subject to certain modifications to the ROE adders. The Commission held that SCE's overall risk is reduced by the CWIP and abandoned plant cost incentives and, therefore, granted an ROE adder of 125-basis points for the DPV2 and Tehachapi Projects and a 75-basis point ROE adder for the Rancho Vista Project. Finally, the Commission granted the 50-basis point ROE adder for SCE's participation in the CAISO.

4. Golden State Water Company (Golden State) filed a timely request for rehearing or clarification, and California Department of Water Resources State Water Project (SWP), the Public Utilities Commission of California (CPUC), and the California Electricity Oversight Board (CEOB) filed timely requests for rehearing of the November 16 Order. On January 28, 2008, CEOB filed a notice terminating its participation in this proceeding.

II. Discussion

A. Sufficiency of Evidence and FPA Section 205 Issues

5. The November 16 Order disagreed with SWP's protest that the Commission should not make a determination concerning the proposed incentives in this proceeding without an FPA section 205 filing due to the potential for large rate impacts of the

³ SCE received 100 percent abandoned plant cost recovery for Segments 1 and 2 of the Tehachapi Project in another proceeding, prior to the issuance of Order No. 679. November 16 Order, 121 FERC ¶ 61,168 at P 64 & n.105.

⁴ 16 U.S.C. § 824s (2000 & Supp. V 2005).

proposed Projects. The Commission found that SWP's proposed approach would be inconsistent with section 219 and Order No. 679.⁵

1. Rehearing Request

6. In arguing that the Commission erred, SWP reiterates its argument that the Commission cannot determine the appropriateness of incentives for SCE without determining the justness and reasonableness of SCE's rates with the incentives. To satisfy the requirement of section 219(d), SWP asserts that SCE's rates, with the inclusion of the requested incentives, must meet the just and reasonable requirement of sections 205 and 206 of the FPA.⁶ Yet, according to SWP, SCE failed to provide sufficient information for the Commission to make that determination.⁷ It asserts that SCE presented general statements and estimates regarding the projected cost of the three Projects, but SCE submitted no hard data upon which those estimates, or the economic implications of the rate incentives, can be assessed. SWP asserts that the record in this proceeding contains no balance sheets, no income statements, no cost of plant statements, no statement of accumulated depreciation, no operation and maintenance expenses, and that there is no specified rate of return, no cost of short-term debt, and no revenue data. Therefore, SWP argues that the record lacks evidence upon which economic and ratepayer impacts of SCE's request can be assessed.⁸

7. SWP argues that based on the evidence submitted in its protest, SCE's approved incentives will significantly increase rates for SCE's and the CAISO's ratepayers.⁹ According to SWP, the evidence shows that the cost of delivered power will rise dramatically and the resulting economic impact on ratepayers will be substantial.¹⁰ SWP

⁵ November 16 Order, 121 FERC ¶ 61,168 at P 43.

⁶ SWP Rehearing Request at 12 (noting that all rates approved under section 219 are subject to the requirements of sections 205 and 206 that all rates, terms and conditions be just and reasonable and not unduly discriminatory or preferential).

⁷ *Id.* at 13.

⁸ *Id.* at 14.

⁹ *Id.* at 15.

¹⁰ SWP included in its protest to SCE's petition an Affidavit of Lee Terry, SWP's senior hydroelectric power engineer. SWP Protest, Affidavit of Lee Terry on Behalf of the California Department of Water Resources State Water Project (Terry Affidavit). SWP notes that assuming a 48 percent common equity ratio, Mr. Terry attested the following: (1) the 50-basis point ROE adder would add \$18.5 million to SCE's rates in

(continued...)

notes that based on Mr. Terry's calculations, SWP's rates in 2013 would include \$1.3 million to pay for the incentive adders, without considering any allowance for CWIP.¹¹ SWP contends that the Commission failed to consider these calculations in the November 16 Order and that its failure to consider and reconcile this evidence with its decision constitutes reversible error.¹²

8. Finally, SWP argues that the Commission's refusal to establish an evidentiary hearing has resulted in an inadequate record that is unable to support the Commission's findings. It states that an administrative process requires an evidentiary hearing when facts are in dispute.¹³ Similar to the procedures required in *Duquesne Light Company*¹⁴ and *San Diego Gas & Electric Company*,¹⁵ SWP states that the Commission should have established evidentiary procedures to ensure that the mandates of FPA sections 219 and 205 are satisfied. Therefore, to cure the inadequate record, SWP asserts that the Commission should establish hearing procedures to include a schedule for the submission of supporting testimony by SCE and for responsive testimony by interested parties, provisions for discovery, an opportunity for cross-examination of sponsoring witnesses, followed by full briefing to the Commission. It contends that, only with such evidence, can the Commission form a reasoned decision which is supported by substantial

2013; (2) the 150-basis point adder for the DPV2 and Tehachapi Projects would increase SCE's rates by an additional \$33.1 million in 2013; and (3) a 100-basis point adder for the Rancho Vista Project would add another \$1.8 million to consumer rates in 2013. The calculations are based on SCE's current rate base of \$1.2 billion and its projected rate base addition of \$4.3 billion over the next five years, and applying a straight-line depreciation rate amortized over forty years. SWP Rehearing Request at 15 (citing Terry Affidavit at 20).

¹¹ *Id.* (citing Terry Affidavit at 20).

¹² *Id.* at 16 (citing *California Dep't of Water Resources v. FERC*, 341 F.3d 906, 910-11 (9th Cir. 2003); *Moraine Pipeline Co. v. FERC*, 906 F.2d 5 (D.C. Cir. 1990)).

¹³ *Id.* at 26 (citing *Morgan v. U.S.*, 304 U.S. 1 (1938); *Communications Investment Corp. v. FCC*, 641 F.2d 954, 992 (D.C. Cir. 1981)).

¹⁴ *Duquesne Light Co.*, 118 FERC ¶ 61,087 (2007) (*Duquesne*).

¹⁵ *San Diego Gas & Elec. Co.*, 118 FERC ¶ 61,073 (2007).

evidence.¹⁶ Therefore, it urges the Commission to establish such procedures and direct SCE to submit cost-specific and rate analysis information based on the requirements of section 205 and section 35.13 of the Commission's regulations.

2. Commission Determination

9. We find that SCE has provided sufficient information with its petition for a declaratory order to permit the Commission to approve its proposed transmission rate incentives under Order Nos. 679 and 679-A, subject to SCE's demonstration of the justness and reasonableness of SCE's overall rates in a subsequent FPA section 205 filing.¹⁷

10. We reject SWP's contention that we must make a determination that SCE's overall rates will be just and reasonable under section 205 at the same time we determine eligibility for the incentives, and that therefore we should have established an evidentiary proceeding. As discussed below, SWP's arguments are inconsistent with the procedural options provided by Order Nos. 679 and 679-A.

11. The Commission's approval of SCE's petition is consistent with the directives set forth by FPA section 219. As noted in the November 16 Order, under Order No. 679, an applicant has the option to seek incentive-based rate treatment (1) through a combination of a petition for a declaratory order and a subsequent section 205 filing to put the rates into effect or (2) by filing only a section 205 filing to request all of the required approvals.¹⁸ The Commission previously noted that petitions for declaratory order allow applicants to receive upfront guidance from the Commission and can be an invaluable tool, offering flexibility to applicants to secure assurances needed to facilitate

¹⁶ SWP Rehearing Request at 27. SWP argues that such an approach is supported by Order No. 679 and *Duquesne and San Diego Gas & Elec. Co.* In both cases, the Commission established hearing and settlement judge procedures, so that the incentive request was evaluated in the context of the overall section 205 rate filing.

¹⁷ We note that on December 21, 2007, SCE submitted revisions to its tariff under section 205 of the FPA to demonstrate the justness and reasonableness of the CWIP and ROE incentives in Docket No. ER08-375-000. On January 11, 2008, SWP filed an intervention to SCE's filing. The Commission accepted SCE's proposed tariff revisions and established a paper hearing. *Southern California Edison Co.*, 122 FERC ¶ 61,187 (2008).

¹⁸ See November 16 Order, 121 FERC ¶ 61,168 at P 43; see also Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 76.

investments and financing for the proposed projects prior to commencing construction.¹⁹ If an applicant pursues the first option, an applicant must demonstrate in a subsequent section 205 filing that its overall rate, including the incentives, is just and reasonable.²⁰ This provides all interested parties with an opportunity to comment, and the Commission will evaluate whether the rates are just and reasonable and not unduly discriminatory or preferential.

12. We disagree with SWP that SCE is required to submit additional information, i.e., balance statements, income statements, or other financial cost analysis in its petition for a declaratory order. SCE chose to pursue the first option provided under Order No. 679²¹ and, therefore, it was not required to make a showing in its petition that its rate recovery meets the just and reasonable standard under section 205 or provide any analysis regarding the rate impact of the incentives. As noted above, Order No. 679 does not provide for Commission inquiries into the reasonableness of transmission cost estimates in a petition for a declaratory order unless the applicant requests that the Commission make an upfront ROE determination in the declaratory order.²² While it is true that under section 219(d), all rates approved thereunder are subject to the requirement of sections 205 and 206 of the FPA, which require that all rates, charges, terms and conditions be just and reasonable and not unduly discriminatory or preferential,²³ the Commission is not required to evaluate the justness and reasonableness of the overall rates at the petition for declaratory order stage. Rather, the Commission specifically stated that any petition for a declaratory order will only address whether the applicant's proposal qualifies for incentive-based rate treatment and, if requested, which incentives the applicant may adopt.²⁴ Any issues involving specific rate calculations will be addressed in individual section 205 proceedings, where the applicant seeks to put the rates into effect.²⁵ Moreover, the Commission specifically noted that applicants for incentive-based rate

¹⁹ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 77; *see also American Elec. Power Serv. Corp.*, 118 FERC ¶ 61,041, at P 20 (2007).

²⁰ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 79.

²¹ *See* 18 C.F.R. § 35.35(d) (2007).

²² Had SCE requested that the Commission make an upfront ROE determination in a declaratory order, then SCE would have been required to provide support for such a determination. But, SCE did not seek an upfront ROE determination in this proceeding.

²³ Pub. L. 109-58, 119 Stat. 594, section 1241.

²⁴ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 77.

²⁵ *Id.* P 81. *See also id.* P 20.

treatments are not required to provide a cost-benefit analysis.²⁶ Accordingly, as we noted in the November 16 Order, SWP should raise such issues, including rate calculations for SCE's rate recovery, in the section 205 proceeding.

13. Additionally, we reject SWP's argument that the Commission was required to consider, at the declaratory order stage, SWP's evidence that the approved incentives will increase rates for ratepayers. As stated above, because SCE chose to pursue the first option, i.e., petition for a declaratory order and a subsequent section 205 filing, we did not make a determination into the justness and reasonableness of SCE's overall rates. We specifically stated in the November 16 Order:

We also emphasize that we are not determining the justness and reasonableness of SCE's overall rates at this stage. Our approval is declaratory in nature; we are approving SCE's proposed incentives as satisfying requirements of section 219 and Order No. 679 to provide the regulatory certainty necessary for SCE to proceed with the proposed Project's financing and construction. Our decision therefore is confined to the particular incentives being approved in the instant proceeding and does not constitute approval of any particular rate.^[27]

As noted above, SCE made its section 205 filing in Docket No. ER08-375-000, in which the Commission set ROE and CWIP recovery issues for a paper hearing. Thus, SWP's arguments concerning rate impacts are beyond the scope of this proceeding. To the extent that SWP argues that the Commission may only grant incentives in conjunction with a determination on the justness and reasonableness of a corresponding section 205 filing to recover such incentives, we reject SWP's argument as an impermissible collateral attack on Order No. 679, which provided applicants for incentives with the procedural option of a petition for a declaratory order, as discussed above.

14. We also disagree that the Commission should have set SCE's petition for a trial-type evidentiary hearing in this proceeding. SWP fails to recognize that SCE's petition is procedurally distinguishable from *Duquesne* and *San Diego Gas & Electric Co.* In *Duquesne*, the applicant simultaneously filed a petition for declaratory order requesting incentives and a formula rate which included a proposed base ROE under section 205 of the FPA (second option from above). In that respect, the Commission found that the applicant's proposed formula rate under section 205 presented elements that may be

²⁶ Order No 679, FERC Stats. & Regs. ¶ 31,222 at P 65.

²⁷ November 16 Order, 121 FERC ¶ 61,168 at P 149.

unjust and unreasonable, unduly discriminatory or preferential, or otherwise unlawful and, therefore, established a hearing.²⁸ Similarly, in *San Diego Gas & Electric Co.*, the company submitted new tariff sheets under section 205 to implement a new transmission owner formula rate mechanism to replace the existing formula rate mechanism. The Commission determined that the company's filing raised issues of material fact related to non-incentive inputs of the formula and, therefore, established hearing and settlement judge procedures. In contrast, as explained above, in the November 16 Order, the Commission made a determination on a petition for a declaratory order, and conditioned our approval on subsequent section 205 proceedings.

15. Finally, we also reject SWP's argument that the Commission failed to find that the cost of delivered power without the three Projects would be higher than the cost of delivered power with the three Projects. As we state above, applicants for transmission rate incentives are not required to submit a cost-benefit analysis. In addition, in Order No. 679-A, the Commission reaffirmed its belief that regional planning or state approval processes "will, in all likelihood, examine whether the project maintains reliability or reduces congestion. But in instances where this is not the case the applicant will bear the full burden of demonstrating such facts."²⁹ In the November 16 Order, the Commission, citing Order No. 679-A, stated that "[o]ur review shows that SCE has met its burden that the regional planning processes determined that the proposed Projects will ensure reliability or reduce the cost of delivered power by reducing transmission congestion."³⁰

B. Rebuttable Presumption

16. In the November 16 Order, the Commission concluded that SCE's proposed Projects satisfied the Order No. 679 rebuttable presumption of eligibility for incentive rate treatment under section 219.³¹ The Commission found that SCE met the section 219 burden because the three Projects have been approved by a regional planning process that considered reliability and/or congestion benefits of the Projects.³²

²⁸ *Duquesne*, 118 FERC ¶ 61,087 at P 69.

²⁹ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 49.

³⁰ November 16 Order, 121 FERC ¶ 61,168 at P 39.

³¹ *Id.* P 38-39.

³² The Commission also noted that on October 2, 2007, the U.S. Department of Energy (DOE) announced its designation of two NIETC – the Mid-Atlantic Area National Interest Electric Transmission Corridor (Docket No. 2007-OE-01) and the Southwest Area National Interest Electric Transmission Corridor (Docket No. 2007-OE-

1. Rehearing Request

17. SWP contends that the Commission wrongly concluded that SCE met the rebuttable presumption of reliability for all three Projects. Under Order No. 679, it notes that SCE must show that each of the Projects is needed to “ensure reliability or reduces the cost of delivered power by reducing congestion” and the Projects must result from a fair and open regional planning process that evaluates each Project’s reliability and congestion, or those that have received construction approval from the appropriate siting authority.³³ It argues that SCE has no such showing for the three Projects.³⁴ On the contrary, according to SWP, the record contains only passing references to reliability in the CAISO staff memo, without any factual supporting basis upon which the Commission may rely. Moreover, the CAISO staff memo recommending the approval of the Tehachapi Project indicates that the CAISO is not relying on reliability to determine its approval of the Project.³⁵ Therefore, SWP argues that the Commission’s conclusion regarding the Tehachapi Project is directly in conflict with the evidence. It also asserts that the Commission failed to address SWP’s arguments on the reliability issue for the Tehachapi Project.³⁶ Moreover, SWP notes that the CPUC made no findings based on system reliability benefits of the Tehachapi Project and asserts that the CAISO’s approval of Rancho Vista was based primarily on a finding of it being the least-cost alternative to meet load growth.³⁷ Moreover, it states that the CPUC has not made any findings regarding Tehachapi’s segments 4-11 and the Rancho Vista Project.

02). The Southwest Area NIETC included the counties in Arizona and California through which SCE’s proposed right-of-way for the DPV2 Project will travel. See Department of Energy, *National Electric Transmission Congestion Report*, available at <http://nietc.anl.gov>. The Commission stated that, while SCE does not rely on the NIETC process for purposes of meeting the rebuttable presumption, the NIETC determination would be entitled to due weight to the extent DOE found reliability or congestion benefits. November 16 Order, 121 FERC ¶ 61,168 at n.67 (citing Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at n.77).

³³ SWP Rehearing Request at 16 (citing 18 C.F.R. § 35.35(i)(1)).

³⁴ *Id.* at 16.

³⁵ *Id.* at 17 (citing SCE Petition, Exhibit I at 8 (stating that “the CAISO is not relying on such reliability or economic benefits or RPS compliance to justify approval of the Tehachapi Project”)).

³⁶ *Id.*

³⁷ *Id.* (citing SCE Petition at 30 & Exhibit L at 1).

18. In addition, SWP argues that there is no evidence that the three Projects will reduce the cost of delivered power by reducing congestion. SWP asserts that SCE failed to meet the burden established in *Duquesne*, where the Commission explained that “if the approval process does not confirm that the project ensures reliability or reduces the cost of delivered power by reducing congestion, the applicant bears the burden of demonstrating that its project satisfies these criteria.”³⁸ Instead of making such a demonstration, SWP reiterates that SCE relied on the CAISO and the CPUC approval processes which were not based on findings of reliability.

19. Further, SWP asserts that the alternative test for demonstrating the need for a project – that it will reduce the cost of delivered power – has also not been met because there is no evidence to support such a finding for any of the three Projects. SWP contends that SCE’s statement that the DPV2 Project has a benefit to cost ratio of 1.7:1 is unsupported and conflicts with the CAISO’s determination that the ratio ranges from 1.2:1 to 3.2:1.³⁹

2. Commission Determination

20. In the November 16 Order, the Commission found that SCE met its burden that the proposed Projects meet the rebuttable presumption of eligibility for incentive rate treatment in that all three Projects have been approved by a regional planning process that considers and evaluates projects for reliability and/or congestion.⁴⁰ We affirm that finding here and, therefore, will deny SWP’s request for rehearing on this issue.

21. As the Commission explained in the November 16 Order, pursuant to Order Nos. 679 and 679-A, any public utility filing a petition for declaratory order or section 205 filing to obtain incentive rate treatment for transmission infrastructure investment must satisfy the requirements of section 219. The applicant must demonstrate that the facilities for which it seeks incentives either ensure reliability or reduce the cost of delivered power by reducing transmission congestion.⁴¹ Order No. 679 adopted a set of processes that, if an applicant satisfies them, will afford its project a rebuttable presumption that it

³⁸ *Id.* at 18 (citing *Duquesne*, 118 FERC ¶ 61,087 at P 63).

³⁹ *Id.* (citing SCE Petition at 25 and SCE Petition, Exhibit D, CAISO Memo at 6 (Feb. 18, 2005)).

⁴⁰ November 16 Order, 121 FERC ¶ 61,168 at P 39-40.

⁴¹ *See* 18 C.F.R. § 35.35(i) (2007).

meets the requirements of section 219.⁴² The rebuttable presumption is established for: (i) a transmission project that results from a fair and open regional planning process that considers and evaluates projects for reliability and/or congestion; or (ii) a transmission project that has received construction approval from an appropriate state commission or state siting authority.⁴³ Order No. 679-A 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.⁴⁴ Further, to the extent that these approval processes do not require such criteria, the applicant bears the burden of demonstrating that its project satisfies these criteria.⁴⁵

22. We disagree with SWP and reaffirm our determination that SCE did establish a rebuttable presumption of eligibility for incentive rate treatment. Contrary to SWP's assertions, SCE presented sufficient evidence that the CAISO considers both reductions in power prices due to reduced congestion and reliability in its regional planning process. Our review indicated that the CAISO concluded that there are, among other benefits, reliability and congestion management benefits from the Projects. For example, the CAISO's review showed that it considered reliability, congestion management, and economic benefits in evaluating the DPV2 Project.⁴⁶ The CAISO's study on the Tehachapi Project also indicated that Project is necessary to reliably interconnect generation resources in the Tehachapi area and, at the same time, to provide reliability

⁴² The Commission noted that the rebuttable presumption was created for the purpose of avoiding duplication in determining whether a project maintains reliability or reduces congestion. It stated that it did not want to repeat the work of the state siting authorities, regional planning processes, or the DOE in evaluating these issues. Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 46.

⁴³ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P58.

⁴⁴ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 49.

⁴⁵ *Id.*; 18 C.F.R. § 35.35(i)(2) (2007).

⁴⁶ November 16 Order, 121 FERC ¶ 61,168 at P 39 and n.69 (noting that that the CAISO Memorandum indicates that the DPV2 Project provides economic benefits, improves reliability, helps foster competitive markets, helps meet load growth, and reduces congestion).

and economic value for the CAISO grid.⁴⁷ Finally, we noted that the CAISO's review found that the Rancho Vista Project is needed to reliably serve load growth in Southern California.⁴⁸

23. As noted in the November 16 Order, the fact that the CAISO reviewed the Projects under additional criteria and found other benefits in approving these Projects does not detract from the CAISO's determinations that included reliability and/or congestion management.⁴⁹ Moreover, regional entities are not required to mirror their planning processes or approvals of transmission projects to the requirements in Order Nos. 679 and 679-A. Each regional entity may base its own conclusions on the needs and requirements of that particular region. The rebuttable presumption only requires that the transmission project be vetted in a regional planning process that *considers and evaluates projects for reliability and/or congestion*.

24. To make its argument that the CAISO was not relying on its findings concerning reliability and economic benefits, SWP points to the CAISO Staff memo on Tehachapi that states that its findings were not based on reliability and/or congestion. We note, however, that the CAISO staff memo cited by SWP explicitly states that "Tehachapi Transmission Project offers System Reliability and efficiency benefits. . . ."⁵⁰ The fact that the CAISO did not rely on reliability findings to justify approval of the Project does not detract from its finding that the Project offers system reliability. This finding is the only relevant fact for purposes of the rebuttable presumption under section 219.

25. Also, contrary to SWP's assertions, the CPUC's review of the Tehachapi Project included findings of enhanced system reliability. For example, the CPUC noted that the Tehachapi Project "will be needed both to enable California to meet RPS goals as well as *to assure the continuing reliability and safety of the transmission grid in Southern*

⁴⁷ *Id.* P 39 and n.70 (noting that the CAISO South Regional Transmission Plan determined that "the Tehachapi Project is the least-cost solution that reliably interconnects 4,350 MW of generating resources" and that the Project addresses the reliability needs of the CAISO-controlled grid in light of the projected growth in Los Angeles area).

⁴⁸ *Id.* P 39 & n.71 (noting that CAISO determined that "without the Rancho Vista substation, the existing substation (Mira Loma) would be overloaded beyond its capability and could raise reliability concerns").

⁴⁹ *Id.* P 40.

⁵⁰ SCE Petition, Exhibit I, CAISO Memorandum at 8 (January 18, 2007).

California.”⁵¹ Similarly, with respect to Segments 2 and 3, the CPUC found that, without system improvements, SCE and others could not deliver growing amounts of wind power from the Tehachapi region.⁵² The CPUC also considered the fact that the existing system was too constrained (i.e., congested) to bring in additional wind power.⁵³

26. SWP asserts that SCE failed to show an independent demonstration that its Projects satisfy the criteria under section 219, i.e., that the Projects reduce the cost of delivered power or reduces congestion. As explained herein, given the review by CAISO and in addition the review by the CPUC, SCE was not required to make such a showing.

C. Nexus Requirement and ROE Adders

27. In the November 16 Order, the Commission found that, consistent with Order Nos. 679 and 679-A, SCE had adequately demonstrated a nexus between the total package of proposed rate incentives and its investment in the three Projects, i.e., that the total package of incentives is tailored to address the demonstrable risks or challenges faced by SCE.⁵⁴ Specifically, we noted that the incentive rate treatments proposed by SCE are not

⁵¹ SCE Petition, Exhibit J: *In the Matter of the Application of Southern California Edison Company (U 338-E) for a Certificate of Public Convenience and Necessity Concerning the Antelope-Pardee Project as Required by Decision 04-06-010 and as Modified by Subsequent Assigned Commissioner Ruling, D.07-03-012* at 22 (CPUC, Mar. 1, 2007) (emphasis added).

⁵² SCE Petition, Exhibit K: *In the Matter of the Application of Southern California Edison Company (U 338-E) for a Certificate of Public Convenience and Necessity Concerning the Antelope-Vincent 500kV (Segment 2) and Antelope-Tehachapi 500kV and 220kV (Segment 3) Transmission Projects as Required by Decision 04-06-010 and as Modified by Subsequent Assigned Commissioner Ruling, D.07-03-045* at 22-23 (CPUC, Mar. 15, 2007).

⁵³ *Id.* at 16 (“As we have recognized in our prior decisions, transmission to the wind rich Tehachapi area is almost unique in its ability to qualify under the standard set forth above because of the size of the wind resource in this area, the constraints on the existing transmission system, and the level of interest on behalf of both utilities and merchant providers aspiring to develop projects there.”).

⁵⁴ November 16 Order, 121 FERC ¶ 61,168 at P 129-149.

mutually exclusive and found that SCE had made a sufficient showing that, in constructing these three Projects, it faced significant risks and challenges that warrant the requested incentives.⁵⁵

28. However, in evaluating the total package of incentives, the Commission found that, based on the facts of this case, the CWIP and abandoned plant cost recovery incentives reduce SCE's overall risk.⁵⁶ Therefore, the Commission concluded that a reduction in SCE's proposed ROE adders is appropriate, consistent with Order No. 679-A.⁵⁷ Accordingly, the Commission granted an 125-basis point ROE incentive adder for the DPV2 and Tehachapi Projects (rather than 150 basis points), and a 75-basis point ROE incentive adder for the Rancho Vista Project (rather than 100 basis points), to be bound by the upper end of the zone of reasonableness, to be determined when SCE makes its future section 205 filing.⁵⁸

1. Rehearing Request

29. SWP argues that there is no substantial evidence to support the Commission's finding that a nexus exists between the incentives and investments.⁵⁹ SWP contends that, rather than undertaking its own assessment, the Commission relied heavily on SCE's contentions that the three Projects face significant and unique financial, regulatory and other risks, and that granting the ROE incentives will enhance SCE's cash flow, improve SCE's financial position, and support SCE's overall credit quality. According to SWP, the Commission's reliance on SCE's unsworn, untested, and unexamined assertions that are contested does not meet the FPA requirements for substantial evidence. SWP also asserts that SCE ignored Commission Staff's request for additional support and testimony for the nexus between incentives and investments in its deficiency letter.⁶⁰ SWP

⁵⁵ *Id.* P 142.

⁵⁶ The Commission found that SCE had shown a nexus between the proposed CWIP and recovery of abandoned plant costs and, therefore, granted both incentives. *Id.* P 57, 71.

⁵⁷ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 6 (“[i]f some of the incentives in the package reduce the risks of the project, that fact will be taken into account in any request for an enhanced ROE”).

⁵⁸ November 16 Order, 121 FERC ¶ 61,168 at P 129.

⁵⁹ SWP Rehearing Request at 19 (citing *Duquesne*, 118 FERC ¶ 61,087 at P 49).

⁶⁰ On July 17, 2007, the Director, Division of Tariffs and Market Development – West, acting under delegated authority, issued a deficiency letter, directing SCE to

(continued...)

contends that SCE failed to provide much of the information sought by Staff in the deficiency letter. Instead of submitting testimony and other supporting information, as directed, SWP asserts that SCE merely reiterated the same assertions made in its Petition regarding the DPV2, Tehachapi, and Rancho Vista Projects.⁶¹

30. Moreover, SWP asserts that SCE failed to provide a demonstration separately for each project that the total package of incentives is tailored to address the demonstrable risks or challenges faced by the applicant, including whether certain incentives reduce the risk addressed by other incentives.⁶² Therefore, it asserts that the Commission's conclusion on the nexus finding is not well-reasoned.⁶³ Further, SWP asserts that the record shows that the three Projects will be built regardless of whether the incentives are granted. It states that planning and design of all three Projects commenced before EPAct 2005 or Order No. 679.⁶⁴ Therefore, it argues that such evidence cannot support a finding of a nexus between the incentives and the investments.

31. SWP contends that the Commission was inconsistent in its conclusion regarding SCE's financial condition. While the Commission accepted the argument that SCE's financial position is strong, SWP avers that the Commission also relied on SCE's contention that its financial condition could be stressed as it takes on large amounts of additional debt to support the three Projects to support a nexus finding.⁶⁵ Moreover, it asserts that the Commission's suggestion that the applicant's financial position is not relevant is inconsistent with its holding in *Duquesne*, where the Commission noted that without the incentives, Duquesne could face difficulties with the proposed project.⁶⁶

submit additional information for its incentive requests in the petition (deficiency letter). On August 16, 2007, SCE filed a response to the deficiency letter.

⁶¹ SWP Rehearing Request at 7.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.* at 21.

⁶⁵ *Id.* at 19-20 (citing November 16 Order, 121 FERC ¶ 61,168 at P 145).

⁶⁶ *Id.* 20 (citing *Duquesne*, 118 FERC ¶ 61,087 at P 59 (“without these incentives Duquesne could experience deterioration in its credit quality that could lead to higher rates and commitment fees under its current revolving credit facility, in addition to increasing its borrowing costs under any new long-term borrowing arrangements”)).

32. In addition, the CPUC argues that the Commission arbitrarily and capriciously awarded ROE incentives to the three Projects without requiring a meaningful financial analysis on the necessity and impact of the incentives on SCE. In doing so, the CPUC asserts that the Commission ignored its precedent. For example, it notes that in *ComEd*, the Commission rejected the requested ROE incentives because it found that the applicant did not make a sufficient showing that it faced financial risks given the company's investment-grade rating and failure to provide a cash flow analysis demonstrating that its credit rating will be negatively impacted.⁶⁷ Similarly, the CPUC argues that SCE failed to present an adequate justification for its proposed ROE incentives because it has an investment-grade rating and did not provide a cash flow analysis showing that its credit rating will be negatively impacted.⁶⁸ Further, the CPUC notes that while in *Duquesne*, the Commission found that without the incentives the company's credit quality could deteriorate and lead to higher rates and borrowing costs, in *ComEd*, the Commission found that the incentives were not needed to maintain credit quality and there was no "demonstration that without the incentives, [ComEd's] financial condition will weaken."⁶⁹ The CPUC contends that the Commission did not consider such analysis in awarding the incentives to SCE, but simply assumed that SCE's financial position could be stressed and impacted as it takes on large amount of additional debt for the Projects.⁷⁰ The CPUC argues that this is highly speculative and does not meet the requirements of Order No 679-A as interpreted in *ComEd*.

33. The CPUC disagrees with the Commission's contention that, based on *Baltimore Gas and Electric Company*,⁷¹ projects that are not routine face inherent risks and challenges and/or provide benefits that are worthy of incentives.⁷² Under such reasoning, the CPUC asserts that projects that are not routine would be eligible for incentives regardless of whether the ROE incentives are justified. Instead, it asserts that high ROE incentives in addition to CWIP, abandoned plant costs, and the 50-basis point ISO membership incentive require a meaningful financial analysis. Additionally, the CPUC

⁶⁷ CPUC Rehearing Request at 14 (citing *Commonwealth Edison Co.*, 119 FERC ¶ 61,238, at P 64 (2007), *order on reh'g*, 122 FERC ¶ 61,037 (2008) (*ComEd*)).

⁶⁸ *Id.* (citing CPUC Protest to SCE's Supplemental Filing at 6-7).

⁶⁹ *Id.* at 15 (citing *ComEd*, 119 FERC ¶ 61,238 at P 67, 68).

⁷⁰ *Id.* (citing November 16 Order, 121 FERC ¶ 61,168 at P 145).

⁷¹ *Baltimore Gas and Electric Co.*, 120 FERC ¶ 61,084 (2007) (*BG&E*).

⁷² CPUC Rehearing Request at 15 (citing November 16 Order, 121 FERC ¶ 61,168 at P 145).

states that it never claimed that financial weakness is necessary to receive any incentive rate treatments. However, it asserts that the Commission inappropriately applied Order No. 679-A by granting SCE all four incentive treatments when it has an investment-grade rating, has not provided any cash flow analysis showing that its credit rating will be negatively impacted or that borrowing will be difficult, or any other showing of financial need. The CPUC argues that such a determination is also a reversal of the *ComEd* precedent and reflects the Commission's lack of a reasoned decision-making process.⁷³

34. In regard to ROE adders, the CPUC argues that, in evaluating the risks of SCE's investments and whether such risks justified SCE's proposed ROE adders in addition to CWIP and abandoned plant incentive, the Commission failed to consider that SCE's risks for the three Projects are lowered by California law and the CPUC's regulatory actions. Specifically, the CPUC states that it presented evidence in its protest that California Public Utilities Code section 399.25 and CPUC decision (D.) 06-06-034 provide backstop protection to SCE which eliminates the risk that SCE would not receive cost recovery.⁷⁴ According to the CPUC, under section 399.25, any costs for projects contributing to California renewable goals, including the ones which could be recoverable pursuant to the Commission's order, are otherwise recoverable pursuant to CPUC orders (if the Commission does not authorize recovery of these costs).⁷⁵ In that respect, it argues that SCE has two opportunities to recover these costs, which ensures cost recovery and, therefore, eliminates the risk that SCE would otherwise face.⁷⁶ The CPUC asserts that such facts should be considered in assessing whether an enhanced ROE for DPV2, Tehachapi, and Rancho Vista Projects is warranted.

35. Additionally, the CPUC states that its decision (D.)06-11-018 "greatly" reduces SCE's regulatory uncertainty because the decision held that the CPUC would grant a

⁷³ *Id.* at 16.

⁷⁴ *Id.* at 11 (citing CPUC Protest at 7-20).

⁷⁵ *Id.* at 12. See also Cal. Pub. Util. Code § 399.25(b)(4) (2007); *Order Instituting Investigation to Facilitate Proactive Development of Transmission Infrastructure to Access Energy Resources for California*, 2006 Cal. PUC LEXIS 220 (Cal. PUC 2006). Section 399.25 helps facilitate utilities' compliance with the California's Renewable Portfolio Standard (RPS) goals. The RPS program requires retail sellers of electricity to increase their sale of electricity produced by renewable energy resources to 20 percent by 2010. November 16 Order, 121 FERC ¶ 61,168 at n.3.

⁷⁶ The CPUC notes that Tehachapi's segments 1-3 already received approval for this rate treatment. CPUC Rehearing Request at 12 (citing November 16 Order, 121 FERC ¶ 61,168 at P 123; SCE's June 25 Answer at 19).

rebuttable presumption to CAISO determinations on whether proposed transmission projects are economically beneficial.⁷⁷ This decision has a bearing on regulatory risk because the CPUC, as the state entity with primary jurisdiction over SCE, has agreed to give some deference to a non-regulatory technical body.⁷⁸ Additionally, the CPUC states that it presented analysis of specific characteristics of SCE as a California utility that does not warrant the same level of incentives that may be justified in other regulatory environments. Yet, the November 16 Order ignored such analysis, which is relevant to the level of incentives to which SCE may be authorized.⁷⁹

2. Commission Determination

36. As discussed below, we affirm the November 16 Order's finding that SCE satisfied the nexus requirement and, therefore, deny the CPUC's and SWP's requests for rehearing on this issue.

37. As an initial matter, we reject SWP's assertions as it pertains to the insufficiency of the supplemented information filed by SCE on August 16, 2007. The totality of the evidence presented on the record in this case has allowed us to make a determination consistent with section 219, subject to the outcome of the ongoing section 205 proceeding. We did not solely rely on the supplemented information in making our finding; the supplemented information filed by SCE forms only part of the record evidence in this proceeding.

38. In the November 16 Order, the Commission stated that in evaluating whether an applicant has satisfied the required nexus test, the Commission will examine the total package of incentives being sought, the inter-relationship between any incentives, and how any requested incentives address the risks and challenges faced by the project.⁸⁰ This nexus test is fact-specific and requires the Commission to review each application based on its own unique facts and on a case-by-case basis.⁸¹ The Commission noted that

⁷⁷ See Decision 06-11-018, *Opinion on Methodology for Economic Assessment of Transmission Projects* (November 9, 2006).

⁷⁸ CPUC Rehearing Request at 13.

⁷⁹ *Id.* (citing CPUC's June 8, 2007 Protest at 15-20).

⁸⁰ November 16 Order, 121 FERC ¶ 61,168 at P 130; *see also* Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 26; Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 21 ("by this we mean that the incentive(s) sought must be tailored to address the demonstrable risks and challenges faced by the applicant in undertaking the project").

⁸¹ *Id.* P 65.

it would be impossible to identify every challenge or risk faced by an applicant, or to develop a list of incentives that would be appropriate given a particular set of risks and challenges.⁸² Therefore, the nexus test is not based on a sole factor or one specific risk facing the applicant. Rather, it is a combination of factors, taken together as a whole, that would present a set of risks and challenges that warrants the incentives for the applicant. Further, Order No. 679 states that the Commission will “consider applications for ROE incentives for all projects,” but that the “the most compelling case for incentive ROEs are new projects that present special risks or challenges, not “routine investments made in the ordinary course” of business.⁸³

39. Further, as the November 16 Order explained,⁸⁴ the Commission provided clarification on the nexus test. Specifically, it noted that in evaluating whether the total package of incentives requested is “tailored to address the demonstrable risks or challenges faced by the applicant,” the question of whether a project is routine is probative.⁸⁵ The Commission elaborated on how it will evaluate projects to determine whether they are routine and the effect this evaluation has on an applicant’s request for incentives.⁸⁶ The Commission stated that: (1) it will consider all relevant factors

⁸² In addition, the Commission chose not to be so bounded to a limited and arbitrary set of criteria or characteristics because doing so would have impaired our ability to fulfill Congress’ mandate that we “promote reliable and economically efficient transmission and generation of electricity by promoting capital *investment* in the enlargement, improvement, maintenance, and operation of *all facilities for the transmission of electric energy in interstate commerce . . .*” 16 U.S.C. § 824s(b)(1) (emphasis added).

⁸³ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 60.

⁸⁴ November 16 Order, 121 FERC ¶ 61,168 at P 131.

⁸⁵ *BG&E*, 120 FERC ¶ 61,084 at P 48.

⁸⁶ In that respect, the Commission explained its determinations regarding routine investments in Order Nos. 679 and 679-A:

[W]e held in Order No. 679 that routine investments “may not always qualify” for incentives. However, we did not find that they would never qualify. Similarly, in Order No. 679-A, we held that projects with “special risks and challenges” present “the most compelling case” for incentives, but did not hold they are the only projects that can qualify for incentives. Second, we held that routine investments “to meet existing reliability standards” may not always qualify for incentives. However, we did not hold that, if a project's primary or sole purpose is to maintain reliability, it

(continued...)

presented by the applicant to determine whether or not a project is routine;⁸⁷ and (2) applicants must provide detailed factual information in support of the factors they rely upon.⁸⁸ Additionally, the Commission clarified that “when an applicant has adequately demonstrated that the project for which it requests an incentive is not routine, that applicant has, for purposes of the nexus test, shown that the project faces risks and challenges that merit an incentive.”⁸⁹ Finally, the Commission stated that if it determines that a project is routine, an applicant is not foreclosed from the requested incentive; it may show that its project faces risks and challenges or provides sufficient benefits to warrant incentive rate treatment.⁹⁰

40. We reject the CPUC’s and SWP’s argument that the Commission’s conclusion regarding SCE’s financial condition is inconsistent and ignores precedent. They fail to consider that financial condition *may* be one of many factors that the Commission evaluates in determining the nexus test. For that reason, in the November 16 Order, the Commission noted that in *certain circumstances*, the Commission *may* find that the financial position is relevant even though Order Nos. 679 and 679-A did not specifically

should not be eligible for incentives. Indeed, to do so would have been to disregard the plain language of section 219, which required the Commission to adopt a rule that “promote[s] reliable and economically efficient transmission and generation of electricity by promoting capital investment in the enlargement, improvement, maintenance, and operation of all facilities for the transmission of electric energy in interstate commerce.”

Id. P 51 (footnotes omitted).

⁸⁷ These factors include, but are not limited to: (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, internal competition for financing with other projects, long lead times, regulatory and political risks, specific financing challenges, other impediments). *Id.* P 52.

⁸⁸ *See id.* P 53.

⁸⁹ *Id.* P 54.

⁹⁰ *Id.* P 55.

require the Commission to base its determinations on the financial position of the applicant. As stated above, the nexus test is fact-specific and requires the Commission to review each application based on its own unique facts and on a case-by-case basis.

41. Contrary to SWP's assertion, the Commission did not imply that the company's financial position is not relevant in evaluating the nexus requirement. In evaluating the total package, along with many factors, the Commission considered SCE's financial condition in light of the large amount of capital it will need to construct the three Projects. The Commission noted that "[w]hile SCE's BBB+ credit rating demonstrates an investment-grade ratio, this rating is not significantly above a non-investment grade rating."⁹¹ Accordingly, the Commission concluded that SCE's financial position could be compromised – its credit rating could be downgraded – as it takes on a large amount of additional debt.⁹²

42. Moreover, while the Commission considered the financial positions of *ComEd* and *Duquesne*, they were not the sole determining factors in the Commission's conclusions. Rather, both cases involved a combination of factors, consistent with Order Nos. 679 and 679-A. In addition, on rehearing the Commission reversed its *ComEd* determination in part and held, on reconsideration, that other factors were relevant in assessing whether two of the facilities at issue were routine.⁹³ Thus, the Commission considered financial and other factors in granting incentives to ComEd. In *Duquesne*, the Commission determined that the proposed project was a non-routine project based on, among other factors, the size of the investment and the financing needed to construct the project. But it also considered other factors, such as the regulatory risks arising from the lack of siting approvals.⁹⁴

⁹¹ November 16 Order, 121 FERC ¶ 61,168 at P 145. We note that Standard & Poor's investment grade level starts at BBB. Thus, BBB+ is just above the investment-grade rating. See Standard and Poor's Ratings Definitions at 3-6 (March 17, 2008), available at <http://www.ratingsdirect.com>.

⁹² A company's credit rating may fluctuate based on varying circumstances. For example, SCE noted that its Standard & Poor's corporate credit rating dropped from A+ to D in less than two weeks during the California energy crisis. November 16 Order, 121 FERC ¶ 61,168 at n. 213. In seeking rehearing of the decision in *ComEd*, ComEd noted that its just above investment grade in March 2007 was downgraded to "junk" status by June 2007. *ComEd*, 122 FERC ¶ 61,037 at P 23.

⁹³ *ComEd*, 122 FERC ¶ 61,137 at P 28.

⁹⁴ *Duquesne*, 118 FERC ¶ 61,087 at P 54.

43. Further, as explained in the November 16 Order, the Commission's nexus finding for SCE's Projects is consistent with the nexus test recently clarified in *BG&E*.⁹⁵ In both cases, the Commission found that the projects were regional in scope with wide-ranging benefits and that the state processes had evaluated the relevant section 219 factors. Thus, as in *BG&E*, the Commission found that the DPV2, Tehachapi, and Rancho Vista Projects are not routine in nature, but rather, have far-reaching scope and regional benefits, with significant investments and risks and challenges not present in the ordinary course of business.

44. For example, the Commission noted that the DPV2 Project is a \$560 million project that emerged from a regional ad-hoc study group,⁹⁶ the construction of the Project will involve two major transmission lines, and it will provide additional interconnection between Southern California and Arizona and the desert Southwest.⁹⁷ Additionally, the Commission found that the DPV2 Project will improve the reliability of the CAISO grid by increasing voltage support in Southern California and enhancing system operational flexibility for the CAISO operators by providing them with more options in responding to transmission and generation outages.⁹⁸ Further, the Commission concluded that the DPV2 Project faced significant risks due to the magnitude of the financial investment required, the involvement of multiple entities/jurisdictions, and regulatory risks (i.e., siting issues, long lead time, and financial impact).

45. The Commission also found that the Tehachapi Project is not routine in nature, but rather, has far-reaching scope and regional benefits. It is a \$1.7 billion project, consisting of more than 200 miles of 500 kV transmission line, approximately 10 miles of 220 kV transmission line, and three new substation facilities, which will provide the least-cost solution to connect up to 4,500 MW of generating resources.⁹⁹ The Commission also found that the Tehachapi Project will address reliability needs of the CAISO-controlled

⁹⁵ November 16 Order, 121 FERC ¶ 61,168 at P 131.

⁹⁶ *Id.* n.226.

⁹⁷ *Id.* P 132. The Commission stated that the Project will provide an additional 1,200 MW of import capability to the CAISO-controlled grid from the Southwest and a 1,200 MW increase in the Southern California Import Transmission Nomogram Limit.

⁹⁸ *Id.* P 133. The Commission also noted that the DPV2 Project is expected to also provide important benefits to Arizona and the Southwest by avoiding loss of load during extreme contingencies if a major generating facility or high-voltage transmission line or substation were lost.

⁹⁹ *Id.* P 135.

grid, including transmission constraints, due to projected growth in the Southern California.¹⁰⁰ Additionally, the Commission concluded that the Tehachapi Project faces significant risks and challenges due to the magnitude of the financial investment required and regulatory risks (i.e., siting issues, long lead time, and financial impacts).¹⁰¹ Further, in addition to noting the risks and challenges in constructing the Tehachapi Project, the Commission stated that the Project will facilitate the ability of California utilities to comply with the California's RPS requirement by providing access to planned renewable resources in the Tehachapi Wind Resource Area.¹⁰²

46. Finally, the Commission found that the Rancho Vista Project is not routine in nature, but rather, has far-reaching scope and regional benefits because the Project is a new 500 kV substation costing about \$200 million, intended to relieve loading on the existing Mira Loma substation to accommodate the continual growth of 100 MW per year in that region.¹⁰³ Also, the Commission found that, pursuant to the CAISO's conclusions, the Rancho Vista Project is needed to reliably serve load on the SCE transmission system and the Project is the least-cost transmission alternative to meet load growth in the Los Angeles Basin.¹⁰⁴ Further, similar to the DPV2 and the Tehachapi Projects, the Commission concluded that the Rancho Vista Project faces challenges and risks not present in the ordinary course of business (i.e., siting risks, long lead time, and financial impact).

47. Therefore, we disagree with SWP that there is no substantial evidence to support the Commission's finding that a nexus exists between the incentives and investments. SCE provided sufficient information for the Commission to make a finding on the nexus requirement, consistent with Order Nos. 679 and 679-A.

48. We also find no merit to SWP's argument that no nexus exists because SCE began its plan and design for its Projects prior to EPCAct 2005 and Order No. 679. On the contrary, Order No. 679 specifically provides that such projects are not disqualified for incentive treatment. Order No. 679 considers such projects, stating that incentives are

¹⁰⁰ *Id.* P 136. The Commission also noted that Tehachapi Project will improve the robustness of the California's aging electric transmission system.

¹⁰¹ *Id.* P 137.

¹⁰² *Id.* P 138.

¹⁰³ *Id.* P 139 ("The Mira Loma substation is nearing its design capacity of 4,000 MW while the load in the area continues to grow at approximately 100 MW per year").

¹⁰⁴ *Id.* P 140.

warranted if granting incentives may help in securing financing or may assist in completing the project.¹⁰⁵ This is consistent with Congress' intent in enacting section 219 for the Commission to take steps to bring new transmission on line expeditiously.¹⁰⁶

49. With respect to the CPUC's argument that SCE risks are lowered by California law and the CPUC's regulatory actions, we find that any reduction in risk that may be attributable to these actions is difficult to quantify. Moreover, guaranteed cost-based recovery through state regulatory mechanisms does not necessarily create adequate incentives to build necessary infrastructure. We reiterate that Congress enacted section 219, and we subsequently issued Order No. 679, based on the fact that existing cost-based recovery mechanisms have been insufficient to stimulate investment in infrastructure to ensure reliability and/or reduce congestion costs.¹⁰⁷ As stated in the November 16 Order, we do not find that section 399.25 of the California Code excludes SCE from eligibility for ROE incentives.¹⁰⁸

50. Additionally, as stated above, the Commission is not evaluating the nexus requirement based on one factor or one particular risk. Rather, it is a combination of factors and risks that together would warrant the incentives. Therefore, the fact that SCE may be eligible for cost recovery under the state regulatory construct does not take away the significant risks and challenges it faces in constructing the three Projects. As noted above, all three Projects will face significant costs, siting issues, long-lead times, and financial impact. Accordingly, given such risks and challenges, the ROE adders are

¹⁰⁵ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 35 (“[e]ven where a project already has been planned or announced, the granting of incentives may help in securing financing for the project or may bring the project to completion sooner than originally anticipated”).

¹⁰⁶ *Id.*

¹⁰⁷ Order No. 679, FERC Stats & Regs. ¶ 31,222 at P 10. Section 219(b)(2)-(3) directed the Commission to ensure that its rule, as applied, provides “a return on equity that attracts new investment in transmission facilities (including related transmission technologies); encourage deployment of transmission technologies and other measures to increase the capacity and efficiency of existing transmission facilities and improve the operation of the facilities” 16 U.S.C. § 824s(b)(2)-(3) (2000 & Supp. V 2005).

¹⁰⁸ November 16 Order, 121 FERC ¶ 61,168 at P 147 (noting that “[s]ection 219 does not exclude transmission projects with guaranteed cost recovery from eligibility of incentives”).

warranted. We note, however, that as explained above, any issues relating to rate impacts caused by double recovery should be raised in the section 205 proceeding in which SCE proposes recovery of incentives.

51. Further, contrary to the CPUC's assertion, the Commission considered SCE's overall risks in determining SCE's ROE incentives.¹⁰⁹ In the November 16 Order, the Commission determined that as a total package, a reduction in SCE's requested ROE adders is warranted because the CWIP and abandoned plant cost incentives serve to reduce SCE's overall risk. The Commission noted that SCE will have less financial risk during the construction period because the CWIP incentive will result in an increased cash flow and it will not be required to refund the prudently-incurred costs collected.¹¹⁰ Also, the abandoned plant recovery will provide assurance to investors that they will be able to recover a return on and of their investments, thereby further reducing financial risk associated with these investments.¹¹¹ Therefore, the Commission granted a 125-basis point adder (rather than the requested 150 basis points) for the DPV2 and Tehachapi Projects and 75-basis point adder (rather than the requested 100 basis points) for the Rancho Vista Project.

D. Additional Nexus Arguments Specific to the Rancho Vista Project

52. In the November 16 Order, the Commission found that the Rancho Vista Project met the section 219 requirements and satisfied the nexus test as required under Order Nos. 679 and 679-A. The Commission determined that the Project is not routine in nature, but has far-reaching scope and regional benefits.¹¹² For the Project, the Commission granted a CWIP incentive and a 75-basis point ROE adder, along with the 50-basis point incentive for SCE's membership in the CAISO.

¹⁰⁹ Regarding SWP's argument that the Commission failed to consider the total package of incentives for each of the three Projects, we note that the protesters raised issues regarding the nexus test that were common to all three Projects and their arguments applied to all three Projects. Thus, to avoid repetition, we addressed the total packages of each Project in one section. But, we evaluated the total package of incentives for each Project.

¹¹⁰ November 16 Order, 121 FERC ¶ 61,168 at P 143 & n.251.

¹¹¹ *Id.* P 143.

¹¹² *Id.* P 139-41.

1. Rehearing Request

53. The CPUC argues that the Commission's decision to grant the 75-basis point ROE incentive to the Rancho Vista Project is not justified, arbitrary, and lacks reasoned decision-making.¹¹³ While the November 16 Order grants a lesser ROE incentive than requested by SCE, the CPUC contends that the Commission does not justify why any ROE basis adder is appropriate in combination with the CWIP, abandoned plant and ISO membership incentives.¹¹⁴ It asserts that the ROE incentive for these risks is duplicative, noting that the risks identified by the Commission as facing Rancho Vista as warranting ROE incentives are the same as the risks identified by the Commission as warranting 100 percent CWIP in rate base (i.e., to enhance cash flow, reduce interest expense, assist SCE with financing, and improve SCE's coverage ratios).¹¹⁵ Therefore, the CPUC avers that there is no justification for the 75-basis point adder when the CWIP and abandoned plant incentives eliminate the risks for which the ROE adder is intended.¹¹⁶ Moreover, it states that the November 16 Order provides no rational basis for its calculation of the 75-basis points.¹¹⁷

54. According to the CPUC, the Commission failed to properly apply the nexus requirement under Order No. 679-A because it failed to analyze the interrelationship of incentives when it granted the ROE adder for the Rancho Vista Project in addition to authorizing 100 percent of CWIP in ratebase and abandoned plant recovery. The nexus test under Order No. 679-A requires the Commission to consider incentives that reduce risk when determining whether an enhanced ROE is justified.¹¹⁸ The CPUC notes that this test is intended to protect consumers when applicants both seek incentives that

¹¹³ CPUC Rehearing Request at 3-4 (citing *North Carolina Utils. Comm'n v. FERC*, 42 F.3d 659, 666 (D.C. Cir. 1994)).

¹¹⁴ *Id.* at 5.

¹¹⁵ *Id.*

¹¹⁶ The CPUC states that in Order 679-A, the Commission stated the combination of these incentives might not be appropriate. *Id.* at 6 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 65).

¹¹⁷ *Id.* at 6.

¹¹⁸ *Id.* at 4 (citing Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 21).

reduce the risk of the project and seek an enhanced rate of return for increased risk.¹¹⁹ Yet, the CPUC argues, the Commission failed to apply these factors and examine the interrelationships of the incentives.

55. Additionally, the CPUC asserts that the Commission ignored the argument that the risks for the Rancho Vista Project are not as high as SCE portrays. It contends that large investments may not necessarily be more risky because they increase rate base more substantially and, therefore, present lucrative opportunities to investors and shareholders.¹²⁰ As to long lead times, the CPUC notes that such long lead times are routine - many California transmission projects take four to five years or more to complete. It further notes that the process for Rancho Vista is significantly streamlined because the project is exempt from the CPUC environmental review.¹²¹

56. The CPUC argues that the Commission ignored the CPUC's evidence on the actual risks facing Rancho Vista.¹²² It states that in its protest, the CPUC noted that SCE represented to the CPUC that the Rancho Vista Project was exempt from the CPUC's environmental review process pursuant to CPUC General Order 131-D. Because of this, SCE avoided much regulatory oversight and the project would be easier to construct than other routine investments requiring a CPUC Certificate of Public Convenience and Necessity or Permits to Construct.¹²³ Unlike the DPV2 and Tehachapi Projects, the Rancho Vista Project does not face involvement of multiple jurisdictions and regulatory risk and this evidence is relevant to an ROE incentive determination. The CPUC maintains that the November 16 Order does not substantiate why any adder is justified in light of the CPUC's argument on regulatory risk.¹²⁴

¹¹⁹ *Id.* (citing Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 6).

¹²⁰ *Id.* at 7.

¹²¹ *Id.* at 8.

¹²² *Id.* at 9 (citing to CPUC Protest to Supplemental Filing at 7-9). The CPUC argues that in enacting orders, the Commission cannot legally ignore evidence and analysis without discussion. *Motor Vehicle Ass'n v. State Farm*, 463 U.S. at 43 (1983).

¹²³ *Id.* at 9.

¹²⁴ *Id.* at 9-10.

2. Commission Determination

57. As discussed below, we affirm the November 16 Order's finding that a 75-basis point ROE incentive is appropriate for the Rancho Vista Project and, therefore, we will deny rehearing on this issue.

58. We disagree with the CPUC's assertion that the Commission did not justify why the ROE basis adder is appropriate in combination with the other incentives.¹²⁵ As discussed above, in the November 16 Order, the Commission explained that the Rancho Vista Project is not a routine investment because it has far-reaching scope and regional benefits.¹²⁶ Moreover, the Commission found that due to the large amount of the investment and the size of the Project, SCE faces risks and challenges not present in the ordinary course of business.¹²⁷ Thus, based on these factors, as in *BG&E*, the Commission determined that the Rancho Vista Project is not routine. The CPUC has not presented any new arguments or facts regarding the Rancho Vista Project on rehearing that we had not previously considered. As such, we continue to believe that a 75-basis point ROE adder is appropriate for the Rancho Vista Project.

59. We also reject the CPUC's argument that the nexus test was not properly applied to the Rancho Vista Project. As explained above, the nexus test is fact-specific and requires the Commission to review each application and project on its own unique facts. The Commission does not have a set formula and the ROE incentive is determined on a case-by-case basis. Based on SCE's showing, the Commission in its judgment determined that a 75-basis point ROE adder was appropriate, so long as the ultimate ROE is within the zone of reasonableness.¹²⁸ Moreover, contrary to the CPUC's argument, the Commission considered the overall risks in determining SCE's ROE incentives, consistent with Order No. 679-A. For that reason, the Commission determined that as a total package, a reduction in SCE's requested ROE adders was warranted because other

¹²⁵ Contrary to the CPUC's assertion, SCE did not request abandoned plant cost recovery for the Rancho Vista Project. November 16 Order, 121 FERC ¶ 61,168 at P 62, 71.

¹²⁶ *Id.* P 139.

¹²⁷ *See id.* P 141.

¹²⁸ As noted above, the Commission determined that the Rancho Vista Project met the rebuttable presumption for eligibility of incentives under section 219 and satisfied the nexus test required under Order Nos. 679 and 679-A.

incentives served to reduce SCE's overall risk. Accordingly, the Commission reduced the ROE incentive by 25 basis points for all three Projects, including the Rancho Vista Project.

60. The CPUC argues that the Rancho Vista Project may not face the same siting risks and challenges as the other two Projects. But, SCE recognized this fact and took it into consideration by requesting a lower ROE adder than the DPV2 and the Tehachapi Projects.¹²⁹

E. Issues Regarding Tehachapi Network Facilities

1. Rehearing Request

61. Golden State and SWP contend that the Commission erred in granting SCE transmission rate incentives for the Tehachapi Project. Golden State argues that transmission rate incentives for the Tehachapi Project should be limited to network facilities.¹³⁰ SWP asserts that, without any explanation, the Commission states that the Project has been redesigned to be a network facility and qualifies for rolled-in rate treatment.¹³¹ Yet, the Commission also states that the petition in the CAISO Order concerned a new financing mechanism to recover costs for building interconnection facilities. SWP asserts that the two statements are inconsistent and does not explain how and when SCE redesigned the subject facilities.¹³²

62. SWP argues that the Commission failed to address whether segments of the Tehachapi Project are network facilities, and thereby ignored the special treatment already provided to the Tehachapi Project. SWP notes that the CAISO Order allows the CAISO to roll in the costs of these interconnection facilities through the transmission revenue requirement (TRR) of the Participating Transmission Owner (PTO) that constructs the facility, i.e., SCE. Thus, SWP argues that ratepayers will be assessed the costs of the Tehachapi Project facilities unless and until new location-constrained

¹²⁹ November 16 Order, 121 FERC ¶ 61,168 at P 128; *see also* SCE September 20, 2007 Answer at 19.

¹³⁰ Golden State Rehearing Request at 2 (citing *Calif. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,061, *order on clarification and reh'g*, 120 FERC ¶ 61,244 (2007) (CAISO Order)).

¹³¹ SWP Rehearing Request at 25 (citing November 16 Order, 121 FERC ¶ 61,168 at P 74).

¹³² *Id.*

generation resources in the Tehachapi region come on line.¹³³ Accordingly, Golden State asserts that the Commission should reject all incentives for portions of the Tehachapi Project that meet the criteria for special rate treatment under the CAISO Order; otherwise, the Commission would be providing additional incentives to SCE at ratepayer's expense. Golden State requests that the Commission clarify that the incentives for the Tehachapi Project will apply only to network facilities and not to generation-tie facilities.¹³⁴

63. However, if the Commission intended the proposed incentives to apply to the generation-tie facilities, Golden State seeks rehearing. Golden State states that while the Commission explained that Congress enacted section 219 of the FPA and the Commission subsequently issued Order No. 679 because the existing cost-based recovery mechanisms have been insufficient to stimulate investment in infrastructure to ensure reliability and/or reduce congestion, Golden State argues that special financing treatment granted in the CAISO Order does not qualify as an "existing" cost-based recovery mechanism. It states that the CAISO Order was issued after Order No. 679 and the enactment of section 219.¹³⁵ Therefore, it would be inaccurate to classify the CAISO Order as an "existing" cost-based recovery mechanism. Further, it contends that while section 219 does not explicitly exclude certain types of projects from eligibility for incentives, that does not mean that all transmission projects should receive incentives. Golden State argues that granting additional incentives for generation ties would only serve to increase rates.¹³⁶

64. Moreover, SWP argues that the balance between ratepayer impacts and encouraging location constrained resources has been eviscerated by the November 16 Order. According to SWP, the CAISO Order noted that the special financing mechanism for the Tehachapi Project would limit the cost impact on ratepayers by imposing a rate impact cap and capacity subscription requirements.¹³⁷ This was a key consideration in the CAISO's proposal and the Commission's approval thereof.

¹³³ *Id.* at 22 (citing CAISO Order, 119 FERC ¶ 61,061 at P 5, where the Commission explained that all users of the grid would pay the cost of the unsubscribed portion of the Tehachapi line through TAC until the line is fully subscribed).

¹³⁴ Golden State Rehearing Request at 3.

¹³⁵ *Id.* at 3-4.

¹³⁶ *Id.* at 4.

¹³⁷ SWP Rehearing Request at 23 (citing CAISO Order, 119 FERC ¶ 61,061 at P 63).

65. Because SCE's ratepayers will be responsible for the costs of the interconnection facilities, SWP argues that the Tehachapi Project does not present abnormal risk to SCE. Rather, it asserts that the Projects represent less risk than ordinary transmission projects because ratepayer funding is assured in advance, and even less risk than other new interconnection projects which typically must be funded first by the generators and/or the utility.¹³⁸ SWP argues that by granting the requested incentives, the Commission granted yet another special treatment for the same facilities. It asserts that the November 16 Order does not consider the policy and practical implications of these two special deals.¹³⁹

2. Commission Determination

66. As discussed below, we find that Golden State's and SWP's arguments on the Tehachapi Project are misplaced and we will deny rehearing on this issue.

67. Contrary to the arguments by SWP and Golden State, the Tehachapi facilities granted incentives in this proceeding are not interconnection facilities that were the subject of the CAISO Order; accordingly, there is no inconsistency. In a prior order, the Commission determined that Segments 1 and 2 of the Tehachapi Project were network upgrades while Segment 3 constituted an interconnection facility.¹⁴⁰ However, since then, the Tehachapi Project has expanded from being composed of three segments to one made up of 11 segments. Under SCE's current proposal, the Tehachapi Project as a whole will meet the Commission's network integration test, and will therefore be network facilities under the CAISO's operational control.¹⁴¹ While a small portion of Segments 3 and 4 will remain radial generation-tie facilities,¹⁴² SCE noted that it will

¹³⁸ *Id.* at 24.

¹³⁹ *Id.* at 25.

¹⁴⁰ *Southern California Edison Co.*, 112 FERC ¶ 61,014, at P 36, 42, *order denying reh'g*, 113 FERC ¶ 61,143 (2005).

¹⁴¹ SCE's response to deficiency letter at 25. Segment 3 will operate on a non-integrated basis for a limited period of time between its in-service date and the in-service date of Segment 10, after which time it will meet the Commission's network integration test. *Id.* at 24.

¹⁴² According to SCE, the portion that will remain generation-tie facilities amounts to approximately \$57 million, about three percent of the estimated \$1.8 billion of the total cost for the Tehachapi Project. SCE's response to deficiency letter at 25; SCE September 20 Answer at 15.

finance and build the entire project, including the generation-tie components.¹⁴³ We reviewed the Tehachapi project as a whole, and found that its benefits to the transmission grid warrant the incentives granted.

68. Our grant of the incentives in this proceeding is based on the facts presented in the application. We do not believe that parsing out pieces of the proposal is appropriate here. Transmission projects are often built in segments. This construction strategy does not detract from the fact that the project is designed as a network facility. To look at or treat operational, but unfinished portions of a project differently from the completed project would serve to create rate uncertainty and undermine the clear intent of Order No. 679. Accordingly, we believe it would be inappropriate to require different pricing regimes to be used during different stages of the Project's development.

69. Additionally, the CAISO Order is inapposite to this proceeding. The intent and purpose of the CAISO Order was to address the existing barriers impeding the development of facilities needed to connect location-constrained resources to the CAISO-controlled grid.¹⁴⁴ To that end, the Commission approved a new mechanism to finance the construction of interconnection facilities that varied from Order No. 2003's default generator interconnection policies.¹⁴⁵ Given the special circumstances facing location-constrained resources,¹⁴⁶ the Commission stated that it was appropriate to allow the

¹⁴³ November 16 Order, 121 FERC ¶ 61,168 at P 123.

¹⁴⁴ Location-constrained resources are "generation resources that are typically constrained as a result of their location, relative size and the immobility of their fuel source." CAISO Order, 119 FERC ¶ 61,061 at n.1.

¹⁴⁵ Order No. 2003 provides that non-network or interconnection facilities are directly assignable costs that should be paid for by the interconnection customer. *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

¹⁴⁶ The Commission noted that:

These resources tend to have an immobile fuel, are small in size relative to the necessary interconnection facilities, tend to come on line incrementally over time, and are often remotely located from loads. Location constrained resources therefore

(continued...)

CAISO's proposal to roll in the costs of any unsubscribed capacity from a multi-user interconnection facility.¹⁴⁷ In comparison, however, the intent and purpose of section 219 and Order Nos. 679 and 679-A are to provide rate incentives to overcome the under-investment in transmission infrastructure. As discussed above, the experience of recent years shows that companies were not inclined to make sufficient investments in critical infrastructure, which led to Congress' enactment of section 219 to provide for rate incentives.¹⁴⁸ Therefore, even if the Tehachapi Project is eligible for the special financing mechanism approved in the CAISO Order, this does not necessarily preclude the Project from transmission incentives.

70. As we noted in the November 16 Order, a network integration standard was not included in section 219 or Order No. 679 and, therefore, any findings of integration or non-integration are not relevant for making determinations under section 219 and Order No. 679.¹⁴⁹ In the November 16 Order, the Commission reviewed the Tehachapi Project as a whole and found that the proposed incentives are warranted because the Project met the rebuttable presumption for eligibility of incentives under section 219 and satisfied the nexus requirement, consistent with Order Nos. 679 and 679-A.

71. SWP argues that the November 16 Order upset the balance between ratepayer impacts and encouraging location-constrained resources established by the CAISO Order. As noted above, the financing mechanism approved in the CAISO Order is inapposite to the determinations for transmission incentive. As currently designed, the Tehachapi Project is composed of 11 segments that will be electrically integrated and interconnected with the California grid at both ends of the Project. By any commonly accepted

have a limited ability to minimize their interconnection costs and, moreover, these factors, can in certain circumstances, impede the development of such resources altogether.

CAISO Order, 119 FERC ¶ 61,061 at P 64.

¹⁴⁷ Under the CAISO's proposal, Participating Transmission Owners that construct interconnection facilities would be able to reflect in their TRRs and in the CAISO's TAC the costs of eligible interconnection facilities that are not being directly recovered from generation resources. Each generator that interconnects would be responsible for paying its *pro rata* share of the going-forward costs of the line. All users of the transmission grid would pay the costs of any unsubscribed portion of the line through their inclusion in the TAC until the line is fully subscribed. *Id.* P 4-6.

¹⁴⁸ Order No. 679, FERC Stats & Regs. ¶ 31,222 at P 10.

¹⁴⁹ November 16 Order, 121 FERC ¶ 61,168 at P 44.

engineering analysis, the Project is designed as a network facility.¹⁵⁰ Moreover, it is a vast overstatement to conclude that the incentives granted in the November 16 Order for the Tehachapi Project would “upset a balance” struck in the CAISO Order when only three percent of the Project *may* qualify for the rate treatment under the CAISO Order.

72. We also disagree with SWP’s argument that the Tehachapi facilities present a lower risk to SCE than represented by SCE. As stated above and discussed in the November 16 Order, SCE faces significant risks and challenges that warrant the requested incentives.¹⁵¹ Additionally, SCE has assumed a greater risk for the Tehachapi Project by funding the facilities upfront and seeking to recover these costs from transmission ratepayers in network transmission rates. If the Project constituted interconnection facilities, SCE would not have to bear risk because the generator would have sole investment responsibility.

F. Abandoned Plant Costs

73. In the November 16 Order, the Commission found that SCE had shown, consistent with Order No. 679, a nexus between the recovery of prudently-incurred costs associated with abandoned transmission projects and its planned investment. The Commission noted that this incentive will be an effective means to encourage the completion of SCE’s Projects.¹⁵² Therefore, the Commission granted SCE’s request for recovery of 100 percent of abandonment costs for the three Projects, provided that the abandonment is a result of factors beyond the control of SCE.¹⁵³

1. Rehearing Request

74. Golden State argues that SCE should not be entitled to recover abandoned plant costs for the DPV2 Project if the abandonment is due to the Arizona Corporation Commission’s (ACC) certification denial. It notes that the ACC issued an order denying SCE’s Application for a Certificate of Environmental Compatibility for the Arizona segment of the DPV2 Project and the ACC has also denied reconsideration of its order.¹⁵⁴

¹⁵⁰ Even though the two minor portions of Segments 3 and 4 are radial generation-tie facilities, these may in the future become network facilities.

¹⁵¹ *See supra* discussion at P 45; November 16 Order, 121 FERC ¶ 61,168 at P 135-38.

¹⁵² November 16 Order, 121 FERC ¶ 61,168 at P 72.

¹⁵³ *Id.* P 71.

¹⁵⁴ Golden State Rehearing Request at 4-5.

Therefore, Golden State contends that it would be illogical to grant SCE an incentive to protect against the risk of a regulatory denial when the regulatory denial has already taken place. According to Golden State, this would clearly fall into the category of “incentives that only serve to increase rates without providing any real incentives to construct new transmission infrastructure.”¹⁵⁵ However, if SCE is permitted to recover abandoned plant costs for the DPV2 Project, Golden State states that the Commission should limit it so that recovery will not be allowed if the abandonment is due to the ACC’s denial.¹⁵⁶

2. Commission Determination

75. We will deny Golden State’s request for rehearing on this issue. The Commission granted recovery of abandoned plant costs only in circumstances beyond the control of SCE, which must be demonstrated in a section 205 filing for recovery of abandoned plant costs.¹⁵⁷ Golden State’s request is premature because the Commission will not determine whether the circumstances were beyond SCE’s control until SCE seeks abandonment cost recovery in a section 205 filing.¹⁵⁸ Order No. 679 specifically reserves the prudence determination for the later section 205 filing which every utility is required to file if it wishes to make a case for abandonment recovery.¹⁵⁹ Therefore, Golden State’s concerns are more appropriately reserved for that later proceeding.

¹⁵⁵ *Id.* at 5 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 6).

¹⁵⁶ *Id.*

¹⁵⁷ November 16 Order, 121 FERC ¶ 61,168 at P 71.

¹⁵⁸ *Id.* P 73.

¹⁵⁹ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 165-66.

The Commission orders:

The requests for rehearing of the November 16 Order are hereby denied, as discussed in the body of this order.

By the Commission. Commissioner Kelly dissenting in part with a separate statement attached.

Commissioner Wellinghoff 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. EL07-62-001

(Issued June 23, 2008)

KELLY, Commissioner, *dissenting in part*:

This order addresses requests for rehearing or clarification of the Commission's November 16, 2007 order¹ granting Southern California Edison Company's (SCE) petition for a declaratory order. In the November 16 Order, the Commission granted an array of incentives to SCE with respect to three separate projects: the Devers-Palo Verde II Project, the Tehachapi Project, and the Rancho Vista Substation Project. I concurred in part and dissented in part on the November 16 Order, stating that the Devers-Palo Verde II and Tehachapi Projects did not merit project-specific incentive return on equity (ROE) adders and that none of the requested incentives were necessary for the Rancho Vista project.² I continue to believe that evidence presented by SCE in its application failed to demonstrate that incentive ROE adders were necessary for the Devers-Palo Verde II and Tehachapi Projects and that the Rancho Vista merited incentive rate treatment and therefore I dissent in part from today's order.

In my statement on the November 16 Order, I expressed my belief that the majority had not acted carefully in granting incentives to the SCE projects³ and that doing so repeatedly could result in granting incentive returns as a matter of course. I have long advocated relying on specific criteria in order to make

¹ *S. Cal. Edison Co.*, 121 FERC ¶ 61,168 (2007) (November 16 Order).

² I did state that including 100 percent of CWIP in rate base and recovery of 100 percent of the prudently incurred costs of facilities that are cancelled or abandoned due to factors beyond SCE's control are appropriate incentives for the Devers-Palo Verde II and Tehachapi Projects.

³ In Order No. 679-A, the Commission stated "[a]lthough the Commission has broad discretion to establish returns on equity anywhere within the zone of reasonableness, we must be careful in the manner in which we exercise this discretion." *See Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697-A, 73 Fed. Reg. 25,832 (May 7, 2008), FERC Stats. & Regs. ¶ 31,268, at P 7 (2008).

reasoned and consistent decisions on requests for incentives for the project. Absent such criteria, the Commission is not only susceptible to granting incentive returns as a matter of course but also vulnerable to arguments that the Commission arrived at arbitrary and capricious decisions.

With respect to this instant proceeding, I am troubled by a specific statement offered in answering a California Public Utility's Commission (CPUC) argument, which, I believe, only serves to emphasize the hazards of addressing applications for transmission incentives without a set of reasoned and predictable criteria. The CPUC argued that the Commission provided no rational basis for its calculation of the 75-basis point adder for the Rancho Vista Project. In response, the majority asserts that the Commission considered the overall risks of the project in determining the ROE incentive and, "in its judgment," determined that a 75-basis point ROE adder was appropriate for the Rancho Vista Project, subject to ultimate ROE residing within the zone of reasonableness.⁴ I believe the Commission's decision, which includes no further explanation or support for "its judgment," is an example of arbitrary and capricious decision making. Congress, through the Federal Power Act (FPA), tasked the Commission with ensuring that wholesale rates are just and reasonable.⁵ I believe that the only way to meet this responsibility is to exercise reasoned decision making. This is precisely why I have advocated for applying a more transparent and reliable set of criteria to transmission incentives applications.⁶ The majority acknowledges that there is no set formula for establishing an ROE incentive and that the determination must be made on a case-by-case basis. I agree. This provides even more reason why, in the absence of a set formula, it is necessary to explain how the specific facts of each case lead to the decision regarding incentives. The majority provides no such explanation in this instance. Further, by failing to adequately support its determinations, the Commission is leaving itself open to a court finding that the Commission's decision is arbitrary and capricious, and therefore should be reversed.

I believe that the majority was right to grant a reduced ROE adder in order to account for the CWIP abandoned plant recovery incentives. In no way do I mean to dissuade similar future action. However, I am confident that any such reduction (or indeed an increase) would be far easier if taken in accordance with a

⁴ See *S. Cal. Edison*, 123 FERC ¶ 61,293, at P 59 (2008) (citation omitted).

⁵ See 16 U.S.C. § 824d, 824e (2000 & Supp. V 2005).

⁶ See *American Electric Power Service Corporation*, 118 FERC ¶61,041 (2007).

set of reliable and criteria against which all future applicants for incentives could measure their projects.

For these reasons, I respectfully dissent in part from this order.

Suedeem G. Kelly

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Southern California Edison Company

Docket No. EL07-62-001

(Issued June 23, 2008)

WELLINGHOFF, Commissioner, *concurring*:

In my concurrence to the November 16 Order, I stated that the investments for which SoCal Edison is seeking incentive ROE adders in this proceeding reflect a commitment to advanced technologies that will increase efficiency, enhance grid operations and reliability, and result in greater grid flexibility, thus benefitting all users of the grid and ultimate consumers. I also highlighted the broad and substantial benefits associated with increasing the availability of renewable energy resources, and I noted that the Tehachapi Project featured in this proceeding will enable the interconnection of up to 4,500 MW of dispersed wind resources for generation.

Consistent with my prior statement, I continue to support granting SoCal Edison the incentives discussed in the November 16 Order. For this reason, I concur with today's order.

Jon Wellinghoff
Commissioner