UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

INITIAL COMMENTS OF PACIFIC GAS AND ELECTRIC COMPANY AND SAN DIEGO GAS & ELECTRIC COMPANY

Pacific Gas and Electric Company ("PG&E") and San Diego Gas & Electric Company ("SDG&E") hereby submit their initial comments on the above-captioned Notice of Inquiry ("NOI") concerning the scope and implementation of the Federal Energy Regulatory Commission's ("Commission" or "FERC") electric transmission incentive regulations and policies ("Incentives NOI"). Congress directed the Commission to promulgate these regulations pursuant to Section 1241 of the Energy Policy Act of 2005 ("EPAct2005"),[1] codified as Section 219 of the Federal Power Act ("FPA").[2] The purpose of this Incentives NOI is to obtain information to assist the Commission in evaluating its transmission incentives policy and ensure the current policy satisfies the Commission's obligations under Section 219 of the FPA.[3]

As discussed more fully below, with one notable exception, PG&E and SDG&E generally support the Commission's current incentive policy as set forth in Order No. 679[4] and the 2012 Policy Statement.[5] However, PG&E and SDG&E believe that recent rulings by the

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[1] Energy Policy Act of 2005, Pub. L. No. 109-58, section 1261 *et seq*., 119 Stat 594 (2005).
[2] 16 U.S.C. § 824s.
[3] Incentive NOI, 166 FERC ¶ 61,208 at P 13 (2019).
[4] *Promoting Transmission Investment through Pricing Reform*, Order No. 679, 116 FERC ¶ 61,057, order on reh'g, Order No. 679-A, 117 FERC ¶ 61,345 (2006), order on reh'g, 119 FERC ¶ 61,062 (2007).
[5] *Promoting Transmission Investment through Pricing Reform*, 141 FERC ¶ 61,129 (2012) (2012 Incentives Policy Statement).

Commission reflect a departure from longstanding policy by limiting recovery of 100 percent of prudently incurred costs of transmission facilities that are cancelled or abandoned due to factors outside of the control of public utilities after seeking and receiving a declaratory order for such from the Commission ("Abandonment Incentive"). Specifically, the Commission now claims to have a new "policy" that only makes the Abandonment Incentive effective upon a Commission order granting the Abandonment Incentive, with only 50% recovery of prudently incurred costs prior to the Commission order.[6]

The practical consequences of this change in policy can be significant. In fact, the three California Investor-Owned Utilities – PG&E, SDG&E, and Southern California Edison Company ("SCE") – have received such orders collectively ruling that over $150 million of pre-Order costs would now not be eligible for the Abandonment Incentive.[7] Simply put, the new limits the Commission has placed on the Abandonment Incentive increase project development risk and thus serve as a disincentive to new investment.

Moreover, PG&E and SDG&E do not understand what policy purpose the "dividing line" established by recent Commission decisions purportedly serves, since projects receiving the Abandonment Incentive must subsequently make a Section 205 filing demonstrating that abandoned plant costs were prudently incurred. Tying eligibility for the Abandonment Incentive to the date of the FERC order is simply arbitrary, since the date of the FERC order can vary

[6] *See*, *e.g., San Diego Gas & Electric Co,* 154 FERC ¶ 61,158, *reh'g denied*, 157 FERC ¶ 61,056 (2016); *affirmed*, *San Diego Gas & Electric Co. v. FERC*, D.C. Circuit Case No. 16-1433 (2019).
[7] *Id.; see also Pacific Gas and Electric Co.*, 160 FERC ¶ 61,018 (2017), *reh'g*, 163 FERC ¶ 61,187 (2018), *appeal pending* D.C. Circuit No. 18-1207; *Southern California Edison Co*., 161 FERC ¶ 61,107 (2017), *reh'g denied,* 163 FERC ¶ 61,137 (2018), *appeal pending* D.C. Circuit No. 18-1193.

widely from the date the request is filed and is driven by many factors that may bear no relationship to the development of the proposed project.[8]

In the case of projects subject to California Independent System Operator Corporation ("CAISO") processes, PG&E and SDG&E believe the Commission's resources are better spent on requests for Abandonment Incentives only after the project has been approved by CAISO (and thus reflects significant project development work), rather than potentially opening the floodgates to developers submitting Abandonment Incentive petitions for projects that may not even be mature enough to satisfy the Commission's requirements and/or are ultimately not even chosen by CAISO. Yet the Commission's current rule incentivizes developers to file as soon as possible to ensure recovery. The Commission must satisfy its obligations under Section 219 of the FPA and allow for 100% recovery for transmission projects awarded the Abandonment Incentive. For these reasons, the Commission should remove this "dividing line" as part of this Incentives NOI.[9]

PG&E's and SDG&E's comments also address the return on equity ("ROE") adder to base ROE for joining a regional transmission organization such as CAISO ("RTO/ISO Adder").

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[8] *Pacific Gas and Electric Co.*, 160 FERC ¶ 61,018 (2017), *reh'g*, 163 FERC ¶ 61,187 (2018).

[9] SDG&E appealed a Commission order establishing an effective date limitation on applicability of the Abandonment Incentive in the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit"). In January 2019, a divided panel affirmed the Commission's orders. The dissent raised various issues with the Commission's rulings, including noting that the majority opinion relied on the Commission's representation that it had no "policy" but rather it granted the Abandonment Incentive when "justified" on a "case-by-case basis" in orders tailored to the demonstrated needs of each project. D.C. Circuit Case No. 16-1433, slip op. at 24; dissent at 9. The time period has yet to run for any filing of a petition for writ of certiorari with the Supreme Court of the United States on the D.C. Circuit's opinion, and that time period may be extended until the Supreme Court rules on the pending case considering whether "to overrule *Auer's* rule of deference to agency interpretations of ambiguous regulations." *See* D.C Circuit Case No. 16-1433 dissent at 6 n.4 (*citing Kisor v. Wilkie*, No. 18-15, 2018 WL 6439837 (U.S. Dec. 2018).

PG&E and SDG&E believe the Commission should continue to provide for the RTO/ISO Adder since public utilities such as PG&E and SDG&E are under no obligation to join such entities under the FPA. As PG&E noted in its Initial Brief filed in Docket Nos. ER14-2529, *et al*., the Commission could make clear in this proceeding that it is "the Commission's interpretation of its Order No. 679 that *continuing participation* in an ISO or RTO entitles a utility to the 50 basis point ROE incentive adder even in the face of assertions that the continued participation is required by state law."[10]

PG&E and SDG&E address each issue in detail in the relevant questions listed below.

A. <u>Approach to Incentive Policy</u>

1. Incentives Based on Project Risks and Challenges

Q 1) Should the Commission retain the risks and challenges framework for evaluating incentive applications?

PG&E and SDG&E generally support the current framework as set forth in the 2012 Policy Statement.

Q 2) Is providing incentives to address risks and challenges an appropriate proxy for the expected benefits brought by transmission and identified in section 219 (i.e., ensuring reliability or reducing the cost of delivered power by reducing transmission congestion)? If risks and challenges are not a useful proxy for benefits, is it an appropriate approach for other reasons?

In California, PG&E and SDG&E see no need for the Commission to independently examine a transmission project's expected benefits since that type of analysis is currently performed under CAISO's transmission planning process. This lengthy and comprehensive

[10] PG&E Initial Brief at 17 (September 19, 2018) (citation omitted) (emphasis in original).

review is set forth in detail in Section 24 of the CAISO tariff and involves many stakeholders. Moreover, as noted by the Commission, "Congress did not require the Commission to base an incentive reward on a specific level of benefits."[11]

Q 3) The Commission currently considers risks both in calculating a public utility's base ROE and in assessing the availability and level of any ROE adder for risks and challenges. Is this approach still appropriate? If so, which risks are relevant to each inquiry, and, if they differ, how should the Commission distinguish between risks and challenges examined in each inquiry?

PG&E and SDG&E generally support the "case-by-case" approach adopted in Order No. 679 and the 2012 Policy Statement, and that applicants narrowly tailor the requests for incentives based on the specific risks and challenges faced by the project.[12]

3. Incentives Based on Project Characteristics

Q 12) 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?

PG&E and SDG&E believe the Commission's current approach generally meets the goals of Section 219. PG&E's and SDG&E's primary concern is that the Commission allow recovery of all prudently incurred costs as specified by Congress in Section 219 of the FPA and remove the 50% disallowance for pre-Order costs related to projects eligible for the Abandonment Incentive, which serves as disincentive to invest.

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[11] Incentives NOI at P 17.
[12] *Id*. at PP 6-9.

Q 13) If the Commission adopts an approach based on project characteristics, should it lay out general principles and/or bright line criteria for identifying or evaluating those characteristics?

PG&E and SDG&E generally support the "case-by-case" approach adopted in Order No. 679 and the 2012 Policy Statement and that applicants narrowly tailor the requests for incentives based on the specific risks and challenges faced by the project.[13] This case-by-case approach recognizes that each project is unique, and, as such, a flexible evaluation approach grounded in general principles is likely to be more robust for FERC and for project developers than an approach utilizing bright line criteria which would need to be continually revised to account for project particularities not contemplated in the original construction of the set of bright line criteria. With the exception of FERC Order No. 1000 competitive projects as addressed in Question 77, PG&E and SDG&E do not support the use of bright line criteria for identifying or evaluating project characteristics that warrant incentives.

Q 14) If so, how should applicable criteria be established, and, in cases where more than one criterion applies, how should they be evaluated in combination?

PG&E and SDG&E do not support the application of bright line criteria in the identification and evaluation of project characteristics outside of certain FERC Order No. 1000 projects as outlined below in Question 77.

Q 15) How would an approach based on project characteristics impact certainty for project developers, particularly relative to the current risks and challenges framework?

It is possible that an approach based on project characteristics could result in greater certainty for project developers, relative to the current risks and challenges framework. The

[13] Incentives NOI at PP 6-9.

characteristics of a given project are generally static throughout the project lifecycle, whereas project risks and challenges (*e.g*. permitting challenges, tax rates, etc.) can emerge and disappear during a project implementation timeline lasting a decade or more.

Q 16) Should transmission projects with certain characteristics be awarded incentives automatically? How could the Commission administer such an approach?

Please see PG&E's and SDG&E's answer to Question 77.

B. Incentive Objectives

11. Order No. 1000 Transmission Projects

Q 52) Should these or other incentives be granted automatically for transmission projects selected in a regional transmission plan for purposes of cost allocation?

Please see PG&E's and SDG&E's answer to Question 77.

Q 53) If so, what specific incentives are appropriate for such automatic treatment and how should such incentives be designed?

PG&E and SDG&E believe it is appropriate to grant such treatment for the Abandonment Incentive in the limited circumstances addressed in response to Question 77.

Q 54) 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?

In Order No. 679-A at P 76, the Commission noted that "[w]e affirm the finding in the Final Rule that the Commission will not limit an applicant's ability to seek incentive-based rate treatments based on corporate structure or ownership. The Commission will evaluate these applications to determine if incentive treatment is justified based on their demonstrations that the projects meet the requirements of section 219 and this rule."

C. Existing Incentives

1. ROE-Adder Incentives

b. RTO/ISO Participation

Q 61) Should the Commission revise the RTO-participation incentive?

As noted above, in PG&E Initial Brief filed in Docket Nos. ER14-2529, *et al*., the Commission could make clear in this proceeding that it is "the Commission's interpretation that of its Order No. 679 that *continuing participation* in an ISO or RTO entitles a utility to the 50 basis point incentive adder even in the face of assertions that the continued participation is required by state law."[14]

Q 63) If the Commission continues to provide ROE adders for RTO/ISO participation, what is an appropriate level for an ROE adder?

PG&E and SDG&E support the current 50 basis point adder.

Q 64) Should the RTO-participation incentive be awarded for a fixed period of time after a transmission owner joins an RTO or ISO?

Please see answer to Question 61.

Q 66) 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?

Please see answer to Question 61 and PG&E's briefs filed in Docket No. ER14-2529-005, *et al.*, which are expressly incorporated herein by reference.

2. Non-ROE Transmission Incentives

c. Recovery of the Cost of Abandoned Plant

[14] PG&E Initial Brief at 17 (September 19, 2018) (citation omitted).

Q 77) 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?

The Commission appears to recognize the various unique risks faced by high-voltage "greenfield" projects in California seeking the Abandonment Incentive, which are approved under the CAISO's transmission planning process. These projects require the procurement of new property and rights-of-way, often in places where the project will face significant costs and opposition raised in the permitting process. These risks include significant permitting and environmental review by state regulators, and ongoing annual re-assessments made by CAISO to address the impact of renewable energy on the need for approved or proposed projects. Indeed, in its 2018-2019 Transmission Plan, CAISO cancelled a joint project with PG&E and MidAmerican Central California Transco, LLC ("MCCT") for the "Gates-Gregg 230 kV Line" due to the impact of new renewable resources.[15] The project was originally approved in the CAISO 2012-2013 Transmission Plan as a FERC Order No. 1000 competitive transmission project. In 2014, both PG&E and MCCT were granted 100% recovery under the Abandonment Incentive for the Gates-Gregg 230 kV Line.[16] No party objected to the Abandonment Incentives granted to PG&E and MCCT.

As noted above, these comments are focused on the Commission's "policy" since 2016 to limit recovery under Abandonment Incentive to costs incurred after the Commission order, with 50% recovery of prudently incurred costs prior to the Order. Because of the unique risks faced

[15] In Docket No. ER19-2073, CAISO filed its Notice of Termination of the Approved Project Sponsor Agreement, effective June 1, 2019.

[16] *Pacific Gas and Electric Co.*, 148 FERC ¶ 61,195; *MidAmerican Central California Transco, LLC*, 147 FERC ¶ 61,179 (2014).

in California for greenfield projects, PG&E and SDG&E believe there is a basis for blanket pre-approval of the Abandonment Incentive for Order No. 1000 competitive transmission projects selected by CAISO in its annual transmission plan, with no limitation on recovery of pre-Order costs. The blanket pre-approval of the Abandonment Incentive for Order No, 1000 competitive transmission projects should apply to the project in its entirety, both competitive and non-competitive scopes. Project expenditures should still be subject to a later Section 205 prudency review in the event the project is abandoned for reasons beyond the project's control.

In any event, the Commission should revisit its recent rulings since 2016 on the recovery of pre-Order costs under the Abandonment Incentive.[17] PG&E and SDG&E believe those Commission's rulings are a disincentive for new transmission projects and serve no legitimate policy purpose.

PG&E's last Petition for Declaratory Order in Docket No. EL16-47 serves as a useful example of the risks and challenges faced by PG&E in these types of projects. PG&E made clear to the Commission prior to the issuance of its August 24, 2017 "Order on Petition of Declaratory Order"[18] that PG&E had already incurred $68 million in pre-construction expenses. That is a very significant amount of money and the Commission ruled that PG&E was only entitled to 50% recovery. As noted above, the Commission has issued rulings in two other cases

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[17] *See*, *e.g., San Diego Gas & Electric Co,* 154 FERC ¶ 61,158 (2016), *reh'g denied*, 157 FERC ¶ 61,056 (2016); *affirmed*, *San Diego Gas & Electric Co. v. FERC*, D.C. Circuit Case No. 16-1433 (2019), slip op. at 24.
[18] *Pacific Gas and Electric Co.*, 160 FERC ¶ 61,018 (2017).

involving PG&E, SDG&E, and SCE collectively ruling that over $150 million of pre-Order costs would not be eligible for the Abandonment Incentive.

In the August 24, 2017 Order, the Commission makes passing reference to CAISO's support for PG&E's request for the Abandonment Incentive.[19] The CAISO discussed the risks faced by PG&E, emphasizing PG&E's obligations to move forward with permitting and construction of the eight projects even in the absence of a Commission declaratory order:

> The CAISO supports PG&E's requested authorization for abandoned plant recovery. … Under the CAISO tariff, project sponsors such as PG&E are obligated to make a good faith effort to obtain all approvals and property rights for and to construct needed transmission projects reflected in the annual transmission plan for which they are responsible. **It is particularly important that project sponsors proceed with reliability projects in a diligent and timely manner so the CAISO does not face potential reliability criteria violations**. The availability of abandoned plant recovery promotes this undertaking and is an important incentive that serves to expand the options available to the CAISO in meeting reliability and other needs identified in its annual transmission planning process.[20]

By "reliability criteria violations," the CAISO means conditions that threaten the availability of electric power to homes, businesses, hospitals, and other customers. In other words, if utilities do not proceed with new transmission projects in a "diligent and timely manner," the potential for customer outages will increase. In its Petition, PG&E noted that five projects were for new 230 kV substations and associated "greenfield" transmission lines (which require new rights-of-way) selected by CAISO to address reliability, and other reinforcements such as protecting the San Francisco peninsula in the event of an extreme (NERC Transmission Planning Standards Category D) contingency, which is an extreme event resulting in two or more (multiple) elements removed or cascading out of service in widespread areas.[21]

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[19] *Id.* at P 12.
[20] *See* CAISO Comments at 3 (emphasis added).
[21] *See* Petition at 3-5.

As a general matter, the Commission should not discount the risks associated with obtaining necessary permits from the California Public Utilities Commission ("CPUC"). As PG&E explained in Docket No. EL16-47, all of the projects subject to PG&E request are greenfield projects (which require new land and new rights-of-way). The Commission should acknowledge the CPUC's own admission that concedes that "there is no question that the CPCN process introduces risks . . . ."[22] Commission rulings that the risks are "uncertain" or "speculative" at this stage because the CPUC has not made its siting decisions makes no sense.[23] Regardless whether PG&E or SDG&E require a Certificate of Public Convenience ("CPCN") or a Notice to Proceed, both utilities still also fall under the same California Environmental Quality Act ("CEQA") review process with a review of alternative sites. These risks are not "speculative" or "uncertain."

Rather, as suggested by the Commission in PG&E's Order on Rehearing, is the Commission arguing that an applicant must show the CPUC ordered an alternate route before receiving the Abandonment Incentive?[24] PG&E and SDG&E believe that makes no sense since the CPUC has no obligation to approve a CPCN, no set timeline on which it must do so, and in any event, that process typically happens well *after* the CAISO has approved the project.

As a policy matter, the Commission should revisit its recent rulings making the Abandonment Incentive only effective upon a Commission order granting the Abandonment

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[22] *See* PG&E Answer at 5; CPUC Protest at 14.
[23] *Order on Rehearing*, 163 FERC at P.10.
[24] *Id.*

Incentive.[25] PG&E and SDG&E believe those Commission's rulings serve no legitimate policy purpose. Indeed, the Commission must reconcile this new "policy" with the recent appellate court decision adopting the Commission's argument that the Commission grants the Abandoned Plant Incentive when "justified" on a "case-by-case basis."[26] The Commission should consider whether there is a reason to encourage developers to submit more petitions for declaratory order before receiving approval from the CAISO, because that is a likely outcome of the new effective date rule. Even assuming the Commission has a new policy with the "dividing line," PG&E and SDG&E believe that is bad policy that should be corrected in this Incentives NOI.

Q 78) How, if at all, could the Commission grant the abandoned plant incentive without encouraging transmission developers to pursue unnecessarily risky[27] transmission projects or take unnecessary risks in transmission development? Could such behavior be reduced if the developer shared some risk associated with the abandonment, e.g., 10 percent of abandonment costs? If so, what level of developer risk is appropriate?

Please see answer to Question 77.

Q 79) How should the Commission evaluate whether the costs of an abandoned facility were prudently incurred?

PG&E and SDG&E believe the current policy works where after receiving the Abandonment Incentive, public utilities must make a Section 205 filing under FPA to demonstrate those costs were prudently incurred.

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[25] *See, e.g., San Diego Gas & Electric Co,* 154 FERC ¶ 61,158, *reh'g denied*, 157 FERC ¶.61,056 (2016); *affirmed*, *San Diego Gas & Electric Co. v. FERC*, D.C. Circuit Case No. 16-1433 (2019).

[26] D.C. Circuit Case No. 16-1433, slip op. at 24, dissent at 9.

[27] PG&E Motion for Expedited Review at 5 (March 23, 2017).

D. Mechanics and Implementation

2. Case-by-Case vs. Automatic Approach in Reviewing Incentive Applications

Q 90) 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 a general matter, PG&E and SDG&E believe it would be helpful to have threshold criteria so that the Commission could promptly grant incentives.

Q 91) If so, how could the Commission determine which incentives should be awarded automatically?

As noted above, one example is granting the Abandonment Incentive automatically for "greenfield" competitive FERC Order 1000 projects approved in the CAISO transmission planning process.

Q 92) If the existing case-by-case approach to incentives is retained, could it be improved? If so, how?

Unless the Commission revises its policy here to allow for 100% recovery under the Abandonment Incentive, there will always be a problem with the fact that the Commission has no statutory deadline for acting on petitions for declarations. In Order No. 679, the Commission advised that it would attempt to act on such requests within 60 days but that is not always feasible.[28]

[28] Order No. 679 at P 77.

E. Metrics for Evaluating the Effectiveness of Incentives

Q 105) Should the Commission upgrade the FERC-730 filing format to XBRL or another format or standard? If so, what filing format would be most beneficial and useful to filers and users of the information?

PG&E and SDG&E support implementation of the XBRL (eXtensible Business Reporting Language) standard for the contemplated upgrade to the FERC-730 filing format. PG&E and SDG&E recognize the reporting utility, scalability, flexibility, and administrative efficiencies to be gained through the use of the XML-related XBRL standard, which is deployed in financial reporting systems worldwide. In light of its experiences with the implementation of XML-based systems for FERC's eTariff and Electric Quarterly Report (EQR) programs, PG&E and SDG&E also recognize the enhanced business research and analysis capabilities of such systems. The Commission has been developing the FERC Forms Refresh project to convert its old reporting regime for FERC Form Nos. 1, 1-F, et al., to XBRL-based systems precisely due to the strengths of the XML (eXtensible Markup Language) standard.

As with the eTariff and EQR switchovers from the Microsoft-decommissioned Visual FoxPro standard to more open sourced XML-based systems, PG&E and SDG&E respectfully request that, should it move forward with the upgrade indicated in this Question 105, the Commission should allow ample time for public stakeholder comments, technical conferences, as well as sufficient time for the regulated entities to adjust their internal business reporting systems to accommodate any new adopted standards.

Respectfully submitted,

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