STATE OF CALIFORNIA GAVIN NEWSOM, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
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June 26, 2019

VIA ELECTRONIC DELIVERY

Ms. Kimberly D. Bose
Office of the Secretary
Federal Energy Regulatory Commission
888 First Street, N.E., Room 1A, East
Washington, D.C. 20426

Re: ***Inquiry Regarding the Commission's Electric Transmission Incentives Policy,*** **Docket No. PL19-3-000**

Dear Ms. Bose:

Enclosed for filing in the above-docketed case, please find an original electronic filing of the attached document entitled "**NOTICE OF INTERVENTION AND OPENING COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION**."

Thank you for your cooperation in this matter.

Sincerely,

/s/ JONATHAN PAIS KNAPP

Jonathan Pais Knapp
Attorney

Enclosures

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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Inquiry Regarding the Commission's Electric Transmission Incentives Policy	Docket No.: PL19-3-000

NOTICE OF INTERVENTION AND OPENING COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION

Pursuant to Rule 214(a) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission" or "FERC"), and the Commission's March 21, 2019 Notice of Inquiry ("NOI") in the above-captioned docket,[1] the California Public Utilities Commission and the People of the State of California ("CPUC") submit this Notice of Intervention and these Opening Comments on the scope and implementation of the Commission's electric transmission incentives regulations and policies under Order No. 679, as subsequently refined by rehearing orders 679-A, 679-B and the Commission's 2012 policy statement ("2012 Incentives Policy Statement").[2]

[1] *Inquiry Regarding the Commission's Electric Transmission Incentives Policy*, 166 FERC ¶ 61,208 (March 21, 2019) ("NOI").

[2] *Promoting Transmission Investment Through Pricing Reform*, Order No. 679, 116 FERC ¶ 61,057 (2006), *order on reh'g*, Order No. 679-A, 117 FERC ¶ 61,345 (2006), *order on reh'g*, Order No. 679-B, 119 FERC ¶ 61,062 (2007); *Promoting Transmission Investment Through Pricing Reform*, 141 FERC ¶ 61,129 (2012) (the "2012 Policy Statement").

I. NOTICE OF INTERVENTION

The CPUC is a constitutionally-established agency charged with responsibility for regulating electric corporations in the State of California. In addition, the CPUC has a statutory mandate to represent the interests of electric consumers throughout California in proceedings before the Commission. This Notice of Intervention serves to make the CPUC a party to this proceeding.

Communications to the CPUC in this proceeding should be addressed to:

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II. INTRODUCTION

The CPUC commends the Commission for engaging in is this public inquiry "to gauge whether there is a need to add to, modify, or eliminate certain policies or regulatory requirements" that govern its award of electric transmission incentives.[3] Given that the need for investment in transmission infrastructure that motivated Congress to enact section 219[4] of the Federal Power Act ("FPA")[5] in 2005, and thereby establish electric transmission incentives, is no longer a national problem, this is an appropriate time to reevaluate the need for incentives and to consider changes to the Commission's relevant policies and regulations.

Based on the questions posed in the NOI, it appears the Commission is both considering ways to make the existing nexus test for assessing whether incentives are warranted more rigorous, *e.g.*, by exploring the possibility of reinstating a cost-benefit analysis and requiring *ex post* measurement and verification of project benefits, and ways to make the nexus test less rigorous, *e.g.*, by soliciting input on the concept of granting incentives automatically if a project satisfies certain

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[3] NOI at P 13.

[4] All further statutory references are to the Federal Power Act unless otherwise specified.

[5] 16 U.S.C. § 791a, *et seq*.

threshold criteria concerning its characteristics, forecasted benefits or the overall circumstances that it is intended to address.

Because the transmission reliability and congestion issues that existed in 2005 no longer represent a problem in need of a national solution, the CPUC respectfully submits that there is no principled and reasoned justification for now making the nexus test *less* rigorous. Instead, the Commission's reevaluation of its transmission incentives policy should be focused on how to *increase* the rigor of its nexus test for assessing whether an individual incentive is needed to realize a project that will, in turn, satisfy the statutory goals of section 219, *i.e.*, to ensure reliability or reduce congestion, and thereby reduce the cost of delivered power. As one of the primary purposes of section 219 is to reduce costs for consumers, the CPUC recommends necessary reforms to make the existing nexus test more rigorous, transparent and data driven to ensure that rates which result from incentives will, in fact, be just and reasonable.

The CPUC also recommends that given the vastly improved conditions in the national electric grid that have occurred since section 219 was enacted, the Commission should assess the ongoing need for incentives on a regional basis. For example, in the California Independent System Operator's ("CAISO") control area there are no system-wide, chronic, long-term transmission reliability or congestion issues that warrant the continued award of electric transmission incentives.

The CPUC has organized its Opening Comments into two sections: (1) a narrative section that lays out the CPUC's overall recommendations; and (2) a section that responds to specific, enumerated questions posed in the NOI. Although the CPUC has not responded to all 105 questions posed in the NOI, we reserve the right to respond in our Reply Comments to other intervenors' comments pertaining to questions we have elected not to comment on here.[6]

III. BACKGROUND

A. The Commission's Electric Transmission Incentives Policy Under Federal Power Act Section 219.

Congress directed the Commission to establish electric transmission incentives in section 219 of the FPA, which was enacted as part of the Energy Policy Act of 2005 ("EPAct 2005")[7] in response to "a long decline in transmission investment."[8] The primary purpose of these electric transmission incentives, as set forth in section 219, is to "benefit[] consumers by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion."[9] In addition to this core mandate, section 219 also directs the Commission to adopt specific

[6] The CPUC is also a signatory to the Joint Initial Comments of the Aluminum Association, the American Chemistry Council, the American Forest and Paper Association, the American Public Power Association, Blue Ridge Power Agency, the California Municipal Utilities Association, the California Public Utilities Commission, the Cities OF Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California, the Electricity Consumers Resource Council, the Industrial Energy Consumers of America, Maryland Office of People's Counsel, the National Association of State Utility Consumer Advocates, the New York Public Service Commission, Northern California Power Agency, the Office of the People's Counsel for the District of Columbia, the Transmission Agency of Northern California, and the Virginia Office of the Attorney General, Division of Consumer Counsel (referred to below as "Joint Initial Comments").

[7] 109 P.L. 58, 119 Stat. 594.

[8] Order 679-A at P 7.

[9] 16 U.S.C. § 824s(a).

incentives, such as for utilities that join Regional Transmission Organizations ("RTO") or Independent System Operators ("ISO") and for technologies that improve the capacity and efficiency of existing transmission facilities.[10]

In accordance with section 219, which required the Commission to establish incentive-based rate treatments by rulemaking, the Commission promulgated the "Incentive Rule."[11] The Incentive Rule, as codified in Title 18, Code of Federal Regulations section 35.35(d), prescribes a three-part test for assessing whether a request for an individual incentive is warranted, referred to as the "nexus test." The applicant must demonstrate that the facilities for which it seeks incentives:

1. Either ensure reliability or reduce the cost of delivered power by reducing transmission congestion consistent with the requirements of section 219;
2. That the total package of incentives is tailored to address the demonstrable risks or challenges faced by the applicant in undertaking the project; and
3. That resulting rates are just and reasonable.[12]

The Incentive Rule establishes multiple categories of return on equity ("ROE") enhancing incentives, such as the ROE adder for joining an RTO or ISO, and risk reducing incentives, such as "recovery of 100 percent of prudently incurred costs of transmission facilities that are cancelled or abandoned due to

[10] 16 U.S.C. § 824s(b).

[11] 18 C.F.R. § 35.35(d).

[12] *Id*.

factors beyond the control of the public utility," (the "abandoned plant incentive").[13]

B. One of the Primary Purposes of the Commission's Incentive Ratemaking is to Reduce Transmission Costs to Consumers.

Years before the enactment of section 219, in 1992, the Commission established incentive ratemaking in a policy statement, which explains the purpose of incentives is to "encourage efficiency" in utility operations while conforming to the just and reasonable standard for rate setting.[14] To that end, the Commission originally required that an applicant quantify the benefits of each requested incentive and imposed a cap on the cost of the incentive to ratepayers.[15] Subsequently the Commission required in Order No. 2000 that applicants for electric transmission incentives submit "a cost-benefit analysis, including rate impacts . . . [and] demonstrate that the resulting rates are just, reasonable, and not unduly discriminatory or preferential."[16] Despite section 219's express mandate

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[13] 18 C.F.R. §§ 35.35(d)(1)(vi), (d)(2), and (e).

[14] *Policy Statement on Incentive Regulation*, 61 FERC ¶ 61168, 61587 (1992) (the "1992 Policy Statement") (emphasis added) ("[t]he first general principle is that *incentive regulation should encourage efficiency*. Efficiency encompasses several dimensions. Utilities should operate at optimal levels, allocate services first to the highest valued uses, invest in new capital when economically warranted, and capture expanding markets. The second general principle is that starting rates under incentive regulation must conform to the Commission's traditional just and reasonable standard.").

[15] *Id*. at ¶ 61590 (emphasis added) ("[t]he Commission remains convinced that benefits to consumers must be quantifiable even though the task is admittedly a difficult one. *All proposals must include a quantified estimate of the consumer benefits compared to cost-of-service regulation* (*i.e*., a comparison of projected cost-of-service rates to prospective rates under the proposed incentive rate mechanism), and a realistic estimate of the program's prospects for success and the risks of failure. *The projected cost-of-service rates will serve as an overall cap on incentive rate increases to limit consumer risk*.").

[16] *Regional Transmission Organizations*, Final Rule, Order No. 2000, 65 FR 809, 913, 928

that the Commission "promote reliable and *economically efficient* transmission and generation of electricity,"[17] in Order Nos. 679 and 679-A the Commission made its incentive regulation less rigorous and specifically rejected the requirement that an applicant for incentives provide a cost-benefit analysis.[18] The Commission continued to focus, however, on the need to reduce consumer costs as one of two critical problems—the other being threats to reliability—that incentives were intended to address. For example, in Order No. 679, the Commission stated that it "should not provide incentives *that only serve to increase rates without providing any real incentives to construct new transmission infrastructure*."[19] Similarly, in Order No. 679-A, the Commission explained that the Incentive Rule was promulgated in response to "a Congressional directive to use the Commission's discretion under section 205 to address a national problem – the decline in transmission investment that is threatening reliability *and imposing billions of dollars in congestion costs on consumers*."[20] Six years later in the 2012 Policy Statement the Commission modified its electric transmission incentives

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(emphasis added) (where the Commission stated that it would consider innovative rate treatments for transmission owners such as "a higher ROE on transmission plant" for applicants that satisfied the requirements in the final rule, and emphasized that "[t]he Applicant must explain how the proposed rate treatment would help achieve the goals of RTOs, *including efficient use of and investment in the transmission system and reliability benefits to consumers; provide a cost-benefit analysis, including rate impacts*; and explain why the proposed rate treatment is appropriate for the RTO proposed by the Applicant. This means that [applications] must be complete and fully explained; *must demonstrate that the resulting rates are just, reasonable, and not unduly discriminatory or preferential; must identify how the rate treatment promotes efficiency and what benefits result* . . . .").

[17] 16 U.S.C. § 824s(b)(1).

[18] Order No. 679 at P 65; Order No. 679-A at P 35.

[19] Order No. 679 at P 6 (emphasis added).

[20] Order No. 679-A at P 37 (emphasis added).

policy in several important ways in order to promote “a more efficient, reliable and *cost-effective* transmission system,” including the directive that application of an incentive ROE should be based on an applicant’s cost estimate, not the actual cost of a project, in order to guard consumers against the risk of cost escalation.[21]

C. Notable Commission Policies that Govern Its Award of Electric Transmission Incentives.

1. Incentives Must Be Prospective and Only Awarded to Induce Voluntary Conduct.

As explained by the Court of Appeals for the Ninth Circuit, the Commission “has a longstanding policy that rate incentives must be prospective and that there must be a connection between the incentive and the conduct meant to be induced. This policy is incorporated in Order 679. The policy prohibits the Commission from rewarding utilities for past conduct or for conduct which they are otherwise obligated to undertake.”[22] Thus, “[a]n incentive cannot induce behavior that is already legally mandated.”[23] “This longstanding policy is evinced in a series of FERC decisions and statements” dating back to the 1992 Policy Statement.[24]

[21] 2012 Policy Statement at PP 25, 28-30.

[22] *Cal. PUC v. FERC*, 879 F.3d 966, 977 (9th Cir. 2018).

[23] *Id.* at 970

[24] *Id*. at 977 (citations omitted); *see* 1992 Policy Statement at ¶ 61599 (where the Commission articulates the policy as follows: “Consideration of past performance would violate the standard that incentive ratemaking must be prospective. . . . Incentive regulation can produce superior results over traditional regulation only if it is prospective.”). *See also* NOI at P 38 (citing *Cal. PUC v. FERC*, 879 F.3d at 978) (“[t]he Commission has a ‘longstanding policy that incentives should only be awarded to induce voluntary conduct.’”).

2. Requests for Incentive Rates Must Be Justified on a Case-By-Case Basis.

In Order No. 679 the Commission directed that requests for incentive rates must be justified on a case-by-case basis. See *e.g.*, Order No. 679 at ¶ 82 (explaining that "[t]he Commission will require applicants to justify each of the incentive-based rate treatments it proposes by showing how the proposed incentive satisfies section 219"); *id*. at ¶ 20 (emphasizing that incentives will only be awarded "when justified"); *id*. at ¶ 26 ("each applicant must demonstrate that there is a nexus between the incentive sought and the investment being made"); *id*. at ¶ 43 (emphasis added) ("our *case-by-case approach* ensures that the incentives granted will be tailored to particular circumstances").[25]

The Commission subsequently "clarified the parameters of the nexus test through adjudication" in *Baltimore Gas & Electric Company*, 120 FERC ¶ 61,084 (2007) by holding that "a project meets the nexus test if it is 'not routine.'"[26] In the 2012 Policy Statement, however, the Commission determined that it would no longer use the *Baltimore Gas* routine/non-routine analysis as a *proxy* for satisfying the nexus test.[27] The Commission explained that "[w]hile prior orders found that

[25] *See also* Order No. 679-B at P 18 (emphasis added) (where the Commission affirmed that "[i]ncentives for reliability projects will be based, *on a case-by-case basis*, on the challenges and risks of the particular reliability project").

[26] *N.C. Utils. Comm'n v. FERC*, 741 F.3d 439, 443-44 (4th Cir. 2014) (citations omitted) (explaining that "[t]o make this determination, FERC considers all relevant factors including: (1) the project's scope measured in dollar investment or increase in transfer capability; (2) its impact on regional reliability or reduced congestion costs; and (3) project specific challenges including siting risks, political pressure, and difficulties in securing financing. FERC also held projects resulting from a regional planning process qualify as 'not routine' because of their impact on regional reliability.").

[27] *Id*. at 444 n.2 (citation omitted).

analysis probative . . . *we believe it is necessary to analyze the need for each individual incentive, and the total package of incentives, instead of relying on a proxy*."[28]

Thus, as the Commission affirmed in the 2012 Policy Statement, and as the Court of Appeals for the District of Columbia Circuit articulated earlier this year, "the Commission grants incentive rate authority 'when justified' on a 'case-by-case basis' in orders tailored to the demonstrated needs of each project."[29]

D. The March 21, 2019 Notice of Inquiry.

On March 21, 2019, the Commission issued the NOI seeking comments on the scope and implementation of the policies and regulatory requirements that govern the Commission's award of electric transmission incentives under Order No. 679, as refined by rehearing orders 679-A, 679-B and the 2012 Policy Statement.[30]

In 2011, the Commission issued a similar NOI concerning its electric transmission incentives policy, received comments from affected stakeholders, including the CPUC, and ultimately issued its 2012 Policy Statement that refined its electric transmission incentives policy. The NOI explains that, in light of developments in the intervening seven years significantly affecting "how transmission is planned, developed, operated, and maintained [,] . . . it is

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[28] 2012 Policy Statement at P 10 (emphasis added).

[29] *San Diego Gas & Elec. Co. v. FERC*, 913 F.3d 127, 141 (D.C. Cir. 2019) (*citing* Order No. 679 at P 20; Order No. 679-B at P 18).

[30] NOI at PP 1-2.

appropriate to seek comment from stakeholders on the scope and implementation of the Commission's transmission incentives policy and on how the Commission should evaluate future requests for transmission incentives in a manner consistent with Congress's direction in section 219."[31]

IV. ARGUMENT

A. Electric Transmission Incentives Are Not Needed in the CAISO.

The CPUC recommends that given the vastly improved conditions in the national electric grid that have occurred since section 219 was enacted, the Commission should assess the ongoing need for incentives on a regional basis. As the Commission has previously explained, section 219 was enacted to address "a national problem:" a long decline in transmission investment prior to 2005 that resulted in transmission congestion which impeded competitive wholesale markets, impaired "the reliability of the electric grid," and resulted in consumers paying billions of dollars in congestion costs.[32] In 2003, real-dollar investment in electric transmission in the U.S. was less than the level of investment in 1975.[33] During the intervening twenty-eight years, however, the load on the nation's transmission system doubled.[34] Thus, the Commission stated, in 2006, that the "need for capital investment in energy infrastructure is a national problem that

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[31] *Id*. at P 2.

[32] Order No. 679-A at P 9.

[33] Order No. 679 at P 10.

[34] *Id*.

requires a national solution."[35] But thirteen years later, due to a number of factors, including the declining price of natural gas and corresponding development of additional gas-fired power plants located near load centers, and increasing investment in transmission infrastructure,[36] transmission reliability and congestion are no longer the urgent issues of national concern that they were.

1. There Are No Pressing Transmission Reliability or Congestion Issues in the CAISO that Warrant Incentives.

Although reliability and congestion issues may persist in certain areas of the nation, in many regions, such as the CAISO control area, there are no "chronic, long-term" system-wide transmission reliability or congestion issues that warrant the Commission's intervention in the competitive market to incentivize investment in transmission infrastructure.[37] When Order 679 was implemented, with the exception of Southern California, the Western Interconnection was not experiencing congestion to the extent that the electric networks in the Eastern

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[35] Order No. 679-A at P 9.

[36] As explained *infra*, given that the Commission's existing nexus test for reviewing applications for electric transmission incentives does not require any assessment or *ex post* verification of the benefits of the incentives, it is impossible to ascertain the extent, if at all, that the incentives contributed to the increased level of investment in transmission infrastructure, as compared to the period prior to the enactment of section 219.

[37] *See* NOI at P 25 (emphasis added) (wherein the Commission acknowledges that regional differences bear on the need for transmission infrastructure: "Section 219's objective of promoting the development of transmission facilities that ensure reliability and/or reduce congestion may be particularly important *in regions of the country that have experienced chronic, long-term congestion or require operating procedures in place to address long-term reliability issues*.").

Interconnection were.[38] Still, investment in the west continued. By 2015, the Department of Energy found,

> There has been a marked increase in transmission construction and project completions across the West over the past three years, and equal progress in planning and coordination of new transmission project proposals. These completions have already improved western transmission throughput, reducing usage on many key interfaces and reducing congestion and associated costs.[39]

In parts of the country like the CAISO control area where there are no pressing, system-wide transmission reliability and congestion issues, a reasonable rate of return on capital additions satisfies the long-standing standard for just and reasonable rates *without ROE-enhancing or risk-reducing incentives*. In other words, a reasonable rate of return without ROE-enhancing or risk-reducing incentives is sufficient to: (1) maintain the financial integrity of the enterprise; (2) enable the company to attract new capital; and (3) provide a return to the common equity owners that is commensurate with returns on investments in other enterprises of corresponding risk.[40]

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[38] U.S. Department of Energy. National Electric Transmission Congestion Study, August 2006, *available at* https://www.energy.gov/sites/prod/files/oeprod/DocumentsandMedia/Congestion_Study_2006-9MB.pdf, at pp. 40-46.

[39] U.S. Department of Energy. National Electric Transmission Congestion Study, September 2015, *available at* https://www.energy.gov/sites/prod/files/2015/09/f26/2015%20National%20Electric%20Transmission%20Congestion%20Study_0.pdf, at p. 51.

[40] *Federal Power Commission v. Hope Natural Gas Company*, 320 U.S. 591, 603 (1944); *Bluefield Water Works and Improvement Company v. Public Service Commission of West Virginia*, 262 U.S. 679, 692-93 (1923).

As the Commission recognizes, "a prudent transmission provider will not only plan to maintain reliability and consider whether transmission upgrades or other investments can reduce the overall costs of serving native load, but also consider how to plan for transmission needs driven by Public Policy Requirements."[41] Incentives are neither needed nor appropriate to induce transmission providers to engage in these fundamental maintenance and planning activities in regions of the country such as the CAISO control area where there are no pressing, system-wide transmission reliability or congestion issues.

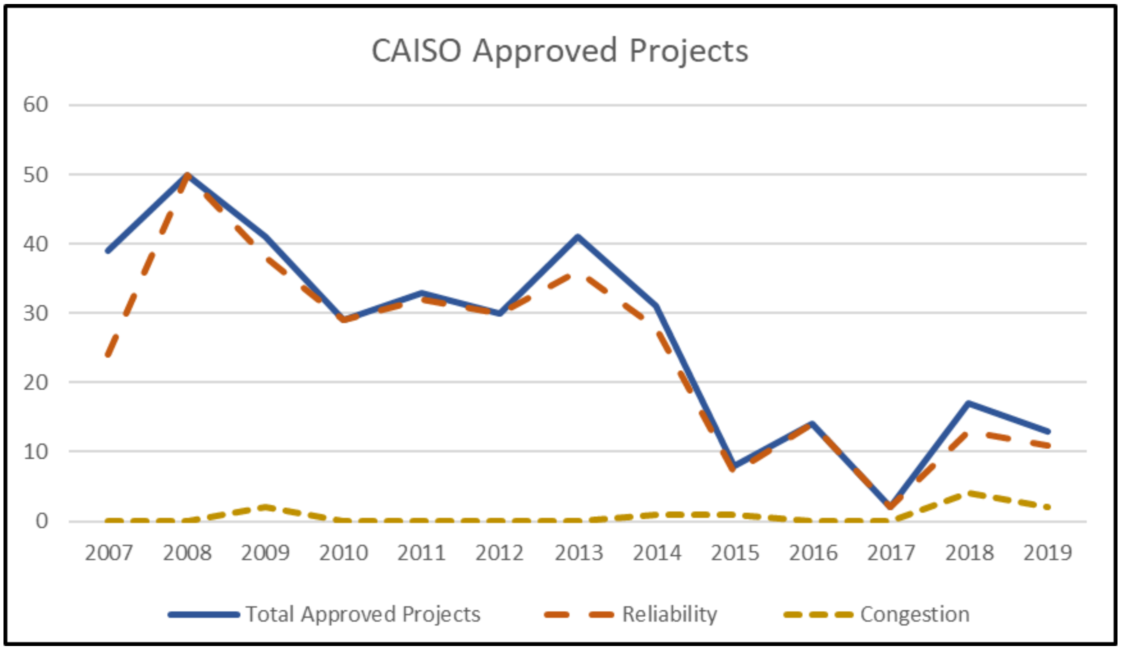
a) There are No Pressing, System-Wide Reliability Issues in the CAISO.

Since the inception of Order No. 679, there has been far less need for electric transmission incentives in the CAISO control area compared to other regions of the country. As shown in Figure 1 below, since 2007 the total number of projects approved by the CAISO each year has, on average, markedly decreased. The overwhelming majority of transmission projects approved by the CAISO are intended to enhance reliability.[42] Thus, the steep decline in the

[41] *Transmission Planning & Cost Allocation*, 2011 FERC LEXIS 1387, *1388-89 (July 21, 2011).) *See also* NOI at P 22 (where the Commission observes that "[t]ransmission owners are already required to address many facets of reliability through compliance with the North American Electric Reliability Corporation (NERC) reliability standards and various other planning criteria.").

[42] California ISO. 2007 Transmission Plan, 2007 at pp. 9-10,14; California ISO. 2008 CAISO Transmission Plan, 2008 at pp. 53-66; California ISO. 2009 California ISO Transmission Plan, 2009 at pp.205-223; California ISO. 2010 Final California ISO Transmission Plan, 2010 at pp.262-267; California ISO. 2010-2011 Transmission Plan, 2011 at pp.522-524; California ISO. 2011-2012 Transmission Plan, 2012 at pp. 419-428; California ISO. 2012-2013 Transmission Plan, 2013 at pp. 363-374; California ISO. 2013-2014 Transmission Plan, 2014 at pp. 278-292; California ISO. 2014-2015 Transmission Plan, 2015 at pp. 251-265; California ISO. 2015-2016 Transmission Plan, 2016 at pp. 319-334; California ISO. 2016-2017 Transmission Plan, 2017 at pp. 368-379; California ISO. 2017-2018 Transmission Plan, 2018 at pp. 325-335; California

Figure 1



CAISO's approval of transmission projects during this period, as depicted in Figure 1 above, primarily reflects a decline in reliability enhancing projects. There are multiple reasons that a transmission project may ultimately not be approved by the CAISO. This overall trajectory, *i.e.*, a decreasing number of transmission projects being approved each year since 2007, however, at a minimum, is a strong indicator there are no pressing, system-wide reliability issues in the CAISO control area. Presumably, if the opposite were true, and there were significant, system-wide, chronic transmission reliability issues in the CAISO control area, one would expect to see a greater number of transmission reliability enhancing projects approved by the CAISO during the past decade.

ISO. 2018-2019 Transmission Plan, 2019 at pp. 469-477.

b) There are No Pressing, System-Wide Congestion Issues in the CAISO.

Similarly, there are no pressing, system-wide congestion issues that warrant incentives in the CAISO control area. Figure 1, above, shows that few projects have been identified by the CAISO to address congestion issues since the Commission issued Order No. 679 in 2006. In fact, notwithstanding a small uptick in projects approved by the CAISO to address congestion issues over the past two years, only 10 of the 348 total projects approved by the CAISO between 2007 and 2019 specifically address congestion.[43]

c) Projects Previously Approved by the CAISO are Being Cancelled or Held at an Increasing Rate in Recent Years.

Another indicator that shows there is no need for incentives to encourage transmission investment in the CAISO control area are the myriad transmission projects that have been cancelled or put on hold in recent years. As shown below in Figure 2, of the 62 transmission projects that were cancelled or put on hold between 2007 and 2019, 53 of the transmission projects were either cancelled or put on hold since 2016.[44] There are many reasons that a transmission project may not ultimately go forward or be delayed. The large number of projects that have been cancelled or postponed in the CAISO control area in the past three years, however, underscores the current lack of need for electric transmission incentives in this region.

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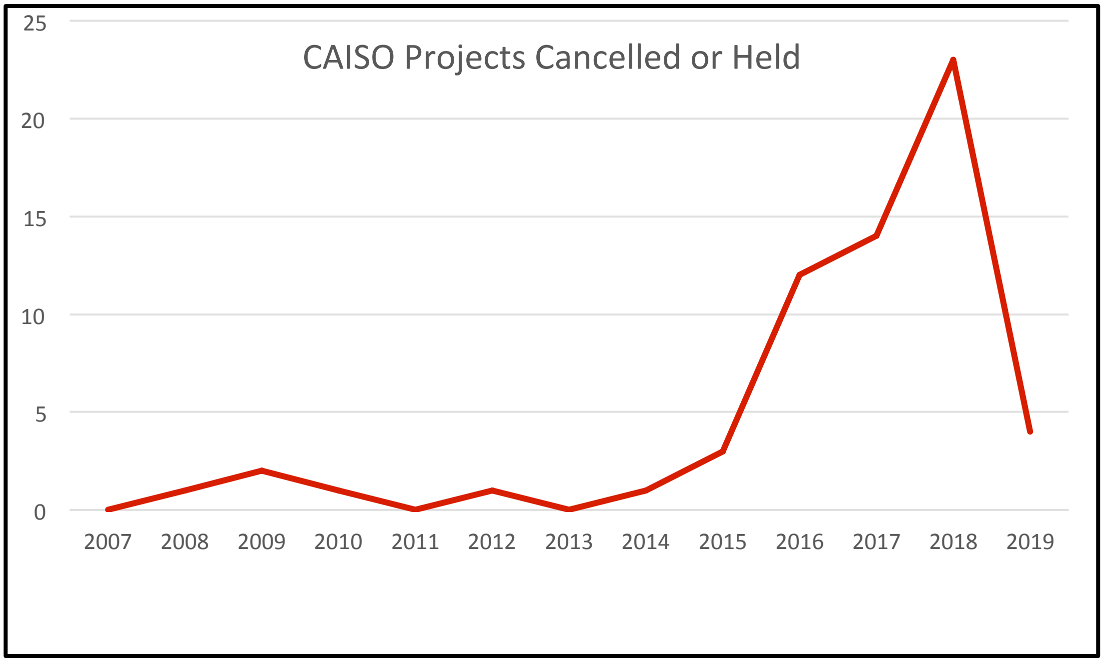
[43] *Id.*

[44] *Id.*

Figure 2.



2. The Commission Should Consider the Regulatory Regimes in Each State in Determining Whether Incentives Are Needed.

The Commission should also consider the regulatory regimes in each state in determining whether incentives are necessary. For example, in California, if a critical transmission related issue were to arise, the CPUC could, as it has in the past, order the applicable investor owned utility ("IOU") to undertake the needed transmission upgrades.[45] Further, California Public Utilities Code section 399.2.5 provides a "backstop" cost mechanism that allows California IOUs to recover

[45] *Interim Opinion on Transmission Needs in the Tehachapi Wind Resource Area*, D.04-06-010, 2004 Cal. PUC LEXIS 610, *67 (where the CPUC ordered that "[t]ransmission planning for the Tehachapi area shall be modified to provide for an orderly, logical, and phased expansion of the transmission system based on the magnitude of the wind resource identified by the [California Energy Commission], engineering and cost considerations, and recognition of other relevant factors including regional transmission needs."); *id.* at *68-69 ([Southern California Edison Company] shall file an application seeking a certificate authorizing construction of the first phase of Tehachapi transmission upgrades . . . within six months of the effective date of this order and seek transmission rate recovery at the Federal Energy Regulatory Commission.").

through CPUC jurisdictional retail rates any costs of transmission facilities that are not approved by the Commission for recovery through transmission rates, provided such facilities are deemed necessary to achieve California's renewables portfolio standard goals and were prudently incurred. Cal. Pub. Util. Code § 399.2.5(a), (b)(4).[46]

3. Refinement of Order No. 1000 to Require Competition in Local Planning Processes Would Increase Investment in Transmission Infrastructure and Lower Costs to Consumers.

While these considerations counsel against a one-size-fits-all "national solution," the CAISO control area—and the rest of the U.S.—could benefit from the refinement of FERC Order No. 1000 to increase competition for investment in transmission infrastructure. Incentive ratemaking is not necessary where a market is "workably competitive."[47] By revising FERC Order 1000 to require that local planning processes be open to competition from non-incumbent developers, the Commission could increase investment in transmission infrastructure and lower costs to consumers, and thereby more cost-effectively achieve the goals of its electric transmission incentive policy (without granting incentives).[48] Order 1000

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[46] 2011 CPUC Comments at 15-16.

[47] 1992 Policy Statement at ¶ 61610 (emphasis added) (where the Commission explained that "[i]ncentive ratemaking is an alternative regulatory mechanism that can reward utilities for efficiency and benefit customers with lower rates. Incentive ratemaking can help achieve the goal of productive efficiency. *It is not a substitute for market-based mechanisms where markets are workably competitive*. Rather, it is a way to attempt to replicate incentives that occur naturally in a competitive market.").

[48] Consistent with section IV(A) above, the Commission will need to take regional differences into consideration in refining Order 1000. For example, the CAISO considers "local projects" to

requires transmission providers to open their transmission planning processes to non-incumbent transmission developers.[49] But "[t]he tariffs that specify the rules for transmission planning for each region currently exclude the large majority of transmission investments from competitive processes."[50] Some of these restrictive criteria are set out in Order 1000, which limits competition to projects that are regionally cost allocated, thereby excluding projects whose costs are paid for solely by local transmission users.[51] In fact, "only 3% of U.S. transmission investments approved between 2013 and 2017 have been subject to competitive processes that were open to non-incumbents."[52] Subjecting more transmission projects to competition could increase the cost-effectiveness of the investments and stimulate innovation and thereby provide greater overall benefits to consumers than the Commission's existing incentive policy.[53]

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be projects under 200 kilovolts ("kV") that are cost allocated within a utility's service area. The CPUC also recognizes that not all "local projects" would be appropriate for competitive bidding and that it makes sense for certain projects to be completed by the incumbent utility.

[49] Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities, Order No. 1000, 76 Fed. Reg. 49,842 (Aug. 11, 2011), FERC Stats. & Regs. ¶ 31,323 (2011) ("Order No. 1000"), *reh'g denied*, Order No. 1000-A, 77 Fed. Reg. 32,184 (May 31, 2012), 139 FERC ¶ 61,132 (2012), *on reh'g*, Order No. 1000-B, 77 Fed. Reg. 64,890 (Oct. 24, 2012), 141 FERC ¶ 61,044 (2012), *review denied sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014) (per curiam), *reh'g en banc denied*, No. 12-1232 (D.C. Cir. Oct. 17, 2014), at PP 7, 9.

[50] *Supplemental Comments of LSP Transmission Holdings, LLC*, AD16-18-000, June 7, 2019, Exhibit A, *Cost Savings Offered by Competition in Electric Transmission Experience to Date and the Potential for Additional Customer Value, Prepared for LSP Transmission Holdings, LLC, The Brattle Group*, April 2019 (referred to below as "Brattle Group Report"), at 6.

[51] *Id*.

[52] *Id*. at 5.

[53] *Id*. at 6. See also *infra* note 96 (explaining that increased competition would compel developers to propose innovative project management and cost controls).

4. Proper Application of Order No. 890's Transparency Requirements to "Self-Approved Projects" Would Make Transmission Investment More Efficient and Cost-Effective.

As explained above, by revising FERC Order 1000 to require that local planning processes—not just regional planning processes—be open to competition from non-incumbent developers, the Commission would increase investment in transmission infrastructure and lower costs to consumers. Many transmission projects undertaken by utilities, however, are "self-approved projects" that do not undergo *any* external review to determine if the projects are, in fact, needed and whether the resulting rates will be just and reasonable.

These projects are generally planned replacements of assets that are then capitalized, which include upgrades to facilities such as substations, line remediation projects that may increase the capacity of the line, and projects to extend the useful life of facilities. In deciding which of these asset replacement projects to undertake, "utilities should be considering whether to replace the asset one-for-one, abandon it all-together because of changing grid topology, or consider other technologies that may enhance the system's performance. This decision-making requires planning, and it should be transparent to all of the utilities' stakeholders, as Order 890 requires."[54] Specifically, Order 890 requires transmission providers to develop processes that provide stakeholders access not

[54] Request for Rehearing, *California Public Utilities Commission, Northern California Power Agency, City and County of San Francisco, State Water Contractors, and Transmission Agency of Northern California v. Pacific Gas and Electric Company,* Docket No. EL17-45-000 (referred to below as "Request for Rehearing"), at 1.

only to transmission plans, but also to the data and assumptions underlying those plans.

The lack of stakeholder review of these "self-approved projects" is a critical issue given the significant amount of investment that utilities allocate to these projects. For example, in the CAISO, a majority of the investment in transmission infrastructure projects undertaken by California's three largest PTOs—Pacific Gas and Electric Company ("PG&E"), Southern California Edison Company ("SCE"), and San Diego Gas and Electric Company ("SDG&E")—are such self-approved projects. Over the next five years, these three PTOs forecast that they will spend approximately $5 billion on "self-approved projects," which will be about 52% of their total transmission investment during this period.[55]

The CPUC urges the Commission to recognize that the open and transparent planning principles that it adopted in Order 890 were clearly intended to apply to all planned transmission investment, including the asset replacement projects referenced above.[56] Proper application of Order 890's transparency requirements to these "self-approved projects" would provide for meaningful stakeholder review and thereby ensure that the transmission grid is developed in an integrated and cost-effective manner using the most appropriate technologies, and that Order 890's goals to prevent undue discrimination and unjust and

[55] This information is included in PTOs' self-reported data. Declaration of Simon Hurd, Analyst, California Public Utilities Commission, June 26, 2019, attached hereto as Exhibit 1 ("Hurd Decl."), at ¶¶ 5-9.

[56] Request for Rehearing at 1-2.

unreasonable rates are met. Such a robust, transparent stakeholder process for transmission planning would equally satisfy the goals of section 219 (without incentives).

B. The Commission Should Not Make its Review of Requests for Electric Transmission Incentives Less Rigorous.

1. The Commission Should Not Award Incentives on an Automatic Basis.

a) There is No Principled and Reasoned Justification for Awarding Incentives on an Automatic Basis.

The NOI asks "[w]hat are the benefits and drawbacks of granting incentives on a case-by-case basis, as compared to being granted automatically, *with or without threshold criteria*?"[57] Such a departure from the Commission's case-by-case approach, as established in Order No. 679, would make it much easier for PTOs to obtain incentives because they would not have to demonstrate why the individual incentives are necessary in their particular cases. The existing case-by-case approach requires applicants for incentives "to demonstrate need."[58] By contrast, if the Commission were to grant incentives automatically, an applicant would only be required to satisfy some "threshold criteria" concerning the characteristics, anticipated benefits, or circumstances *of the proposed project*, or, perhaps, may not even be required to make such a basic showing. As explained

[57] NOI at P 45 (Question 90) (emphasis added).

[58] *San Diego Gas & Elec. Co. v. FERC*, 913 F.3d at 141 (emphasis added) (explaining that the "overarching requirements" articulated in Order No. 679, Order No. 679-B and Title 18, Code of Federal Regulations section 35.35(d) "*call on applicants to demonstrate need*, and they afford some flexibility to the Commission to limit the incentive-rate authority it grants to match that need.").

above in Section III(C)(2), in the 2012 Policy Statement the Commission previously rejected the use of another "proxy," *i.e.*, the routine/non-routine analysis, in lieu of the case-by-case approach.[59] In reinstating the case-by-case approach, the Commission explained that "*we believe it is necessary to analyze the need for each individual incentive*, and the total package of incentives, *instead of relying on a proxy*."[60] The Commission was right to reject the use of a proxy in 2012 based on particular aspects *of the proposed project* in lieu of an assessment as to whether each requested *individual incentive* is, in fact, needed.

Further, the national problem of declining investment in transmission infrastructure that motivated Congress to enact section 219 no longer exists. Thus, the CPUC respectfully submits that the Commission's reevaluation of its transmission incentives policy should be focused on how to *increase* the rigor of its test for assessing whether an individual incentive is needed to realize a project that will, in turn, satisfy the statutory goals of section 219. Given the vastly improved conditions in the national market for transmission infrastructure, there is no "principled and reasoned justification"[61] for the Commission to now make the standard for awarding incentives far *less* rigorous by relying on a "proxy"—or, potentially, numerous proxies—based on characteristics, benefits, or

[59] 2012 Policy Statement at P 10 (emphasis added).

[60] *Id*. (emphasis added).

[61] *Maine v. FERC*, 428 U.S. App. D.C. 251, 264 (2017) (citation omitted) (internal quotations omitted) (emphasis added) ("explaining that judicial review in ratemaking cases is limited to ensuring that the Commission has made a *principled and reasoned decision* supported by the evidentiary record.").

circumstances of the proposed project, instead of assessing the demonstrated need for each requested individual incentive on a case-by-case basis.[62]

In Order No. 679 the Commission explained, "[m]any commenters request that we evaluate proposals [for the abandoned plant incentive] on a case-by-case basis and we affirm that we intend to do so. *The case-by-case approach and the limitation to prudently-incurred costs should adequately discipline investment decisions*."[63] The CPUC is deeply concerned that if the Commission departs from the case-by-case approach that investment decisions will not be adequately disciplined because PTOs will be improperly encouraged to undertake transmission infrastructure projects that may not be necessary.

b) The Case-by-Case Approach is Legally Required.

(1) The Case-by-Case Approach is Required to Satisfy the Just and Reasonable Standard Incorporated in Section 219.

[62] *San Diego Gas & Elec. Co. v. FERC*, 913 F.3d at 141 (*citing* Order No. 679 at P 20; Order No. 679-B at P 18).

[63] Order No. 679 at P 164 (emphasis added). The CPUC submits that prudency reviews are rarely, if ever, successful and thus cannot be relied on to adequately discipline transmission investment decisions. A utility's FERC-jurisdictional expenditures are presumed to be prudent, and a challenging party must establish "serious doubt" about the prudency of an expenditure. *BP Pipelines (Alaska) Inc*., 153 FERC ¶ 61,233 at P 13 (November 20, 2015). Only after "serious doubt" is shown must the utility prove that the expenditure was prudent. *Anaheim, Riverside, Banning, Colton & Azusa v. Fed. Energy Regulatory Com*., 669 F.2d 799, 809 (D.C. Cir. 1981) (citation omitted) (internal quotation omitted). And while serious doubt has been established in a handful of electric transmission cases that have proceeded to hearing, the CPUC could find only one such case in the past 20 years that resulted in findings of imprudence. *Potomac-Appalachian Transmission Highline, LLC & PJM Interconnection, L.L.C*., 152 FERC ¶ 63025 at P 86 (2015), Initial Decision (partial disallowance of PATH's in-house legal fees and services because of missing documentation).

The Commission's case-by-case approach is necessary to satisfy the requirements of section 205, which are incorporated in section 219.[64] Under section 205, the burden of proof is on the filing PTO to show that the requested incentive rate treatment is just and reasonable.[65] An applicant is required to meet this burden under the case-by-case approach. For example, "[t]o qualify for the Abandoned Plant Incentive, the party seeking incentive rate treatment must demonstrate that: (1) the project ensures reliability or reduces transmission congestion; (2) that there is a nexus between the incentive being sought and the investment being made; and (3) *the resulting rates will be just and reasonable*. The Abandoned Plant Incentive is not automatic, and only parties that are able to demonstrate all three criteria are eligible to recover 100 percent of prudently incurred costs."[66] In order for the Commission, consumers and other affected stakeholders to determine whether a requested incentive would result in just and

[64] 16 U.S.C. § 824s(d) (prescribing that "[a]ll rates approved under the rules adopted pursuant to this section, including any revisions to the rules, are subject to the requirements of sections 205 and 206 [16 USCS §§ 824d and 824e] that all rates, charges, terms, and conditions be just and reasonable and not unduly discriminatory or preferential.").

[65] 16 U.S.C. § 824d(e). The CPUC urges the Commission to solely accept applications for incentives in section 205 filings to ensure that affected stakeholders, including state public utility commissions such as the CPUC, have a meaningful opportunity to provide the Commission with their input. See *infra* Section IV(C)(7).

[66] *S. Cal. Edison Co.*, 2018 FERC LEXIS 694, *12 (May 23, 2018) (emphasis added) (citations omitted); *see also* Order No. 2000, 65 FR 809, 913 (in Order No. 2000 the Commission similarly required applicants for innovative rate treatments such as "a higher ROE on transmission plant" to "explain why the proposed rate treatment is appropriate for the [regional transmission organization] proposed by the Applicant. This means that [applications] must demonstrate that the resulting rates are just, reasonable, and not unduly discriminatory or preferential [and] must identify how the rate treatment promotes efficiency and what benefits result.").

reasonable rates, and thus be "lawful" under section 205,[67] PTOs must be required to demonstrate that these requirements are satisfied.

A Commission decision to award electric transmission incentives automatically would relieve applicants of their burden to affirmatively demonstrate that the resulting rates are just and reasonable, as required by section 205, and simultaneously curtail any meaningful opportunity to review the applicant's proposal. A case-by-case analysis of whether each requested individual incentive is needed would thus be replaced by a check-the-box approach in which all that is assessed is whether an applicant has incorporated a pre-determined project characteristic or benefit into, or addressed an identified "circumstance" in, their proposal. For example, the NOI asks:

> Should the Commission grant the abandoned plant incentive automatically, rather than on a case-by-case basis? Under what *circumstances* might an automatic award of the abandoned plant incentive be appropriate?"[68]

If incentives were awarded automatically, applicants would not be required to demonstrate that *each requested individual incentive is needed*, but instead, the Commission might grant certain incentives, such as the abandoned plant incentive, based on the existence of overall "circumstances" *of the proposed project*, not unlike the defunct routine/non-routine analysis. In the 2012 Policy Statement the

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[67] 16 U.S.C. § 824d(a) (prescribing that any rate for "the transmission or sale of electric energy subject to the jurisdiction of the Commission . . . that is not just and reasonable is hereby declared to be unlawful."); see also *Maine v. FERC*, 428 U.S. App. D.C. at 266 (explaining that "[a] utility filing a rate adjustment under section 205 must show that the adjustment is lawful.").

[68] NOI at P 42 (Question 77).

Commission wisely rejected the use of just such a proxy in lieu of the case-by-case approach and the CPUC urges the Commission to do the same now.

(2) The Case-by-Case Approach is Required to Satisfy the Purpose of Section 219.

As noted above, the primary purpose of the electric transmission incentives set forth in section 219 is to "benefit[] consumers by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion."[69] A Commission decision to grant incentives automatically would effectively remove the applicant's burden to demonstrate that each requested individual incentive will "materially affect [the] investment decision[]" to undertake and complete a transmission project that will, in turn, satisfy the statutory purposes of section 219.[70]

In addition to the concerns raised above in reference to section 205 with the Commission's potential rejection of the case-by-case approach, an automatic, check-the-box approach would also be problematic were the Commission to stretch the original purposes of section 219 to include other objectives for incentives, such as "physical and cybersecurity enhancements at transmission facilities" and "projects that enhance resilience" under the rubric of enhancing reliability.[71] For the reasons explained above in Section IV(B)(1)(a), there is no

[69] 16 U.S.C. § 824s(a).

[70] Order No. 679-A at P 25 (emphasis added) (wherein the Commission explains that the objective of the nexus test "is to ensure that incentives are not provided in circumstances *where they do not materially affect investment decisions*.").

[71] See *e.g.*, NOI at P 27 (Question 32: "Should the Commission incentivize physical and cybersecurity enhancements at transmission facilities? If so, what types of security investments

principled and reasoned justification for now making it easier for PTOs to receive incentives while simultaneously broadening the application of incentives to serve additional purposes that Congress did not chose to include in section 219.[72]

(3) The Case-by-Case Approach is Required to Satisfy Title 18, Code of Federal Regulations Section 35.35(d).

The nexus test, as codified in Title 18, Code of Federal Regulations section 35.35(d), incorporates the requirements of sections 205 and 219 by requiring applicants to demonstrate that (1) the proposed project will "*[e]ither ensure reliability or reduce the cost of delivered power by reducing transmission congestion consistent with the requirements of section 219*," (2) "[t]hat the total package of incentives is tailored to address the demonstrable risks or challenges faced by the applicant in undertaking the project; and (3) that the "*resulting rates are just and reasonable*."[73] The contemplated automatic, check-the-box approach would thus equally frustrate the legally required review of an applicant's proposal for incentives under the incentive regulation.

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should qualify for transmission incentives? What type of incentive(s) would be appropriate?"); (Question 34: "Should transmission projects that enhance resilience be eligible for incentives based upon their reliability-enhancing attributes?").

[72] Further, as explained below in Section V in response to Questions 32 and 34, there is no demonstrable need for incentives to address these specific objectives.

[73] 18 C.F.R. § 35.35(d) (emphasis added).

c) The Commission Can Only Remove Order No. 679's Requirement for Case-by-Case Analysis in a New Notice and Comment Rulemaking Proceeding.

Finally, because the Commission adopted the case-by-case approach in Order No. 679, for the Commission to now adopt an automatic, check-the-box approach instead, the Commission would need to initiate a new notice and comment and rulemaking proceeding. When an agency adopts a policy or rule through notice and comment rulemaking—as the Commission did in Order No. 679—it can only amend or repeal it through the same notice and comment procedure.[74] Thus, the Commission cannot, solely in a policy statement issued in response to comments received on the NOI, adopt an automatic, check-the-box approach in lieu of its established case-by-case approach.

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[74] *Clean Air Council v. Pruitt*, 862 F.3d 1, 8-9 (D.C. Cir. 2017) (quoting *National Family Planning and Reproductive Health Association, Inc. v. Sullivan*, 979 F.2d 227, 234, 298 (D.C. Cir. 1992) ("[a]s we have explained, 'an agency issuing a legislative rule is itself bound by the rule until that rule is amended or revoked' and 'may not alter [such a rule] without notice and comment.'"); *Perez v. Mortgage Bankers Association*, 135 S. Ct. 1199, 1206, 191 L. Ed. 2d 186 (2015) ("[T]he D.C. Circuit correctly read § 1 of the APA to mandate that agencies use the same procedures when they amend or repeal a rule as they used to issue the rule in the first instance."); *AFGE, Local 3090 v. FLRA*, 777 F.2d 751, 759 (D.C. Cir. 1985) ("an agency seeking to repeal or modify a legislative rule promulgated by means of notice and comment rulemaking is obligated to undertake similar procedures to accomplish such modification or repeal"); *Action on Smoking and Health v. Civil Aeronautics Board*, 713 F.2d 795, 798-801 (D.C. Cir. 1983).

2. Voluntary Participation Should Remain a Requirement for Receiving an RTO/ISO Incentive.

a) There is No Principled and Reasoned Justification for Removing the Voluntary Participation Requirement.

In the NOI, the Commission asks whether "voluntary participation should remain a requirement for receiving RTO/ISO incentives?"[75] As explained above in Section III(C)(1), the Commission's longstanding policy, as evinced in Commission decisions and statements dating back to the 1992 Policy Statement, and including Order No. 679, provides that incentives must be prospective and can only be awarded to induce voluntary conduct.[76] Thus, in *California Public Utilities Commission v. Federal Energy Regulatory Commission* (*"Cal. PUC v. FERC"*), the Court of Appeals for the Ninth Circuit held that the Commission's award of an ROE adder to PG&E for its continued membership in the CAISO—notwithstanding that PG&E was required to maintain its membership by the CPUC—was an "unacknowledged and unexplained" and thus "arbitrary and capricious" departure from the Commission's "longstanding policy that incentives should only be awarded to induce voluntary conduct."[77]

In *Cal. PUC v. FERC*, the Court of Appeals observed, "[a]n incentive cannot induce behavior that is already legally mandated. Thus, the voluntariness of a utility's membership in a transmission organization is *logically relevant to*

[75] NOI at P 38 (Question 66).

[76] *Cal. PUC v. FERC*, 879 F.3d at 977 (citations omitted).

[77] *Id*. at 977-978.

whether it is eligible for an adder."[78] There is no principled and reasoned—*nor logical*—justification for the Commission to now depart from its longstanding policy by removing the voluntary participation requirement for the RTO/ISO adder and thereby rewarding IOUs for something they are already obligated to do.

Although the CPUC never believed that the Commission was justified—or legally allowed—to award RTO/ISO adders to utilities or other transmission owners that are obligated to join or remain members of transmission organizations, given the dramatically improved landscape for investment in transmission infrastructure since section 219 was enacted, there is certainly no principled or reasoned justification for doing so now.

b) Removal of the Voluntary Participation Requirement Would Result in an Impermissible Generic ROE Adder for RTO/ISO Membership.

Although commenters previously urged the Commission to make a "generic finding" that any entity that joins a transmission organization "automatically qualif[ies]" for an incentive adder, in Order No. 679 the Commission specifically declined to do so and instead elected to consider what incentive (if any) is appropriate for a utility "on a case-by-case basis."[79] In *Cal. PUC v. FERC*, the Court of Appeals held that by awarding PG&E an RTO/ISO adder without consideration of the fact that PG&E's membership in the CAISO is

[78] *Id.* at 970 (emphasis added).

[79] *Id.* at 971 (*citing* Order No. 679 at P 326).

required by the CPUC, the Commission "created a generic adder in violation of [Order No. 679]."[80] A Commission decision to now remove the voluntary participation requirement from the RTO/ISO membership adder would transform the incentive into a "generic adder," which, as explained, is explicitly prohibited by Order No. 679. Such a decision would also be tantamount to awarding the RTO/ISO membership adder on an automatic basis, which would raise the additional issues identified above in Section IV(4)(B)(1).

c) The Commission Can Only Remove the Voluntary Participation Requirement in a New Notice and Comment Rulemaking Proceeding.

Finally, because the Commission reaffirmed its longstanding policy that incentives must be prospective and can only be awarded to induce voluntary conduct in Order No. 679, the Commission can only remove the voluntary participation requirement through a notice and comment rulemaking proceeding.[81]

C. If the Commission Continues to Make Transmission Incentives Available in the CAISO and Other Regions, the Commission Should Make the Existing Nexus Test More Transparent, Rigorous and Data-driven.

To the extent that the Commission continues to make electric transmission incentives available in the CAISO and other regions in the United States, the CPUC recommends several additional requirements to ensure that customers truly benefit from such incentive ratemaking in the form of reduced transmission costs.

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[80] *Cal. PUC v. FERC*, 879 F.3d at 973.

[81] *See* note 74, *infra.*

1. The Commission Should Require Transmission Owners to Identify the Significant Costs of Electric Transmission Incentives.

To ensure transparency, the Commission should require PTOs to identify the annual costs of all electric transmission incentives they receive, including incentives for specific transmission projects. The Commission should require that the PTOs file such reports upon application and on an ongoing, annual basis.

The Commission does not currently require PTOs to disclose the significant costs of electric transmission incentives. For example, in the CAISO control area, three transmission projects that were constructed by SCE—the Tehachapi, Rancho Vista and Devers to Colorado River transmission lines—received multiple electric transmission incentives.[82] Specifically, the Commission approved 100 percent of Construction Work in Progress ("CWIP") treatment for all three projects, and the abandoned plant incentive for the Tehachapi and Rancho Vista projects.[83] SCE also received the ROE adder for SCE's membership in the CAISO.[84] Between 2012 and 2019, these electric transmission incentives cumulatively cost ratepayers, on average, over $24 million per year, and more than $36 million in 2018 alone.[85] By comparison, due to the larger amount of PG&E's rate base, its

[82] *S. Cal. Edison Co.*, 121 FERC ¶ 61,168 at PP 57, 71, 158 (November 16, 2007).

[83] *Id*. at PP 57, 71.

[84] *Id*. at P 158.

[85] Declaration of Louis Torres, Analyst, California Public Utilities Commission, June 26, 2019, attached hereto as Exhibit 2, at ¶¶ 3-4.

ROE adder for membership in the CAISO currently costs ratepayers nearly $30 million per year.[86]

The cost of these incentives to consumers must be understood in the broader context of rising transmission costs throughout the CAISO. The high-voltage transmission access charge ("TAC") in the CAISO control area increased over 415% between October 2006 and May 2019, from $2.97 to $12.34 per megawatt hour ("Mwh").[87] This is a dramatic increase in costs given that gross high-voltage load in the CAISO control area has *decreased* by approximately 3.5% during the same time period.[88] Incentives have contributed to these precipitous cost increases.

Accordingly, to ensure that the significant costs of these incentives are transparent, the Commission must: (1) require that applicants provide an annual estimate of the short- and long-term costs of each requested incentive as part of its application; and (2) require transmission owners to report annually on the costs of each incentive in a standardized and publicly available format that identifies project specific information where appropriate.

2. The Commission Should Implement a Cost-Benefit Analysis.

While electric transmission incentives have significantly increased the cost of transmission projects, because the Commission declined to adopt a cost-benefit

[86] Hurd Decl. at ¶¶ 10-12.

[87] *Id*. at ¶¶ 13-15.

[88] *Id*.

analysis in Order No. 679,[89] there is no way to ascertain to what extent, if any, the incentives have benefited consumers. Thus, the CPUC commends the Commission for now revisiting the need for incorporation of a cost-benefit analysis into the existing nexus test by "examining whether and how it might consider benefits relative to costs when evaluating a request for incentives."[90]

The CPUC urges the Commission to incorporate a cost-benefit analysis into the nexus test, and further, to condition the award of incentives on an applicant's demonstration that the realized benefits of a project materially outweigh its costs.[91] This will protect consumers from the possibility that cost escalation may ultimately render completed projects far less cost-effective than estimated, or not cost-effective at all.

As explained above in Section IV(B)(1)(b), the case-by-case approach is *necessary* to satisfy the requirements of sections 205 and 219, and thus, the CPUC recommends that the Commission continue to apply it. However, the case-by-case approach, as currently implemented, is not *sufficient* to satisfy sections 205 and 219 because it fails to assess, at any level, project benefits in comparison to project costs. The existing nexus test thus fails to require applicants for incentives to demonstrate that their project has satisfied section 219 by providing verifiable benefits to consumers, *i.e.*, by ensuring reliability or reducing congestion and

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[89] Order No. 679 at P 65; Order No. 679-A at P 35.

[90] NOI at P 17.

[91] *Id.* (Question 10: "Should incentives be based only on benefit-to-cost estimates or should the Commission condition the incentives on evidence that that those benefit-to-cost estimates were realized?").

thereby reducing the cost of delivered power, and consequently relieves applicants of their burden under section 205 to establish that the resulting rates are just and reasonable. Without this information and analysis, there is no way for the Commission, consumers and other affected stakeholders to determine whether the transmission project has, in fact, cost-effectively delivered the forecasted benefits such that the resulting rates are just and reasonable.

In the NOI, the Commission solicits input on what "benefit-to-cost ratios should be used," and how project benefits should be evaluated, measured and verified.[92] Although these questions raise complex issues that would be appropriate for socialization in technical workshops, the CPUC offers the following recommendations below.

First, we note that Cost Allocation Principle No. 3 from Order No. 1000 provides that if an RTO or ISO in a regional planning process adopts a benefit-to-cost ratio threshold for projects to be included in a regional transmission plan for purposes of cost allocation, the ratio may not exceed 1.25 without Commission approval of the higher ratio.[93] If a cost-benefit ratio of 1.25 represents a level that regions may adopt simply for projects to be included in a regional plan, the CPUC

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[92] See *e.g.*, NOI at P 15 (Question 5 – soliciting input on how project benefits should be evaluated); P 17 (Question 11 – soliciting input on the types of benefits and costs that should be included in cost-benefit analysis and issues concerning measurement and verification); *id*. (Question 9: "Should incentives be conditioned upon meeting benefit-to-cost benchmarks, such as a benefit-cost ratio? If so, what benefit-to-cost ratios should be used?"); *id*. at P 44 (Question 86 – soliciting input on process for measurement and verification "to determine if the expected benefits accrue to customers"); *id*. at P 89 ("[s]hould there be reporting on projects' expected benefits compared to the results, and over what time period?").

[93] Order 1000 at P 646.

submits that a higher ratio of benefits to costs should be used to determine whether requests for individual electric transmission incentives are warranted.[94]

Second, the CPUC recommends the Commission establish benefit-to-cost benchmarks—with benefits and costs that are comprehensive and relevant for different types of transmission projects—that an applicant must satisfy to be eligible for incentives. The CPUC believes that particular benefits and costs to be considered for this purpose can best be determined and refined through technical workshops.

Third, the CPUC urges the Commission to ensure that a project's actual benefits are measured, verified and compared to the project's forecasted benefits throughout the period that the incentive is in effect. Specifically, in order to justify continued application of each incentive, the Commission should require a PTO to submit annual reports that provide measurement and verification of the project's benefits and the benefit-to-cost ratio attained during the prior year.

Lastly, however project benefits and the benefit-to-cost ratios are evaluated, measured and verified, the Commission should require applicants for electric transmission incentives to demonstrate that projects yield the forecasted benefits and maintain the required benefit-to-cost ratio. PTOs should be subject to penalties if the benefits and/or benefits-to-cost ratio are not attained, potentially including, but not limited to, elimination of the incentive and/or disallowance of

[94] *See* Joint Initial Comments at 35.

rate base.[95]

3. The Commission Should Implement Cost Caps.

To insure that the award of electric transmission incentives is fair—in that accurate costs and benefits are identified and consumers' risk is reasonably limited—the Commission should include an overall cap on the cost of each project that receives incentives to limit consumer risk and thereby ensure that projected benefits, *i.e.*, cost savings to consumers, will be realized. This would not only prohibit application of incentives above the estimated cost of the project, as the Commission directed in the 2012 Policy Statement,[96] but would also require a firm price cap on the project costs to ensure that ratepayers are not harmed by cost escalation.[97]

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[95] NOI at P 17 (Question 11 – also soliciting input on whether the benefit should be revoked if the "expected benefits do not accrue"); *id*. at P 44 (Question 88 – "[s]hould the Commission consider eliminating an incentive if the project fails to realize its anticipated benefits?"); *see* 1992 Policy Statement at ¶ 61,590 (emphasis added) ("Incentive mechanisms should be designed to reward utilities that succeed in reducing costs, expanding services, and streamlining operations. *At the same time, incentive regulation should be designed to penalize utilities that fail to achieve these efficiencies – opportunities for reward should be offset by a symmetric downside risk*."); *id*. at ¶ 61602 ("Utilities will be required to bear all losses during the period the incentive mechanism is in effect. The Commission would not find acceptable an incentive mechanism which guaranteed a benefit to a utility while providing only potential benefits for customers. Accepting such an incentive mechanism would not share benefits of cost savings between consumers and stockholders, and would fail to protect customers' interests.")

[96] 2012 Policy Statement at PP 28-29.

[97] Significantly, other commenters have explained that were the Commission to refine FERC Order No. 1000 to increase competition for investment in transmission infrastructure, developers would be compelled to offer "more project development and cost controls" including cost caps. See *e.g*., Brattle Group Report at 46 (emphasis added) (explaining that "[c]ompetitive processes also provide opportunities for all participants to propose and implement contractual mechanisms—*such as binding construction cost caps*—that would not otherwise be available. *As these competitive processes become more widespread and transparent, they will lead all developers to apply more innovative project development and cost controls*.").

4. The Commission Should Require Applicants for Incentives to Demonstrate That Alternative Transmission Solutions Would Not Provide a More Effective and Efficient Solution for Meeting Transmission Needs.

In furtherance of the Congressional mandate in section 219 to "encourage deployment of transmission technologies and other measures to increase the capacity and efficiency of existing transmission facilities,"[98] the Commission should require applicants for incentives to demonstrate that alternative transmission solutions, such as dynamic line rating,[99] would not provide "a more effective and efficient solution [for meeting] transmission needs."[100] The CPUC recommends that the Commission incorporate this requirement into the analysis of

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98 16 U.S.C. § 824s(b)(3).

99 *See* U.S. Department of Energy, Electricity Delivery and Energy Reliability, Dynamic Line Rating Systems for Transmission Lines, Topical Report, Smart Grid Demonstration Project, April 25, 2014, *available at* https://www.smartgrid.gov/files/SGDP_Transmission_DLR_Topical_Report_04-25-14_FINAL.pdf, at i, ii, (explaining that "[t]ransmission systems are constrained by the capacities of their transmission lines. All transmission owners and operators calculate static ratings for their transmission lines for [varying] conditions. The static rating indicates the maximum amount of current that the line's conductors can carry . . . without violating safety codes or damaging the conductor. Static ratings are adjusted infrequently, so they are usually conservatively based on 'worst-case scenario' conditions (*i.e.*, low wind speed, high ambient temperature, and high solar radiation). . . . [Dynamic Line Rating] technologies enable transmission owners to determine capacity and apply line ratings in real time. This enables system operators to take advantage of additional capacity when it is available. . . . Dynamic ratings are often, but not always, greater than static ratings.").

100 Alternative Transmission Solutions: A Roadmap to the CAISO Transmission Planning Process, GridPolicy, Center for Renewables Integration, March 2018, at 4. *See also* California ISO, Board Approved 2018 -2019 Transmission Plan, March 29, 2019, at 478 (describing the CAISO's policy of "relying on preferred resources [such as energy efficiency] as part of integrated, multifaceted solutions to address reliability needs. . . . [T]he ISO assesses the potential for existing and planned demand side resources to meet identified needs as a first step in considering mitigations to address reliability concerns.").

low-cost alternatives contemplated by the 2012 Policy Statement,[101] and referred to below in Section IV(C)(6).[102]

5. The Commission Should Confirm the Enforceability of its Directives in the 2012 Policy Statement.

In the 2012 Policy Statement the Commission characterized three important, new directives as expectations. The Commission should confirm that the following three directives are, in fact, required by its incentives policy:

- Application of an incentive ROE will be based on the last cost estimate relied upon to include or retain a project in a regional transmission planning process.[103]
- An applicant may not request both ROE enhancing and risk reducing incentives for the same project.[104]
- Applicants for electric transmission incentives must demonstrate that lower cost alternatives to the project have been considered in a regional planning process, state siting process or other appropriate forum.[105]

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[101] 2012 Policy Statement at PP 25-27.

[102] *Notice of Proposed Rulemaking: Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, June 17, 2010, 75 FR 37884, 37891, n.58 (citing *Western Grid Dev., LLC*, 130 FERC ¶ 61,056 (2010) (where the Commission explains that "in appropriate circumstances alternative technologies may be eligible for treatment as transmission for ratemaking purposes.").

[103] *Id*. at P 25 (emphasis added) (where the Commission states that it "*expects* applicants for an incentive ROE based on a project's risks and challenges to commit to limiting the application of the incentive ROE based on a project's risks and challenges to a cost estimate. . . . One option may be for applicants to commit to limiting the application of an incentive ROE based on a project's risks and challenges *to the last cost estimate relied upon to include or retain the project in a regional transmission planning process*.")

[104] *Id*. at P 16 (emphasis added) (where the Commission states that it "*expects* incentives applicants to seek to reduce the risk of transmission investment not otherwise accounted for in its base ROE by using risk-reducing incentives before seeking an incentive ROE based on a project's risks and challenges.").

[105] 2012 Policy Statement at P 25 (emphasis added) (where the Commission states that it "*expects*" applicants to "demonstrate that [lower cost] alternatives to the project have been, or will be, considered in either a relevant transmission planning process or another appropriate forum. Such a showing should help identify the demonstrable consumer benefits of the proposed project and its role in promoting a more efficient, reliable and *cost-effective* transmission

6. The Commission Should Require that Applicants Only be Allowed to Seek ROE Incentives through a Section 205 Filing.

To ensure that the Commission's decisions concerning whether to grant incentives receive the considered deliberation that they deserve, and are informed by input from affected stakeholders in particular cases, the CPUC recommends that the Commission only render ROE incentive determinations in section 205 proceedings and not grant such requests through declaratory orders. Under the Incentive Rule, a utility may request one or more incentive-based rate treatments by either making a filing pursuant to section 205 of the FPA, or in a petition for a declaratory order that precedes a filing pursuant to section 205.[106] When an applicant requests an ROE incentive in a declaratory order, the Commission considers the ROE adder in a vacuum without a full understanding of the consequent rate impacts until a later section 205 proceeding. By contrast, if an applicant requests an ROE incentive in a section 205 filing, that applicant must show that its filing is just and reasonable, and the Commission can set the proceeding for hearings or settlement discussions, thereby providing affected stakeholders a meaningful opportunity to provide the Commission with their input.[107]

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system.").

106 18 C.F.R. § 35.35(d).

107 2011 CPUC Comments at 17-18.

V. RESPONSES TO SPECIFIC QUESTIONS

Q1: Should the Commission retain the risks and challenges framework for evaluating incentive applications?

Yes, the Commission must retain the risks and challenges framework for evaluating incentive applications, as codified in the three-part nexus test at Title 18, Code of Federal Regulations section 35.35(d). An assessment of a developer's risks and challenges in undertaking a transmission project is critical for determining whether a requested individual incentive, is, in fact, needed. Replacement of this "case-by-case or fact-specific" inquiry[108] with mere consideration of whether the proposed project includes a desired characteristic, promises a certain benefit or addresses some yet undetermined circumstance would preclude meaningful review by the Commission, consumers and other affected stakeholders of whether an application satisfies the statutory purpose and requirements of section 219. In addition, because the Commission adopted the three-pronged Incentive Rule in Order No. 679, it could only remove the risk and challenges prong in a subsequent notice and comment rulemaking proceeding.[109] Thus, for the reasons stated, the analysis provided in Section IV(B)(1)(b) above as to why the Commission must retain its case-by-case approach applies equally here.

Q5: If the Commission adopts a benefits approach, should it lay out general principles and/or bright line criteria for evaluating the potential benefits of a proposed transmission project? If so, how should the Commission establish the principles or criteria?

[108] See also *PJM Interconnection, L.L.C.*, 164 F.E.R.C. P61,015 at P 9 (F.E.R.C. July 6, 2018) (citation omitted) ("The Commission reviews incentive requests on a case-by-case or fact-specific basis to determine whether a request should be granted.").

[109] *See* note 74, *infra*.

Q12: How, if at all, would examining transmission projects' characteristics in evaluations of transmission incentives applications improve the Commission's transmission incentives policy and achieve the goals of section 219? Are there drawbacks to this approach, particularly relative to the current risks and challenges framework? Would this approach result in different outcomes, as compared to the current risks and challenges approach for granting incentives?

As explained above in response to Question 1, the CPUC urges the Commission to retain the risk and challenges framework because an assessment of a developer's risks and challenges in undertaking a transmission project is critical for determining whether a requested individual incentive, is, in fact, needed. Thus, the CPUC does not support the adoption of a "benefits approach" or an approach that uses "transmission project characteristics as a proxy for expected benefits."[110]

Q9: Should incentives be conditioned upon meeting benefit-to-cost benchmarks, such as a benefit-cost ratio? If so, what benefit-to-cost ratios should be used?

Q10: Should incentives be based only on benefit-to-cost estimates or should the Commission condition the incentives on evidence that that those benefit-to-cost estimates were realized?

Q11: If an incentive is conditioned upon a transmission developer meeting benefit-to-cost benchmarks, what types of benefits and costs should a transmission developer include, and the Commission consider to support requests for such incentives? Should there be measurement and verification, and if so, over what time period? If expected benefits do not accrue, should the incentive be revoked?

As explained above in Section IV(C)(2), the CPUC urges the Commission to incorporate a cost-benefit analysis into the nexus test, and further, to condition the award of incentives on an applicant's demonstration that the realized benefits

[110] NOI at P 18.

of a project materially outweigh its costs. Although the questions posed in the NOI pertaining to benefit-to-cost ratios and evaluation, measurement and verification of project benefits are complex and would be appropriate for socialization in technical workshops, the CPUC offers specific recommendations on those topics above.

Q17: Should the Commission tailor incentives to promote these types of projects based on their expected reliability benefits? If so, how should the Commission differentiate these projects from others required to meet reliability standards?

The Commission has asked whether it "could potentially tailor incentives to promote reliability transmission projects that significantly enhance transmission reliability above and beyond what is required by the [North American Electric Reliability Corporation or "NERC"] reliability standards or other planning criteria."[111] The CPUC agrees with the Commission that incentives are neither needed nor appropriate to induce transmission providers to comply with NERC reliability standards or other planning criteria pertaining to reliability. The CPUC does not, however, believe that existing reliability standards promulgated by NERC and the Western Electricity Coordinating Council ("WECC"), are insufficient.[112] Thus, the CPUC does not believe there is any reason to induce

[111] NOI at P 22.

[112] "The Energy Policy Act of 2005 requires that FERC approve and enforce standards to protect and improve the reliability of the nation's bulk power system. The North American Electric Reliability Corporation (NERC) develops, revises and implements standards under this statutory framework and delegates compliance monitoring and enforcement authority to various regional councils, such as the Western Electricity Coordinating Council (WECC). NERC also develops and approves regional reliability standards, which are more stringent than a continent-wide reliability standard and may address a regional difference in the bulk power system." CAISO website *available at* http://www.caiso.com/rules/Pages/Compliance/Default.aspx.

PTOs to undertake projects that "significantly enhance transmission reliability above and beyond" such requirements.

Q26: Should the Commission utilize an incentives approach that is based on targeting certain geographic areas where transmission projects would enhance reliability and/or have particular economic efficiency benefits? If so, how should the relevant geographic areas be identified and defined? What entity (e.g., the Commission, RTOs/ISOs, state regulators, other stakeholders) should designate such areas?

As explained above in Section IV(A), the CPUC urges the Commission to assess the ongoing need for incentives on a regional basis and therefore not grant incentives in regions of the U.S., like the CAISO control area, where there are no pressing transmission reliability or congestion issues. The CPUC also recommends, as explained above in Section IV(A)(2), that the Commission consider the regulatory regimes in each state in determining whether incentives are needed. To the extent that states are authorized to order utilities to undertake necessary transmission upgrades and to award cost recovery for prudently incurred transmission expenses incurred to satisfy public policy goals.

In addition, as explained in response to Question 66, the CPUC recommends that as part of its case-by-case analysis for determining whether an ROE adder for RTO/ISO participation is warranted, the Commission should consider whether such an incentive is justified on a regional basis.

Q32: Should the Commission incentivize physical and cyber-security enhancements at transmission facilities? If so, what types of security investments should qualify for transmission incentives? What type of incentive(s) would be appropriate?

Transmission providers are already obligated to ensure reliability and security, including cyber-security, of the transmission system under existing reliability standards and good utility practice. As noted, the Commission recognizes that a prudent transmission provider will "plan to maintain reliability,"[113] which necessarily includes physical security of critical transmission infrastructure facilities and cyber-security. In fact, the Commission's definition of a "reliability standard" applicable to the "bulk-power system" expressly includes "cybersecurity protection."[114] In accordance with the Commission's longstanding policy that incentives must be prospective and can only be awarded to induce voluntary conduct,[115] incentives should not be granted to transmission providers to encourage them to undertake fundamental physical and cyber-security measures because they are already required to do so.[116]

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[113] *Transmission Planning & Cost Allocation*, 2011 FERC LEXIS at 1388-89. *See also* NOI at P 22 (same).

[114] 16 U.S.C. § 824o (emphasis added) (explaining that "[t]he term 'reliability standard' means a requirement, approved by the Commission under this section, to provide for reliable operation of the bulk-power system. The term includes requirements for the operation of existing bulk-power system facilities, *including cybersecurity protection*, and the design of planned additions or modifications to such facilities to the extent necessary to provide for reliable operation of the bulk-power system, but the term does not include any requirement to enlarge such facilities or to construct new transmission capacity or generation capacity.").

[115] *Cal. PUC v. FERC*, 879 F.3d at 977 (citations omitted).

[116] Further, as explained in detail in the Joint Comments, there is no cost-recovery risk for investments needed to maintain a reliable and secure transmission system. Joint Comments at 46 ("[t]here is no persuasive evidence that public utility transmission providers have faced significant obstacles in recovering prudent investment in FERC-approved rates to promote infrastructure security, even for projects that go beyond the requirements of NERC's mandatory reliability standards.").

For the reasons explained above in Sections IV(B)(1)(a) and (b), there is no principled and reasoned justification for now broadening the application of incentives to serve additional purposes that Congress did not chose to include in section 219—and that do not warrant incentive rate treatment—such as physical and cyber-security enhancements at transmission facilities.

Q34: Should transmission projects that enhance resilience be eligible for incentives based upon their reliability-enhancing attributes?

The CPUC does not support incentives aimed at enhancing resilience because the Commission has yet to determine how to define "resilience" in the context of the electric industry, let alone determine whether any Commission action is necessary to promote it. As the Commission recognizes, "there is currently no uniform definition of resilience used across the electric industry."[117] In fact, one of the primary goals of Docket No. AD18-7-000 is "to develop a common understanding among the Commission, industry, and others of what resilience of the bulk power system means and requires."[118] The other two goals of Docket No. AD18-7-000 are "to understand how each RTO and ISO assesses resilience in its geographic footprint" and "to evaluate whether additional Commission action regarding resilience is appropriate at this time."[119] The CPUC submits that until the Commission adopts a definition of "resilience" and determines whether any Commission action is necessary to promote it, a decision

[117] Grid Reliability & Resilience Pricing, 162 FERC ¶ 61,012 at P 22 (January 8, 2018).
[118] *Id*. at P 18.
[119] *Id*.

to grant electric transmission incentives to accomplish this objective would be premature.

Further, for the reasons explained above in Sections IV(B)(1)(a) and (b), there is no principled and reasoned justification for now broadening the application of incentives to serve additional purposes that Congress did not chose to include in section 219—and that the Commission may ultimately determine do not warrant incentive rate treatment—such as enhancing resilience.

Q42: Are there ways the Commission could incentivize RTOs/ISOs to adopt better grid management technologies and/or other technologies to improve the efficiency of individual transmission assets to promote efficient use of the transmission system and improved market performance?

The CPUC recommends, as explained in Section IV(C)(5) above, that the Commission should require applicants for incentives to demonstrate that alternative transmission solutions would not provide a more effective and efficient solution for meeting transmission needs than the construction of costly new transmission infrastructure.

Q54: Should the Commission continue to use certain incentives to seek to place non-incumbent transmission developers on a level playing field with incumbent transmission owners in Order No. 1000 regional transmission planning processes? If so, should the Commission consider requests for such incentives under section 205, or should the Commission consider requests for such incentives for non-incumbent transmission owners under section 219?

The public policy goal of "placing non-incumbent transmission developers on a level playing field with incumbent transmission owners"[120] would be better

[120] NOI at P 34 (citations omitted)

served by opening up local processes to competition, as explained above in Section IV(A)(3), than by granting incentives to market transmission owners, which, as explained above in Sections IV(C)(1), (2), demonstrably increase the price of transmission projects.

Q61: Should the Commission revise the RTO-participation incentive?

As explained above in Section IV(C)(2)(b), the Commission should not remove the voluntary participation requirement from the RTO/ISO-participation adder because doing so would result in a prohibited "generic adder" for RTO/ISO membership. For the same reason, the Commission must retain its case-by-case approach for evaluating whether a request for an individual incentive is warranted and must continue to apply the case-by-analysis to requests for ROE adders for RTO/ISO participation. As part of this case-by-case analysis, the Commission should consider whether the ROE adder for RTO/ISO participation is warranted on a regional basis.

For example, in the CAISO an ROE-adder for RTO/ISO participation is not warranted because: (1) each of the three IOUs—PG&E, SCE, and SDG&E—are required to be members of the CAISO by the CPUC; and (2) independent transmission owners must be members of the CAISO in order to compete for regionally cost allocated projects under Order 1000 and to recover costs through the high-voltage Transmission Access Charge ("TAC"). Thus, as membership in the CAISO is required of IOUs in California by the CPUC and is necessary for independent transmission owners, there is no principled or reasoned justification for awarding an incentive for membership in the CAISO.

In addition, the RTO/ISO-participation adder should not apply to "self-approved projects," as described in Section IV(A)(4) above. These asset replacement projects are not subject to *any* external review and thus there is no way for the Commission, state public utility commissions, consumer advocates, or any other affected stakeholder to determine whether the rates that result from application of the RTO/ISO-participation adder to such projects are just and reasonable.

Q66: In Order No. 679, the Commission found that "the basis for the incentive is a recognition that benefits flow from membership in such organizations and the fact that continuing membership is generally voluntary." Should voluntary participation remain a requirement for receiving RTO/ISO incentives?

As explained above in Section IV(B)(2), the voluntary participation requirement for the RTO/ISO-participation adder is legally required in accordance with the Commission's longstanding policy that incentives must be prospective and can only be awarded to induce voluntary conduct.[121]

Q77: Should the Commission grant the abandoned plant incentive automatically, rather than on a case-by-case basis? Under what circumstances might an automatic award of the abandoned plant incentive be appropriate?

No, as explained above in Section IV(B)(1), the Commission should not award the abandoned plant incentive—or any other electric transmission incentive—automatically. In Order No. 679, the Commission specifically

[121] *Cal. PUC v. FERC*, 879 F.3d at 977 (citations omitted).

defended its decision to offer the abandoned plant incentive by reasoning that the case-by-case approach and the possibility of prudency challenges would "discipline investment decisions" that might otherwise be inappropriately influenced by the availability of the incentive.[122] In light of the vastly improved market for investment in transmission infrastructure that now exists, as compared to 2006 when Order No. 679 was issued, there is no principled and reasoned justification for the Commission to reject its earlier reasoning and award this incentive—or any incentive—automatically.

Q86 Should there be a process of measurement and verification (or audit) to determine if the expected benefits accrued to consumers

Q87: If so, how should measurement and verification take place and over what time period?

Q88: Should the Commission consider eliminating an incentive if the project fails to realize its anticipated benefits?

Q89: Should there be reporting on projects' expected benefits compared to results, and over what time period?

As explained above in Section IV(C)(2), the CPUC urges the Commission to ensure that a project's actual benefits are measured, verified and compared to the project's forecasted benefits throughout the period that the incentive is in effect. Specifically, in order to justify continued application of each incentive, the Commission should require a PTO to submit annual reports that provide measurement and verification of the project's benefits and the benefit-to-cost ratio attained during the prior year. PTOs should be subject to penalties if the benefits

[122] Order No. 679 at P 164. *See* note 63 *supra* (explaining why prudency review is an inadequate mechanism to discipline transmission investment decisions).

and/or benefits-to-cost ratio are not attained, potentially including, but not limited to, elimination of the incentive and/or disallowance of rate base.

Q90: What are the benefits and drawbacks of granting incentives on a case-by-case basis, as compared to being granted automatically, with or without related threshold criteria? Would an automatic approach based on established threshold criteria provide additional certainty? If so, how?

As explained above in Section IV(B)(1), the CPUC strongly urges the Commission to retain the case-by-case approach for assessing whether an individual incentive is needed to realize a project that will, in turn, satisfy the statutory goals of section 219, *i.e.*, to ensure reliability or reduce congestion, and thereby reduce the cost of delivered power. In short, an automatic approach based on threshold criteria would frustrate the legally required review under sections 205 and 219 and the Incentive Rule because it would relieve the applicant of the burden to demonstrate that the project: (1) would either ensure reliability or reduce the cost of delivered power by reducing congestion; (2) that the requested incentive(s) is tailored to address the demonstrable risks faced by the applicant in undertaking the project; and (3) that resulting rates are just and reasonable.

Q92: If the existing case-by-case approach to incentives is retained, could it be improved? If so, how?

As explained above in Section IV(C), the CPUC recommends several modifications to the existing nexus test to make it more transparent, rigorous and data driven. These recommendations include, among other things, initial and annual reporting requirements for PTOs on the short- and long-term costs of each requested incentive, incorporation of a cost-benefit analysis, and, in order to justify continued application of the incentive, submission of annual reports by PTOs that provide measurement and verification of the project's benefits and the benefit-to-cost ratio attained during the prior year.

Q100: Should the Commission require that incentive recipients provide additional data through Form FERC-730? If so, what additional information should be provided?

Form FERC-730 requires basic information on transmission capital investment activity for projects where total costs will exceed $20 million. Spending through the previous calendar year and projected expenditures over the succeeding five years are included. In this current format, there is no required input to account for the impacts of incentives on transmission revenue requirements ("TRR") and therefore no details on the annual costs to consumers. In addition to the information currently included on Form FERC-730, for those same years, the following information should be required:

1. Specific projects receiving ROE adder and/or risk-reducing incentives, the type of incentives received, total impact of each specific incentive on transmission revenue requirements ("TRR") in dollars through the previous calendar year, and expected impacts on the TRR for each of the succeeding five years.
2. Impact of RTO/ISO membership adder on TRR in dollars for the previous calendar year and the expected impact of this incentive on the TRRs in the succeeding five years.

The CPUC believes that reporting on transmission investment activity should include all costs being passed onto ratepayers annually through any incentives granted by the Commission for specific projects or in the form of general adders.

Q103: Should the information on annual transmission spending associated with projects that received transmission incentives be broken down by transmission project?

As explained in response to Question 100, the CPUC strongly believes that in addition to the information already required on Form FERC-730, there should be detailed reporting on the annual spending, specific incentives received, and the dollar impacts on TRRs for any project-specific incentives. This information should include any projects receiving ROE adder or risk-reducing incentives for all of the years already included on Form 730. Further, cumulative impacts on TRRs from project-specific incentives through the previous calendar year should also be included on Form 730.

VI. CONCLUSION

The CPUC commends the Commission for opening this public inquiry to consider changes to its electric transmission incentives policy and appreciates the opportunity to provide these Opening Comments.

Dated: June 26, 2019

Respectfully submitted,

AROCLES AGUILAR
General Counsel
CHRISTINE J. HAMMOND
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TRACI BONE

By: /s/ JONATHAN PAIS KNAPP

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Attorneys for the California Public Utilities Commission and the People of the State of California

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing "**NOTICE OF INTERVENTION AND OPENING COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION"** to be served electronically upon each party identified in the official service list compiled by the Secretary in this proceeding.

Dated at San Francisco, California, this 26th day of June 2019.

/s/ JONATHAN PAIS KNAPP

JONATHAN PAIS KNAPP

Exhibit 1

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Inquiry Regarding the Commission's Electric Transmission Incentives Policy	Docket No.: PL19-3-000

DECLARATION OF SIMON HURD

I, Simon Hurd, declare that:

1. I work for the California Public Utilities Commission ("CPUC") in its San Francisco offices located at 505 Van Ness Avenue, San Francisco, CA 94102. I am currently employed as an analyst in the CPUC Energy Division's Electric Market Structure and Design Section. The Electric Market Structure and Design Section is responsible for, among other things, providing analytical support for the CPUC's participation in Federal Energy Regulatory Commission ("FERC") proceedings on behalf of California ratepayers.

CAISO-Approved Transmission Projects

2. I confirm that the data represented in Sections IV(A)(1)(a-c) of the CPUC's Opening Comments in response to the Notice of Inquiry in FERC Docket No. PL19-3-000 ("Opening Comments") are drawn from CAISO-approved projects, as listed in the CAISO's transmission plans for the years 2006-2019. The data include newly approved

projects, as well as previously approved projects that were either cancelled or put on hold for each year during the subject period.

3. I confirm that the representations in Sections IV(A)(1)(a-c) of the Opening Comments regarding the number of transmission projects in the CAISO control area that were approved, held, and cancelled are true and correct to the best of my knowledge.

<u>Forecasted CAISO- and Self-approved Projects by California Participating Transmission Owners</u>

4. I have been involved in the preparation and review of CPUC Staff data requests to Participating Transmission Owners ("PTOs") Pacific Gas and Electric Company ("PG&E"), Southern California Edison ("SCE"), and San Diego Gas & Electric Company ("SDG&E") for information the CPUC used to develop its Opening Comments.
5. I am familiar with the data referred to in the Opening Comments. I confirm that the representations regarding the data related to forecasted CAISO- and self-approved projects in Section IV(A)(4) of the Opening Comments are true and correct to the best of my knowledge.
6. I confirm that forecasted data for CAISO- and self-approved capital additions for 2018 through 2022 were provided to the CPUC by SCE and SDG&E in May 2018.
7. I confirm that PG&E represented to the CPUC in May 2018 that "PG&E does not forecast transmission capital additions other than in connection with the preparation of its FERC Transmission Owner Tariff rate cases, therefore capital additions forecasts for 2019-2022 have not been made by PG&E and are not available."

8. I confirm that PG&E provided forecasted capital additions for 2018 in response to a CPUC data request in May 2018.
9. I confirm that PG&E provided a non-confidential five-year transmission investment plan to the CPUC on June 13, 2018. From that five-year plan, I used data for major work categories, forecasted project costs, and forecasted in-service dates, to derive the forecasted capital additions costs for 2020 through 2022 represented in the summarized data in Section IV(A)(4) in the Opening Comments.

<u>Impact of the CAISO Membership ROE Adder on PG&E's Transmission Revenue Requirement</u>.

10. I have been involved in the preparation and review of CPUC Staff data requests to the PTOs seeking information on the impacts of FERC incentives on transmission revenue requirements for use in the Opening Comments.
11. I am familiar with the data referred to in the Opening Comments. I confirm that the representations regarding the impact on PG&E's transmission revenue requirement from the CAISO membership ROE incentive adder in Section IV(C)(1) of the Opening Comments are true and correct to the best of my knowledge.
12. I confirm that PG&E provided information to the CPUC about the impacts of its FERC incentives on its transmission revenue requirement via e-mail on June 17, 2019. In the response PG&E explained that "[f]rom March 1, 2017 through December 31, 2017, the annual [transmission revenue requirement or "TRR"] associated with the 50 [basis-point adder for membership in the CAISO] is $29.5 [million] using the weighted average rate base, capital structure and federal income tax rate forecasted in the TO18 filing in Docket No. ER16-2320-000."

Changes in High Voltage Transmission Access Charge and Load in the CAISO Control Area

13. I confirm that I calculated changes in the High Voltage Transmission Access Charge ("TAC') and high voltage load in the CAISO included in Section IV(C)(1) of the Opening Comments using TAC Rates and Load Data published online by the CAISO for October 1, 2006; March 1, 2007; September 1, 2008; September 1, 2009; September 1, 2010; August 1, 2011; July 1, 2012; July 1, 2013; May 1, 2014; June 1, 2015; June 1, 2016; September 1, 2017; July1, 2018; and May 1, 2019.
14. It was not until 2010 that a CAISO-wide uniform High Voltage TAC was established. Therefore, to derive a CAISO-wide High Voltage TAC for years 2006 through 2009, I developed a weighted average by using the percentage of load represented by each region and its respective TAC rate.
15. I confirm that the representations regarding the data related to the High Voltage TAC and loads in Section IV(C)(1) of the Opening Comments are true and correct to the best of my knowledge.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 26th day of June 2019 in San Francisco.

Simon Hurd, Analyst
California Public Utilities Commission

Exhibit 2

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Inquiry Regarding the Commission's Electric Transmission Incentives Policy	Docket No.: PL19-3-000

DECLARATION OF LOUIS TORRES

I, Louis Torres, declare that:

1. I work for the California Public Utilities Commission ("CPUC") in its San Francisco offices located at 505 Van Ness Avenue, San Francisco, CA 94102. I am currently employed as an analyst in the CPUC Energy Division's Electric Market Structure and Design Section. The Electric Market Structure and Design Section is responsible for, among other things, providing analytical support for the CPUC's participation in Federal Energy Regulatory Commission ("FERC") proceedings on behalf of California ratepayers.

<u>Incentive Rate Treatment Granted by FERC to California Participating Transmission Owners</u>

2. I have been involved in reviewing Southern California Edison's ("SCE") transmission owner ("TO") rate filings at FERC since 2014, and have reviewed TO rate cases dating back to TO6 filed in 2012 for information the CPUC has used to develop its Opening

Comments in response to the Notice of Inquiry in FERC Docket No. PL19-3-000 ("Opening Comments").

3. I confirm that I calculated the findings in Section IV(C)(1) of the Opening Comments by using SCE's TO formula rate case filings, including annual updates in FERC Docket Nos. ER11-3697, ER18-169, and ER19-1553; FERC Docket No. ER11-3697 (TO06). Attachment 2 to Appendix IX: Formula Rate Spreadsheet, Schedule 14 – Incentive Plant, filed 2012; FERC Docket No. ER11-3697 (TO07). Attachment 2 to Appendix IX: Formula Rate Spreadsheet, Schedule 14 – Incentive Plant, filed 2013; FERC Docket No. ER11-3697 (TO8). Attachment 2 to Appendix IX: Formula Rate Spreadsheet, Schedule 14 – Incentive Plant, filed 2014; FERC Docket No. ER11-3697 (TO09). Attachment 2 to Appendix IX: Formula Rate Spreadsheet, Schedule 14 – Incentive Plant, filed 2015; FERC Docket No. ER11-3697 (TO10). Attachment 2 to Appendix IX: Formula Rate Spreadsheet, Schedule 14 – Incentive Plant, filed 2016; FERC Docket No. ER11-3697 (TO11). Attachment 2 to Appendix IX: Formula Rate Spreadsheet, Schedule 14 – Incentive Plant, filed 2017; FERC Docket No. ER18-169 (TO2018). Exhibit SCE-4: Proposed Formula Rate Spreadsheet for 2018 Rate Year, Attachment 2 to Appendix IX: Formula Rate Spreadsheet, Schedule 14 – Incentive Plant, filed 2018; FERC Docket No. ER19-1553 (TO2019A). Exhibit SCE-4: Populated Formula Rate Spreadsheet with Proposed Base TRR and Associated Rates, TO2019A, Attachment 2 to Appendix IX: Formula Rate Spreadsheet, Schedule 14 – Incentive Plant, filed 2019.
4. I am familiar with the data referred to in the Opening Comments. I confirm that the representations regarding the data related to the impacts on SCE's transmission revenue

requirement from incentives granted by FERC in Section IV(C)(1) of the Opening Comments are true and correct to the best of my knowledge.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 26th day of June 2019 in San Francisco.

Louis Torres, Analyst
California Public Utilities Commission