

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Inquiry Regarding the Commission's
Electric Transmission Incentives
Policy

Docket No. PL19-3-000

**COMMENTS OF THE NORTHERN CALIFORNIA
POWER AGENCY**

The Northern California Power Agency (NCPA) appreciates the opportunity to respond to the March 21, 2019 Notice of Inquiry regarding the Commission's electric transmission incentives policy.¹ NCPA supports the comments submitted in this proceeding by the Transmission Access Policy Study Group (TAPS), particularly the retention of the risks and challenges framework established through Orders 679 and 679-A² and the 2012 Incentives Policy Statement,³ and the proposed revisions to the return on equity (ROE) adders for transmission-only companies (Transco Adder) and participation in independent system operators and regional transmission organizations (RTO Adder). NCPA offers these additional comments focused on its experience in the California Independent System Operator, Corporation (CAISO) footprint.

¹ *Inquiry Regarding the Commission's Electric Transmission Incentives Policy*, 166 FERC ¶ 61,208 (2019).

² *Promoting Transmission Invest. Through Pricing Reform*, Order No. 679, 116 FERC ¶ 61,057 (Order 679), *order on reh'g*, Order No. 679-A, 117 FERC ¶ 61,345 (2006) (Order 679-A), *clarified*, 119 FERC ¶ 61,062 (2007).

³ *Promoting Transmission Invest. Through Pricing Reform*, 141 FERC ¶ 61,129 (2012) (2012 Policy Statement).

I. COMMUNICATIONS

Correspondence and communications related to these comments should be directed to:

Katharine M. Mapes, Esq.
Amber L. Martin, Esq.
SPIEGEL & MCDIARMID LLP
1875 Eye Street, NW
Suite 700
Washington, DC 20006
Phone: (202) 879-4000
Fax: (202) 393-2866
Email: katharine.mapes@spiegelmc.com
amber.martin@spiegelmc.com

Randy S. Howard
General Manager
NORTHERN CALIFORNIA POWER AGENCY
651 Commerce Drive
Roseville, CA 95678
Phone: (916) 781-4200
Fax: (916) 783-7693
Email: randy.howard@ncpa.com

II. NCPA

A. NCPA

NCPA is a nonprofit California joint powers agency established in 1968 to construct and operate renewable and low-emitting generating facilities and assist in meeting the wholesale energy needs of its sixteen members: the Cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara, Shasta Lake, and Ukiah, Plumas-Sierra Rural Electric Cooperative, Port of Oakland, San Francisco Bay Area Rapid Transit (BART), and Truckee Donner Public Utility District—collectively serving nearly 700,000 electric consumers in Central and Northern California.

NCPA seeks intervention on behalf of itself and its pool members (Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Ukiah, the Plumas-Sierra Rural Electric Cooperative, and the Port of Oakland), all of whom are signatories to the Metered Subsystem Aggregator (MSSA) Agreement with CAISO. The MSSA Agreement establishes the relationship between NCPA and its pool members and CAISO.

It was approved as a settlement agreement by this Commission on August 30, 2002.⁴ The MSSA Agreement is currently on file as Service Agreement No. 457 under the currently effective version of the CAISO tariff, and has been amended twice to maintain consistency with that tariff.

In addition, under the MSSA Agreement, NCPA acts as Scheduling Coordinator for the City of Santa Clara, which has a separate Metered Subsystem Agreement with CAISO.

III. COMMENTS

NCPA supports the comments filed by TAPS in response to the NOI. As TAPS explains in response to Questions 1, 2 and 7, the Commission's current risks and challenges framework for awarding project-specific incentives, developed through Order Nos. 679 and 679-A, refined through the 2012 Policy Statement, and applied on a case-by-case basis, fulfils the Commission's obligations under Section 219 of the Federal Power Act (FPA). And, compared to many of the possible policies suggested by the Commission's questions in the NOI, it does so in a way that generally appropriately promotes needed investment while protecting against unjust and unreasonable rates. In California, this balance is particularly important—California ratepayers have seen transmission rates that have spiraled and continue to do so and, in addition, massive amounts of transmission work are done entirely outside the auspices of the CAISO. Ensuring that unnecessary transmission work is not incentivized must be a priority of the Commission.

⁴ *Cal. Indep. Sys. Operator Corp.*, 100 FERC ¶ 61,233 (2002).

Specifically, while the current framework for project-specific incentives is generally working well, other aspects of the Commission's existing incentives policy could be improved. NCPA urges the Commission to undertake TAPS's suggested refinements to the RTO Adder and Transco Adder. The need for these changes is particularly clear in California.

First, with respect to the RTO Adder, California's three largest investor-owned transmission owners (TOs)—Pacific Gas & Electric Company (PG&E), Southern California Edison Company, and San Diego Gas & Electric Company—are each obligated to seek review and approval of the California Public Utilities Commission prior to exiting CAISO.⁵ These TOs' continued participation in CAISO is thus not voluntary, and the Commission should decline to "unjustly reward [them] for doing what [they are] supposed to do"⁶ Rather, consistent with long-standing Commission policy,⁷ and the Ninth Circuit's recent determination⁸ that the Commission acted arbitrarily in granting PG&E the RTO Adder without regard to the voluntariness of PG&E's continued membership in CAISO, the Commission should clarify its incentives policy to provide that the RTO Adder will be awarded only to TOs whose participation in an RTO is voluntary.

Second, with respect to the Transco Adder, NCPA echoes TAPS's recommendation that the Commission re-examine and recalibrate the use of an ROE

⁵ Decision No. 98-01-053, *Joint Application of Pac. Gas and Elec. Co., et al.*, Application No. 97-11-038, 78 C.P.U.C. 2d 307, 1998 Cal. PUC LEXIS 200, at *17–*18 (Nov. 25, 1997).

⁶ *New England Power Pool*, 97 FERC ¶ 61,093, at 61,477 (2001), *on reh'g*, 98 FERC ¶ 61,249 (2002).

⁷ *See, e.g., id.* *See also Incentive Ratemaking for Interstate Nat. Gas Pipelines, Oil Pipelines, and Elec. Utils.*, 61 FERC ¶ 61,168, at 61,599 (1992) ("A 'reward' for past behavior" after all "does not induce future efficiency and benefit consumers.").

⁸ *Cal. Pub. Utils. Comm'n v. FERC*, 879 F.3d 966, 974 (9th Cir. 2018).

adder to incentivize the formation of transcos. Nearly every one of the CAISO-administered competitive project sponsor solicitations to date has been met with robust competition,⁹ with many transcos offering to *forgo* the Transco Adder or otherwise cap their ROE.¹⁰ As Lawrence Willick of competitive transmission developer LS Power summarized at the June 2016 technical conference, “LS Power does not see a direct link between FERC’s incentive policy and competitive processes [T]ransmission [is] an attractive investment under traditional cost of service regulation.” one worth “aggressively competing [for], taking on additional risk, and providing ratepayer benefits, such as through a binding cost cap.”¹¹ In short, in California, the current process is attracting investors, even without the promise of an incentive ROE. To the extent that the Commission nonetheless determines that continued use of an ROE adder is necessary to incentivize the Transco business model, NCPA urges the Commission to limit its application and duration as suggested by TAPS.¹²

Beyond the Transco Adder, California has a unique issue: prior to the Commission’s official adoption of the Adder, the Commission granted 13.5% incentive ROEs to several TOs that constructed particular transmission projects in congested areas.¹³ Those transmission companies have now argued for over a decade that they

⁹ *Competitive Transmission Dev. Tech. Conference*, Comments of the California Department of Water Resources State Water Project at Attachment A, Docket No. AD16-18-000 (Oct. 3, 2016), eLibrary No. 20161003-5364.

¹⁰ *DesertLink LLC*, Harry Allen-Eldorado 500 kV Transmission Line Project Sponsor Selection Report at 74, Ex. DesertLink-107, Docket No. ER17-135-000 (Oct. 18, 2016), eLibrary No. 20161018-5139.

¹¹ *Competitive Transmission Dev. Tech. Conference*, Opening Remarks of Lawrence Willick on Behalf of LSP Transmission Holdings, LLC at 1 (June 30, 2016), eLibrary No. 20160630-4020.

¹² [Insert cross-reference to TAPS Comments Q 57-60]

¹³ See *Removing Obstacles to Increased Elec. Generation and Nat. Gas Supply in the W. U.S.*, 94 FERC ¶ 61,272, at 61,969-70; *reh’g denied*, 95 FERC ¶ 61,225, *order on requests for reh’g and clarification*, 96 FERC ¶ 61,155, *order on requests for reh’g and clarification*, 97 FERC ¶ 61,024 (2001) (creating incentive

should be entitled to receive those incentive ROEs in perpetuity. The time is ripe to revisit those incentive ROEs in light of changes in the transmission landscape—including significant enhancements to competition and reduced congestion—since the Commission’s original Western Incentives Orders. And for projects located outside high fire risk areas, the record in California demonstrates that such incentive returns are *not* required to get projects built: as noted above, these investments are so attractive that developers are offering to cap their ROEs in exchange for the right to build projects.¹⁴ Ratepayers should not be saddled for years to come with the burden of paying ROEs far exceeding the cost of debt, regardless of whether incentive returns are necessary to spur investment.

NCPA also submits that project-specific incentives should not be awarded for maintenance projects. Over the past decade, transmission costs across the CAISO footprint have more than tripled.¹⁵ While the CAISO has been largely successful in harnessing the benefits of competition for regionally planned projects, the majority of TO spending in CAISO in recent years has been for “asset condition”-type projects, and other

premiums for projects that ease congestion or interconnect new supply in California and other areas of the West) (Western Incentives Order); *see also, e.g., W. Area Power Admin.*, 99 FERC ¶ 61,306, at 62,278, 62,280 (2002) (approving as consistent with Western Incentives Order 13.5% ROE, inclusive of a 200 basis point incentive, for Trans-Elect, Inc.’s and PG&E’s portion of congestion-abating Path 15 project facilities) (*Trans-Elect*); *Sierra Pac. Res. Operating Cos.*, 105 FERC ¶ 61,178, P 15 (2003), *reh’g denied*, 106 FERC ¶ 61,096 (2004) (approving premium ROEs for Nevada Power Co. consistent with Western Incentives Order) (*Nevada Power*); *Trans Bay Cable LLC*, 112 FERC ¶ 61,095, P 25-26 (2005) (approving 13.5% ROE for project in light of assessed risk level and consistency with *Trans Elect* and *Nevada Power*).

¹⁴ *See* note 8, *supra*.

¹⁵ *Compare* Jan. 1, 2019 TAC Rates Based on Filed Annual TRR/TRBA & Load Data, http://www.caiso.com/Documents/HighVoltageAccessChargeRatesEffectiveJan01_2019_RevisedMar21_2019.pdf (reflecting total high-voltage Transmission Access Charge (TAC) rate of \$2.3 billion for 2019), *with* Jan. 1, 2009 TAC Rates Based on Filed Annual TRR/TRBA & Load Data, http://www.caiso.com/Documents/HighVoltageAccessChargeRatesEffectiveJan1_2009_RevisedNov19_2012.pdf (reflecting a total high-voltage TAC rate of \$712 million in 2009).

capital work undertaken without stakeholder input.¹⁶ To the extent that a TO is undertaking work necessary to maintain the reliability of its system, such projects should not be eligible for incentives. Additionally, the Commission should consider whether, if it retains the RTO Adder, that adder should apply to transmission maintenance projects.

Finally, the Commission should not automatically award any incentives, including primarily risk-reducing, non-ROE incentives such as CWIP and Abandoned Plant. While experience demonstrates those requests are often granted, there have been times when such requests have been denied as neither appropriate nor necessary to mitigate risk.¹⁷ A key example, one that results in billions of dollars in investment across the country each year, is replacement projects based on asset condition. In California, these projects are identified and committed to at the TO's discretion, without the benefit of RTO or stakeholder input. Automatic award of incentives for these projects would exacerbate lack of transparency in planning and leave ratepayers to bear the burden of challenging undue incentive treatments. In contrast, requiring a TO to file with the Commission to receive incentive treatments or collect incentive ROEs on these investments would, at the very least, result in the daylight of a public proceeding through which interested parties may comment on such requests, and the Commission can review whether incentives are needed for these TO-controlled, low-risk projects to move forward.

¹⁶ See generally *Cal. Pub. Utils. Comm'n v. Pac. Gas & Elec. Co.*, Complaint, Docket No. EL17-45-000 (Feb. 2, 2017), eLibrary No. 20170202-5239.

¹⁷ See, e.g., *Pac. Gas & Elec. Co.*, 160 FERC ¶ 61,018, P 64 (2017) (denying request for abandoned plant incentive where applicant "ha[d] not demonstrated that the risks and challenges presented [by the projects were] sufficient to satisfy the Order No. 679 nexus test"); *United Illuminating Co.*, 167 FERC ¶ 61,126, P 64 (2019) (rejecting request for ROE incentive adder because the applicant failed to "present sufficient risks and challenges to warrant an ROE Incentive Adder").

IV. CONCLUSION

NCPA appreciates the Commission's continuing efforts to improve electric transmission development, as well as the opportunity to respond to the Commission's inquiry. NCPA respectfully requests that the Commission consider its comments and those of TAPS as it considers revisions to its electric transmission incentives policies.

Respectfully submitted,

/s/ Katharine M. Mapes

Katharine M. Mapes

Amber L. Martin

Attorneys for

Northern California Power Agency

Law Offices of:

Spiegel & McDiarmid LLP

1875 Eye Street, NW

Suite 700

Washington, DC 20006

(202) 879-4000

June 26, 2019