

121 FERC ¶ 61,168
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southern California Edison Company

Docket No. EL07-62-000

ORDER GRANTING PETITION FOR DECLARATORY ORDER

(Issued November 16, 2007)

	<u>Paragraph Numbers</u>
I. Background	<u>3.</u>
A. Description of the Projects	<u>3.</u>
1. DPV2 Project	<u>4.</u>
2. Tehachapi Project	<u>6.</u>
3. Rancho Vista Project	<u>8.</u>
B. SCE's Proposed Incentives	<u>9.</u>
C. Procedural History, Notice of Filings and Responsive Pleadings.....	<u>12.</u>
II. Discussion	<u>16.</u>
A. Procedural Matters	<u>16.</u>
B. Section 219 Requirement	<u>18.</u>
1. SCE's Proposal	<u>20.</u>
2. Protests	<u>26.</u>
3. SCE's Answer.....	<u>33.</u>
4. Commission Determination	<u>38.</u>
C. Incentives and the Commission's Nexus Requirement.....	<u>45.</u>
1. Incentive for CWIP.....	<u>48.</u>
2. Incentive for Recovery of Abandoned Plant Costs	<u>62.</u>
3. ROE Incentives	<u>76.</u>
D. 50-Basis Point ROE Incentive for Continued Participation in the CAISO	<u>150.</u>
1. SCE's Proposal	<u>151.</u>
2. Protests.....	<u>152.</u>
3. SCE's Answer	<u>155.</u>
4. Commission Determination	<u>158.</u>

1. On May 18, 2007, as amended on August 16, 2007, Southern California Edison Company (SCE) filed a petition for declaratory order (Petition), requesting that the Commission approve its proposed incentive rate treatments for three transmission projects, as consistent with Order No. 679.¹ SCE is proposing to construct the following transmission projects: (1) Devers-Palo Verde II Project (DPV2 Project); (2) Tehachapi Transmission Project (Tehachapi Project); and (3) Rancho Vista transmission substation project (Rancho Vista Project) (collectively, Projects).

2. In its Petition, SCE requests a finding that it is eligible to recover the following transmission investment rate incentives: (1) return on equity (ROE) adders of 150-basis points for the DPV2 and Tehachapi Projects and 100-basis points for the Rancho Vista Project, for new transmission investments; (2) Construction Work in Progress (CWIP) of 100 percent during construction of the Projects; and (3) recovery of its abandonment costs for DPV2 and Segments 3 through 11 of the Tehachapi Project if these Projects, or a portion thereof, are cancelled due to factors beyond SCE's control. SCE also requests an ROE adder of 50-basis points for SCE's participation in the California Independent System Operator Corporation (CAISO). For the reasons discussed below, we will grant SCE's Petition and grant the requested incentive rate treatment for its proposed Projects, subject to the modifications described herein.

I. Background

A. Description of the Projects

3. SCE states that the Projects will significantly improve the reliability of the CAISO's bulk power transmission system and reduce the cost of power to customers by reducing transmission congestion on the CAISO-controlled transmission grid. The total capital expenditure for the three Projects is \$2.5 billion.² This will help SCE to maintain reliable service to its customers and to provide increased access to renewable generation resources. SCE states that the Projects will increase the capability of proposed renewable generation projects to connect to the CAISO-controlled grid, which will support its

¹ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

² SCE states that it intends to invest an additional \$1.8 billion in transmission projects for which it is not seeking incentives.

compliance with the State of California's Renewable Portfolio Standard (RPS)³ and the California legislation requiring substantial reductions in greenhouse gas emissions.

1. DPV2 Project

4. The proposed DPV2 Project consists of the construction of two major transmission lines: (1) a 230 mile-long, 500 kV transmission line between Central Arizona near the Harquahala Generating Station and SCE's existing Devers substation located in North Palm Springs in Riverside County, California;⁴ and (2) a 500 kV transmission line between the Devers substation and SCE's valley substation in Southeastern California. SCE states that the DPV2 Project is a \$560 million project that will allow access to efficient and less-expensive generation resources in Arizona. SCE states that the construction of the DPV2 Project will benefit not only California, but Arizona and the Southwest by relieving congestion and ensuring reliability.⁵ Specifically, it states that, among other things, the DPV2 Project would provide reliability benefits because it would avoid loss of load during extreme contingencies, making it possible for power to flow to Arizona load centers from California or the Pacific Northwest. The DPV2 Project would also increase export of Arizona's generating resources during off-peak and shoulder periods, thereby reducing electricity costs in Arizona by spreading recovery of a portion of the fixed costs of Arizona resources to California ratepayers.

5. According to SCE, the DPV2 Project would also enhance competition among generating companies that supply energy to California, and the additional transmission infrastructure would support and induce the development of future energy selling into the California electricity market, increasing liquidity in the market (which reduces market transaction costs), and helping to mitigate market power. The estimated in-service for this Project is 2009.⁶

³ SCE states that the RPS program requires retail sellers of electricity to increase their sale of electricity produced by renewable energy resources to 20 percent by 2010. Petition at 2 & n.4.

⁴ Approximately 102 miles of this proposed transmission line would be located in Arizona. *Id.* at 13.

⁵ *Id.* at 11-12.

⁶ SCE states that recent difficulties obtaining state siting approval will result in a delay of the estimated in-service date for DPV2. *See infra* P 90.

2. Tehachapi Project

6. The Tehachapi Project is a \$1.7 billion project distributed into eleven segments, which consists of more than 200 miles of 500 kV transmission line, approximately 10 miles of 220 kV transmission line, and three new substation facilities.⁷ The Tehachapi Project will interconnect up to 4,500 megawatts (MW) of generating resources, consisting primarily of wind generation, in the Tehachapi area to SCE's transmission system, located in the Tehachapi and Big Creek corridor areas. SCE states that, in addition to supporting renewable generation development, the project addresses reliability needs of the CAISO-controlled grid due to projected load growth in the Los Angeles basin. The Project facilitates the ability of California utilities to comply with the State of California's RPS by providing access to planned renewable resources in the Tehachapi Wind Resource Area (TWRA). Any load-serving entity that enters into a contract for generation located in the TWRA would be able to use the Tehachapi facilities to deliver that energy on an open access basis under the CAISO tariff.⁸

7. Additionally, the Tehachapi Project makes possible a low-cost expansion of transfer capability for Path 26 by removing one of the limiting components of the existing Midway-Vincent No. 3 500 kV transmission line and increasing SCE's ability to move power from Vincent to the Los Angeles basin. The Project also lays the groundwork for integration of planned renewable resources in Inyo and northern San Bernardino counties by expanding the system and extending SCE's 500 kV backbone transmission system. The first elements of the multi-phase project are planned to be in service in December 2008, with the final elements expected to be in-service in 2013.

3. Rancho Vista Project

8. The Rancho Vista Project includes a proposed new 500 kV substation which is expected to go into service in June of 2009. This Project will cost about \$200 million and is the first built by SCE in 20 years. SCE states that the Rancho Vista Project is needed primarily to serve load growth in San Bernardino and Riverside counties. It will provide relief to the existing Mira Loma 500/230 kV substation, which serves an area that has an estimated load growth of 100 MW per year and represents 20 percent of the total annual load growth in the SCE service territory.⁹ In addition, the Rancho Vista Project will

⁷ *Id.* at 15-19 (describing the eleven segments).

⁸ *Id.* at 14.

⁹ *Id.* at 19-20.

enhance SCE's ability to interconnect renewable generation to the CAISO grid, which will increase import capability to the Los Angeles basin.¹⁰

B. SCE's Proposed Incentives

9. SCE states that it is seeking narrowly tailored incentive rate treatment for the Projects. SCE states that it plans to spend about \$2.5 billion for the Projects, which will benefit not only SCE, but also other California utilities. It contends that a grant of incentives is particularly appropriate for these three Projects because each Project has specific and unique challenges that make it distinct from, and more risky than, SCE's other infrastructure investments. Further, SCE states that all of the Projects meet the rebuttable presumption of eligibility for incentive rate treatment.

10. SCE states that it is seeking incentive rate treatments that are consistent with Order Nos. 679 and 679-A, as well as subsequent decisions implementing these orders,¹¹ and that each requested incentive is rationally related to the investments being proposed. Specifically, SCE requests a 50-basis point ROE adder for being a Participating Transmission Owner in the CAISO. SCE requests a 150-basis point adder to its base ROE that will be applied to the DPV2 and Tehachapi Projects and a 100-basis point adder to its base ROE that will be applied to the Rancho Vista Project. It also seeks to include in its transmission rate base, through a single-issue rate filing, 100 percent of prudently-incurred CWIP during construction of the Projects. Finally, SCE requests abandoned plant cost recovery of 100 percent of the prudently-incurred costs of the DPV2 and Tehachapi Projects.

11. Additionally, although SCE is not specifically requesting incentive ratemaking treatment for employing innovative transmission technologies, it includes a technology statement for the three Projects, as required by Order No. 679.¹² Specifically, SCE states that, among other things, the DPV2 and Tehachapi Projects will use: (1) Flexible AC Transmission, an advanced transmission technology that increases the capacity, efficiency, and reliability of a new transmission facility under the Energy Policy Act of

¹⁰ *Id.* at 20.

¹¹ *Id.* at 3, citing *Allegheny Energy, Inc.*, 116 FERC ¶ 61,058 (2006), *order on reh'g*, 118 FERC ¶ 61,042 (2007) (*Allegheny*); *American Electric Power Service Corp.*, 116 FERC ¶ 61,059 (2006), *order on reh'g*, 118 FERC ¶ 61,041 (2007) (*AEP*); *Bangor Hydro-Electric Co.*, 117 FERC ¶ 61,129 (2006); *Duquesne Light Co.*, 118 FERC ¶ 61,087 (2007) (*Duquesne*).

¹² Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 302; Petition at 47-57.

2005 (EPAAct 2005);¹³ (2) special protection systems, which require fiber optic technologies to provide reliable high speed data communication between switching stations and allow the monitoring systems to trip load in the event of outage contingencies; (3) a Static VAR Compensator, which utilizes power electronics, controls, and real-time monitoring software;¹⁴ and (4) other equipment that constitute advanced transmission technologies.¹⁵ In addition, SCE states that the Rancho Vista Project will use advanced technologies, i.e., 500 kV and 220 kV Gas Insulated Switchgears, which fall under section 1223(a)(19) of EPAAct 2005.¹⁶

C. Procedural History, Notice of Filings and Responsive Pleadings

12. Notice of SCE's petition was published in the *Federal Register*, 72 Fed. Reg. 30,365 (2007), with interventions and comments due on or before June 8, 2007. The California Public Utilities Commission (CPUC) filed a notice of intervention and protest. Timely motions to intervene, raising no substantive issues, were filed by Atlantic Path 15, LLC and the Imperial Irrigation District. Timely motions to intervene, comments and protests were filed by: Transmission Agency of Northern California (TANC);¹⁷ Golden State Water Company (Golden State); Modesto Irrigation District (MID); Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (Six Cities); City of Santa Clara, California and the M-S-R Public Power Agency (Santa Clara/MSR); Northern California Power Agency (NCPA); California Electricity Oversight Board (CEOB); California Department of Water Resources State Water Project (SWP); Sacramento Municipal Utility District (SMUD); and Metropolitan Water District of Southern California (Metropolitan). Untimely motions to intervene, raising no substantive issues, were filed by San Diego & Gas Electric Company (SDG&E) and Pacific Gas and Electric Company (PG&E).

13. On June 13, 2007, TANC filed a motion to lodge the Arizona Corporation Commission's (ACC) June 6, 2007 Order Denying Certificate of Environmental

¹³ EPAAct 2005, Pub. L. No. 109-58, 119 Stat. 594, section 1223(a)(10).

¹⁴ EPAAct 2005, section 1223(a)(17).

¹⁵ Petition at 50, 52.

¹⁶ *Id.* at 53-56.

¹⁷ SMUD, NCPA, Santa Clara/M-S-R, and MID have adopted and incorporated TANC's positions.

Compatibility (CEC), in which the ACC rejected the Arizona portion of the DPV2 Project.¹⁸ On June 25, 2007, SCE filed an answer to the protests (SCE June 25 Answer).

14. On July 17, 2007, the Director, Division of Tariffs and Market Development – West, acting under delegated authority, issued a letter seeking additional information relating to SCE’s Petition (Deficiency Letter).

15. On August 16, 2007, SCE filed a response to the Deficiency Letter (Supplemental Filing). Notice of SCE’s Supplemental Filing was published in the *Federal Register*, 72 Fed. Reg. 51,222 (2007), with interventions and comments due on or before September 6, 2007. The CPUC file a notice of intervention and protest. Timely comments and protests were filed by: SWP; CEOB; TANC; Six Cities; Metropolitan;¹⁹ Golden State; and NCPA. PG&E filed a timely motion to intervene. On September 20, 2007, SCE filed an answer to the protests of its Supplemental Filing (SCE September 20 Answer).

II. Discussion

A. Procedural Matters

16. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure,²⁰ the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. In addition, we will grant the unopposed, late interventions of SDG&E and PG&E in view of the early stage of the proceeding and the absence of undue prejudice or delay.

17. Rule 213(a) of the Commission’s Rules of Practice and Procedure²¹ prohibits an answer to a protest, unless otherwise permitted by the decisional authority. We will accept both SCE’s June 26 and September 20 Answers because they have provided information that assisted us in our decision-making process.

¹⁸ *In the Matter of Application of Southern California Edison Co.*, Case No. 130, Decision No. 69638, Docket No. L-00000A-06-0295-00130 (June 6, 2007) (Arizona Order).

¹⁹ Metropolitan supports CPUC’s arguments.

²⁰ 18 C.F.R. § 385.214 (2007).

²¹ *Id.* § 385.213(a)(2).

B. Section 219 Requirement

18. In EPAct 2005, Congress addressed incentive-based rate treatments for new transmission construction.²² Specifically, section 1241 of EPAct 2005 added a new section 219 to the Federal Power Act (FPA) directing the Commission to establish, by rule, incentive-based (including performance-based) rate treatments for electric transmission. The Commission issued Order No. 679, which set forth processes by which a public utility could seek transmission rate incentives pursuant to section 219, including the incentives requested here by SCE.

19. Order No. 679 provided that a public utility may file under the FPA a petition for declaratory order or section 205 filing to obtain incentive rate treatment for transmission infrastructure investment that satisfies the requirements of the FPA section 219. The applicant must demonstrate that the facilities for which it seeks incentives either ensure reliability or reduce the cost of delivered power by reducing transmission congestion.²³ Order No. 679 also established a rebuttable presumption for: (i) a transmission project that results from a fair and open regional planning process that considers and evaluates projects for reliability and/or congestion and is found to be acceptable to the Commission; or (ii) a project that has received construction approval from an appropriate state commission or state siting authority.²⁴ Order No. 679-A clarified the operation of this rebuttable presumption by noting that the authorities and/or processes on which it is based (i.e., a regional planning process, a state commission, or siting authority) must, in fact, consider whether the project ensures reliability or reduces the cost of delivered power by reducing congestion.²⁵

1. SCE's Proposal

20. SCE argues that, pursuant to Order Nos. 679 and 679-A, all of the Projects have met the rebuttable presumption of eligibility for transmission incentives. Specifically, it states that all of the Projects have satisfied the rebuttable presumption because the Projects have been approved through “a fair and open regional planning process” conducted by the CAISO. It contends that the CAISO approved each Project after conducting an independent and thorough evaluation through its stakeholder process and concluding that there are reliability and congestion management benefits for each Project.

²² See Pub L. No. 109-58, 119 Stat 594, 961 (2005).

²³ See 18 C.F.R. § 35.35(i).

²⁴ See *id.*; Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 47.

²⁵ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 49.

21. SCE states that the CAISO concluded, based upon its comprehensive review process, that the DPV2 Project will provide significant reliability and economic benefits to customers, and provide access to additional capacity to meet the growing demand in California.²⁶ It further states that the CAISO concluded that the DPV2 Project also will provide economic benefits due to increased ability to import low-cost generation from the Southwest to replace higher-cost generation currently being used in California. Additionally, SCE states that the CAISO reviewed the entire Tehachapi Project and concluded that the Project will provide system reliability and efficiency benefits, providing benefits to all customers in the CAISO grid.²⁷ Further, SCE states that the Rancho Vista Project was reviewed and approved by the CAISO's transmission review process.²⁸ SCE notes that the CAISO concluded that the Rancho Vista Project is needed to reliably serve load growth in the Los Angeles basin.²⁹ Therefore, SCE argues that all three Projects are entitled to a presumption of eligibility for transmission incentives because the CAISO specifically found that they are needed for reliability.

22. In addition, SCE states that the DPV2 Project and Segments 1-3 of the Tehachapi Project have received Certificates of Public Convenience and Necessity (CPCN) from the CPUC.³⁰ According to SCE, in approving the DPV2 Project, the CPUC recognized that the Project will "enable SCE to provide significant economic benefits to ratepayers, increase the reliability of the transmission network, and increase operational

²⁶ Petition at 24-25; *see also* Exhibit D, CAISO Memorandum at 5 (February 18, 2005) ("the ISO completed a comprehensive analysis of the benefits of [DPV2] . . . and concluded that the project will provide significant reliability and economic benefits to ISO ratepayers"); Exhibit E, CAISO Board Report: Economic Evaluation of the Palo Verde-Devers Line No. 2 at 1 (February 24, 2005) ("[The board] found that the [DPV2] project will provide a significant amount of reliability and economic benefits to CAISO ratepayers").

²⁷ Petition at 28; *see also* Exhibit I, CAISO Memorandum at 1 (January 18, 2007) ("The Tehachapi Transmission Project also addresses reliability needs of the ISO Controlled Grid due to projected growth in Antelope Valley area as well as helping to address South of Lugo transmission constraints – an ongoing source of reliability concern for the Los Angeles Basin").

²⁸ Petition at 29-31.

²⁹ *Id.* at 31; *see also* Exhibit L, CAISO Memorandum at 1 (January 21, 2007) ("This project is needed by the summer of 2011 to reliably serve load growth in the fast growing San Bernardino and Riverside Counties of the [SCE] service territory").

³⁰ Petition at 27-29.

flexibility.”³¹ The CPUC also noted that Segments 1-3 of the Tehachapi Project are needed to meet California’s RPS goals and to ensure reliability and safety of the transmission grid in Southern California.³² According to SCE, the CPUC further concluded that there is no alternative that can meet these needs better than Segments 1-3. Therefore, SCE contends that the CPUC’s siting approval of the DPV2 Project and portions of the Tehachapi Project further satisfies the rebuttable presumption.

23. Further, SCE states that the DPV2 Project has been the subject of an open, regional planning process conducted by the Western Electricity Coordinating Council (WECC) to establish a rating increase for WECC Path 49 and WECC Path 46. Additionally, the path of the DPV2 Project is included in the draft National Interest Electric Transmission Corridor (NIETC) prepared by the U.S. Department of Energy (DOE).³³ Therefore, SCE asserts that the DPV2 Project is entitled to a presumption of eligibility for transmission incentives.

24. In its supplemental filing, SCE asserts that the ACC’s denial of the DPV2 Project has no bearing on DPV2’s eligibility for the rebuttable presumption.³⁴ SCE states that the ACC’s conclusion on reliability effects of the DPV2 Project differs from the conclusions drawn by other organizations that the DPV2 Project will ensure reliability.³⁵ It notes that WECC would not have approved the DPV2 Project path rating if it would weaken grid reliability.³⁶ SCE also notes that the ACC denied the DPV2 Project based

³¹ *Id.* at 26 & n. 29.

³² *Id.* at 29-30. The output of wind projects in the Tehachapi region, which currently exceed 4,500 MW in capacity, cannot be delivered without increased transmission capacity.

³³ *Id.* at 12.

³⁴ Supplemental Filing at 28-32.

³⁵ SCE notes that the DPV2 Project, as proposed by SCE, meets WECC Planning Criteria, North American Electric Reliability Corporation reliability standards, and general industry standards. WECC approved the transmission path rating and the project scope for the DPV2 Project. The project was also approved by the Southwest Transmission Plan Study Group, the Southwest Area Transmission Planning group, the Western Arizona Transmission System study group, and the Palo Verde Engineering and Operating Committee. *Id.* at 29.

³⁶ *Id.* at 29.

on its reliability standard that exceeds the industry reliability standard. Indeed, SCE argues that the ACC's standard is "subjective and effectively unobtainable."³⁷

25. Further, in its supplemental filing, SCE reiterates that the CAISO has approved the entire Tehachapi Project and that all eleven segments of the Tehachapi Project are necessary to accommodate the generation resources in the Tehachapi area.³⁸ SCE notes that Segment 3 will operate on a non-integrated basis for a limited time until Segment 10 is put into service. Further, it states that small portions of Segments 3 and 4 will remain radial generation-tie facilities.³⁹ According to SCE, all other Tehachapi facilities, including Segments 3 and 10 after they are interconnected, will be network facilities under the CAISO's operational control.⁴⁰

2. Protests

26. Parties argue that the Projects are not entitled to a rebuttable presumption of eligibility for incentive rate treatment under section 219 of the FPA. They state that the Projects do not have all of the siting approvals necessary to qualify for the rebuttable presumptions. For example, the DPV2 Project, which requires approvals from multiple states, was approved by the CPUC, but denied by the ACC; therefore, TANC argues that the DPV2 Project is not entitled to the rebuttable presumption.⁴¹ In addition, TANC claims that Order No. 679 does not support a rebuttable presumption for the Tehachapi Project because SCE has received siting approval from the CPUC for only three of the eleven segments needed for the project.⁴² Further, TANC and SWP argue that, because SCE has not received any siting approvals from the CPUC for the Rancho Vista Project, the Rancho Vista Project does not meet the rebuttable presumption.⁴³

³⁷ *Id.* at 30. The ACC noted that "[it] has the authority to establish reliability standards higher than the minimum requirements established by regional and national reliability organizations." Arizona Order at 7.

³⁸ Supplemental Filing at 23.

³⁹ *Id.* at 24-25.

⁴⁰ *Id.* at 25.

⁴¹ TANC Protest at 8.

⁴² *Id.* at 9-10.

⁴³ *Id.* at 10; SWP at 13.

27. TANC also argues that the CPUC's granting of CPCNs for the Projects did not consider and evaluate the projects for reliability and/or congestion to justify applying the rebuttable presumption. Specifically, it states that the CPUC's approval of DPV2 did not address whether the project ensures reliability or reduces congestion as is required by Order Nos. 679 and 679-A. Rather, the CPUC conducted an analysis of the economic and environmental viability of the DPV2 Project, based on whether the DPV2 Project would be of economic benefit to California ratepayers. TANC states that because the CPUC did not consider the DPV2 Project's impact on reliability or congestion, the CPUC's approval does not justify application of the rebuttable presumption.⁴⁴ In addition, TANC argues that the CPUC's approval of the Tehachapi Project is not based on whether the project ensures reliability or reduces congestion; rather, it is based upon the need to construct a transmission line to meet California's RPS.⁴⁵

28. TANC also challenges SCE's reliance upon the CAISO transmission planning process. It asserts that the Projects did not result from a fair and open regional planning process that considers and evaluates projects for reliability and/or congestion to justify applying the rebuttable presumption.⁴⁶ TANC also argues that, under Order No. 679, a regional planning process must address concerns across control areas and across state lines.⁴⁷ Moreover, TANC contends that the CAISO has not shown that its regional planning process has complied with the Commission's nine transmission planning principles required for all regional processes under Order No. 890: (a) coordination; (b) openness; (c) transparency; (d) information exchange; (e) comparability; (f) dispute resolution; (g) regional participation; (h) economic planning studies; and (i) cost allocation.⁴⁸ Additionally, it claims that the CAISO has not complied with Order No. 890's requirement to describe how its existing coordinated and regional planning processes are consistent with or superior to Order No. 890.⁴⁹ According to TANC, the

⁴⁴ TANC Protest at 9.

⁴⁵ *Id.* at 10.

⁴⁶ *Id.* at 12; *see also* SWP Protest at 11-13.

⁴⁷ *Id.* at 11, citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 58.

⁴⁸ *See Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241, at P 84 (2007).

⁴⁹ *Id.* P 84. The Commission directed all transmission providers to develop a transmission planning process by December 7, 2007 that satisfies the nine principles of the transmission planning (coordination, openness, transparency, information exchange, comparability, dispute resolution, regional participation, economic planning studies, and
(continued...)

CAISO only posted a “strawman proposal” detailing how it would improve its transmission planning process to comply with Order No. 890, which confirms that its review of SCE’s Projects was not a regional process.⁵⁰ SWP also asserts that the CAISO’s approval of the Rancho Vista Project was based on a finding of least cost alternative to meet load growth, implying that the determination was not based on reliability.⁵¹

29. SWP contends that SCE’s Petition meets neither of the two fundamental eligibility criteria under section 219 – reduces the cost of delivered power or is needed to ensure reliability. It states that, rather than reducing the cost of delivered power, the incentives requested by SCE will significantly increase – by up to \$53.4 million through the requested return on equity incentives alone– the cost of delivered power.⁵² Additionally, SWP argues that SCE does not make an adequate showing that its proposed Projects will ensure reliability. It argues that the driving purpose of the Tehachapi Project is to interconnect remote wind generation resources and that reliability is a peripheral issue.⁵³

30. Additionally, SWP argues that SCE’s Petition for incentives should not be evaluated without a section 205 filing. It states that, in this instance, where SCE is seeking multiple rate incentives which could potentially have an enormous impact on rates, it is inappropriate to consider the eligibility of the specific projects without a rate impact determination.⁵⁴ Without a section 205 filing, it argues that SCE’s request for incentives does not satisfy the requirements of sections 205 and 219 of the FPA. Section

cost allocation for new projects), and to clearly describe the process in a new attachment (Attachment K) of their open access transmission tariffs (OATT). *Preventing Undue Discrimination and Preference in Transmission Service*, 120 FERC ¶ 61,103, at P 2 (2007) (Order Extending Compliance Action Date and Establishing Technical Conferences).

⁵⁰ TANC Protest at 12.

⁵¹ SWP Protest at 13.

⁵² SWP submitted an affidavit with its protest, detailing its estimated calculation of the rate impact of the return on equity incentives alone. Based on its estimate, SWP argues that the rate effect of SCE’s ROE adder requests is potentially enormous; if all incentives were granted, it estimates that SCE’s revenue requirements would increase by \$13.5 million in 2009 and by \$53.4 million in 2013. *Id.* at 8.

⁵³ *Id.* at 13.

⁵⁴ *Id.* at 16.

219(d) provides that all rates approved thereunder are subject to the just and reasonable requirements of sections 205 and 206 of the FPA.⁵⁵ Yet, without the section 205 filing, SCE's Petition lacks information upon which a just and reasonable determination can be made.⁵⁶ Therefore, SWP argues that the mandate of section 219 that incentives approved not render a rate unjust and unreasonable should be assessed together with a determination of the projects' qualifications for incentive rate treatment.⁵⁷

31. Further, SWP argues that the Commission should establish evidentiary hearing procedures to allow opportunities for all parties to submit testimony and related evidence. Given the magnitude and scope of SCE's requested incentives, SWP argues that hearing and settlement judge procedures are necessary. It contends that in order to ensure that SCE's resulting rates will be just and reasonable, parties must examine the credibility and accuracy of SCE's contentions regarding its requested incentives.⁵⁸

32. TANC also argues that SCE's supplemental filing demonstrates that the Tehachapi Project does not qualify for transmission rate incentives. It contends that because small portions of Segments 3 and 4 will remain radial generation-tie facilities, they will not meet the Commission's test for integration with the CAISO grid. Therefore, TANC argues that not all segments of the Tehachapi Project qualify for transmission rate incentives.

3. SCE's Answer

33. SCE argues that, contrary to the arguments of some protesters, it has demonstrated in the Petition that all three Projects are entitled to the rebuttable presumption established by Order No. 679. It asserts that both DVP2 and Tehachapi Segments 1-3 received siting approvals from the CPUC, and that all Projects received approvals from the CAISO through its regional planning process.⁵⁹ Additionally, SCE reiterates that both the

⁵⁵ 16 U.S.C. § 824(d) and § 824(e) (2000).

⁵⁶ For example, cost of service statements, balance sheets, income statements, cost of plant statements, statement of accumulated depreciation, and operation and maintenance expenses. SWP Protest at 17.

⁵⁷ *Id.* at 16.

⁵⁸ *Id.* at 18-19.

⁵⁹ SCE June 25 Answer at 7-8.

CAISO and the CPUC, in their review processes, considered whether these Projects ensure reliability or reduce the cost of delivered power by reducing congestion.⁶⁰

34. SCE also asserts that multiple state approvals are not needed to meet the rebuttable presumption. It states that the ACC's denial of the Arizona portion of the DPV2 Project is irrelevant for establishing the rebuttable presumption given the approvals by the CAISO, the CPUC, and the Arizona Power Plant and Transmission Line Siting Committee.⁶¹ Further, SCE argues that the Commission has never required that all regulatory approvals must be obtained before an applicant is eligible for incentives.

35. SCE also refutes TANC's argument that the Projects approved by the CAISO do not support the rebuttable presumption because the Commission has not yet approved the CAISO's Attachment K. It argues that Order No. 679 does not suggest that incentive rate filings must be on hold until the Commission approves the tariff attachments required by Order No. 890. Moreover, SCE notes that the Commission has approved a number of incentive rate requests since the issuance of Order No. 679, even though it has not approved any tariff attachments required by Order No. 890.⁶²

36. Furthermore, SCE states that any claim that the CAISO's planning process is not regional should be rejected. It states that the CAISO region is larger than the regions covered by other regional organizations, namely ISO-New England and the New York Independent System Operator. The CAISO also covers a majority of the most populous state that includes three former control areas and the transmission systems of more than ten entities. Moreover, it contends that Order No. 679 does not require that the regional planning involve multiple states.⁶³ It also states that the CAISO engages in regional planning and considers reductions in power prices due to reduced congestion and reliability in its planning process.⁶⁴

37. Further, SCE contends that SWP's arguments are without merit. It states that SWP raises the "self-evident fact" that transmission incentives may lend themselves to increase in rates when compared to the situation where no incentives were granted. This

⁶⁰ *Id.* at 8.

⁶¹ *Id.*

⁶² *Id.* at 10.

⁶³ *Id.* at 10-11.

⁶⁴ *Id.* at 11. SCE asserts that despite contrary assertions by some protestors, the CAISO's findings demonstrate that all three Projects warrant the application of the rebuttable presumption. *Id.*, citing Exhibits D, H, I, and L.

implies that no transmission project would be eligible for an incentive if the incentive increases transmission rates.⁶⁵ Moreover, SCE contends that contrary to SWP's argument, the applicant does not need to prove that the approving body reached the correct conclusion as to reliability and/or cost savings in approving a project. It asserts that the purpose of the rebuttable presumption is to eliminate the need for the applicant to bear the burden of proving that the project is needed for reliability or reduced power prices by easing congestion.⁶⁶ Further, SCE states that SWP provides no basis to second-guess the CAISO's and the CPUC's findings that support the rebuttable presumption.

4. Commission Determination

38. As discussed below, we find that SCE's proposed Projects meet the FPA section 219 rebuttable presumption of eligibility for incentive rate treatment in that the DPV2, the Tehachapi, and the Rancho Vista Projects have been approved by a regional planning process.⁶⁷

39. Our review shows that SCE has met its burden that the regional planning processes determined that the proposed Projects will ensure reliability or reduce the cost of delivered power by reducing transmission congestion.⁶⁸ The CAISO concluded that

⁶⁵ *Id.* at 9.

⁶⁶ *Id.* at 9-10. SCE argues that in *Duquesne*, the Commission found that only where the rebuttable presumption was not met, the applicant bears the burden of proof. *See Duquesne*, 118 FERC ¶ 61,087 at P 63.

⁶⁷ While SCE does not rely on the NIETC process for purposes of meeting the rebuttable presumption, the NIETC determination would be entitled to due weight to the extent DOE found reliability or congestion benefits. *See* Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at n.77. We note that after SCE filed its Petition, on October 2, 2007, the DOE announced its designation of two NIETC – the Mid-Atlantic Area National Interest Electric Transmission Corridor (Docket No. 2007-OE-01) and the Southwest Area National Interest Electric Transmission Corridor (Docket No. 2007-OE-02). *See* Department of Energy, *National Electric Transmission Congestion Report*, available at <http://nietc.anl.gov>. According to the DOE, these corridors include areas in two of the Nation's most populous regions with growing electricity congestion problems. DOE based its designation on data and analysis showing that persistent transmission congestion exists in these two areas. The Southwest Area NIETC includes the counties in Arizona and California through which SCE's proposed right-of-way (ROW) for the DPV2 Project will travel. *Southwest Area Corridor Map*, available at http://nietc.anl.gov/documents/docs/NIETC_Southwest_Area_Corridor_Map.pdf.

⁶⁸ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 49.

there are, among other things, reliability and congestion management benefits from the Projects. For example, in the DPV2 Project, the CAISO's review was based on reliability, congestion management, and economic benefits.⁶⁹ For the Tehachapi Project, the CAISO's study concluded that the project is necessary to reliably interconnect generation resources in the Tehachapi area and, at the same time, to provide reliability and economic value for the CAISO grid.⁷⁰ In regard to the Rancho Vista Project, the CAISO found that the project is needed to reliably serve load growth in the fast growing Southern California counties.⁷¹

40. Thus, we conclude that the CAISO's process meets the rebuttable presumption for eligibility for incentives under section 219. Moreover, our review of the CAISO tariff indicates that the CAISO reviews Participating Transmission Owners' transmission expansion plans to "ensure that each Participating [Transmission Owner]'s expansion plans meet the [a]pplicable [r]eliability [c]riteria."⁷² Therefore, we disagree with protesters' arguments that the approval of SCE's Projects did not result from a regional

⁶⁹ See Petition, Exhibit D, CAISO Memorandum at 1, 5-6 (February 18, 2005). Specifically, the CAISO concluded that the DPV2 Project: (1) provides economic benefits by accessing lower cost generation in Arizona and the Southwest; (2) improves reliability by increasing voltage support in Southern California and enhances system operational flexibility by providing CAISO operators with more options in responding to transmission and generation outages; (3) helps foster competitive markets with grid infrastructure investment; and (4) helps meet load growth in Southern California. Moreover, it found that the DPV2 Project further reduces congestion on the grid between Arizona and California and thereby makes it possible to access power in Arizona. Petition, Exhibit F, CAISO Memorandum at 1-2 (August 31, 2006).

⁷⁰ See Petition, Exhibit H, CAISO South Regional Transmission Plan for 2006 at 1 (December 29, 2006). The study determined that, among other things, the Tehachapi Project is the least-cost solution that reliably interconnects 4,350 MW of generating resources in the Tehachapi area and that the Tehachapi Project addresses reliability needs of the CAISO-controlled grid due to projected growth in the Los Angeles basin. See *id.* at 4; Petition, Exhibit I, CAISO Memorandum at 1 (January 18, 2007).

⁷¹ See Petition, Exhibit L, CAISO Memorandum at 1-2 (January 21, 2005). The CAISO determined that without the Rancho Vista substation, the existing substation (Mira Loma) would be loaded beyond its capability and could raise reliability concerns. Petition, Exhibit M, CAISO Memorandum at 1 (August 31, 2006).

⁷² Section 24.2.2 of the California Independent System Operator Corporation FERC Electric Tariff, Third Replacement Vol. No. 1, (CAISO Tariff) at Original Sheet No. 320.

process that considers and evaluates projects for reliability and/or congestion. The fact that the CAISO found other benefits in approving these Projects, i.e., economic benefits, does not change the fact that the CAISO's planning process included findings concerning reliability and/or congestion management. The fact that a regional planning process' review may be based on other factors in addition to reliability and/or congestion management concerns does not affect our reliance upon it concerning the rebuttable presumption.

41. In addition, we disagree with TANC that the CAISO's planning process does not qualify as a regional planning process because it has not yet complied with Order No. 890's Attachment K requirement. Order No. 679 did not make Attachment K compliance a condition of meeting the section 219 rebuttable presumption. Further, we disagree with TANC's argument that a regional planning process must address concerns across control areas and across state lines. Order No. 679 states that a regional planning process looks across "a large geographical footprint."⁷³ California qualifies as a large geographical footprint and, thus, the CAISO regional planning process is of sufficient scope for purposes of the rebuttable presumption.

42. With respect to the ACC's rejection of the Arizona portion of the proposed DPV2, under Order No. 679, the rebuttable presumption may be based on either a regional planning process *or* state siting approval. It is not a requirement to obtain both. We, therefore, find that, notwithstanding the ACC's rejection of the Arizona portion of DPV2, the approval of the CAISO cited above is dispositive for purposes of the section 219 requirement.

43. Additionally, we disagree with SWP's argument that the Commission should not make a determination in this proceeding without a section 205 filing due to the potential for large rate impact of the proposed Projects. We find that this is inconsistent with section 219 and Order No. 679. Specifically, Order No. 679 provides applicants the option: (1) to seek a declaratory order, requesting incentive-based rate treatments, prior to construction of the facilities, and then to submit a section 205 filing to put the rates into effect; or (2) to submit only a section 205 filing to request all of the required approvals.⁷⁴ The Commission determined that the first option is a valuable tool because it provides assurances needed to facilitate financing and investment in transmission projects.⁷⁵ Under both options, an applicant must demonstrate that its projects meet the requirements under section 219, i.e., they ensure reliability or reduce the cost of delivered

⁷³ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 58.

⁷⁴ *Id.* P 76.

⁷⁵ *Id.* P 77.

power by reducing transmission congestion. If an applicant pursues the first option, an applicant must demonstrate in a subsequent section 205 filing that the rates in which the applicant seeks to recover any incentives are just and reasonable and not unduly discriminatory.⁷⁶ The Commission specifically stated that issues involving rate calculations will be addressed in individual section 205 proceedings.⁷⁷ Therefore, because SCE has chosen to pursue the first option, it is not required to make a showing in this Petition that its rate recovery meets the just and reasonable standard under section 205. Such issues, including rate calculations for SCE's rate recovery, will be addressed in a subsequent section 205 proceeding.

44. With respect to TANC's argument regarding Segments 3 and 4 of the Tehachapi Project, we note that a network integration standard was not included in section 219 or Order No. 679. As discussed above, SCE's Projects, including all segments of the Tehachapi Project, meet the rebuttable presumption for eligibility for incentives under section 219. The issue regarding integration and non-integration is outside the scope of this proceeding for purposes of making a determination under Order No. 679.

C. Incentives and the Commission's Nexus Requirement

45. In addition to satisfying the section 219 requirement of ensuring reliability or reducing the cost of delivered power by reducing congestion, an applicant must demonstrate that there is a nexus between the incentive sought and the investment being made. The Commission policy in evaluating whether an applicant has satisfied the required nexus test requires an examination of the total package of incentives being sought, the interrelationship between any incentives, and how any requested incentives are tailored to the risks and challenges faced by the project.⁷⁸ In addition, the Commission has clarified that it retains the discretion to grant incentives that promote particular policy objectives, unrelated to whether or not a project presents specific economic risks or challenges.⁷⁹

⁷⁶ *Id.* P 79.

⁷⁷ *Id.* P 81.

⁷⁸ 18 C.F.R. § 35.35(d) (2007); Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 26. *See also* Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 21 (“[b]y this we mean that the incentive(s) sought must be tailored to address the demonstrable risks and challenges faced by the applicant in undertaking the project”).

⁷⁹ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at n. 37.

46. In Order No. 679-A, the Commission clarified that its nexus test is met when an applicant demonstrates that that total package of incentives requested is “tailored to address the demonstrable risks or challenges faced by the applicant.”⁸⁰ By its terms, this nexus test is fact-specific and requires the Commission to review each application on a case-by-case basis. Notably, the Commission chose not to adopt a list of criteria or characteristics that must be met by every applicant before an incentive would be approved. The Commission recognized that it would be impossible to identify every conceivable challenge or risk faced by an applicant, or to develop *a priori* a menu of incentives that would or would not be appropriate given a particular set of risks and challenges. Thus, we have held that we will address each request for incentives on its own merits and on a case-by-case basis.

47. As discussed herein, we find that SCE has satisfied the Commission’s nexus requirement for the Projects.

1. Incentive for CWIP

a. SCE’s Proposal

48. SCE claims that there is a nexus between its request for 100 percent CWIP and the investment being made for the proposed Projects because this incentive will provide regulatory certainty, rate stability and improve cash flow.⁸¹

49. As noted above, SCE states that it is embarking on an “unprecedented” capital commitment in transmission expansion and intends to invest \$2.5 billion in the Projects, with an additional \$1.8 billion over the next five years on other transmission projects for which it is not seeking incentives at this time. Thus, SCE asserts that because it is expending large amounts of capital over the next five years, it will be important for SCE to have an increased cash flow prior to the in-service dates of the Projects.⁸² In addition, SCE explains that the traditional rate recovery mechanism, which would not allow it to recover the costs of construction until the Projects are placed into service, will not be sufficient to finance such a large transmission expansion program as the three proposed Projects.⁸³

⁸⁰ *Id.* P 40.

⁸¹ Petition at 38.

⁸² *Id.* at 38-39. SCE notes that its total planned transmission investment is \$4.3 billion, which is more than three times its current transmission rate base of \$1.2 billion.

⁸³ *Id.* at 39.

50. SCE explains that financing costs for facilities and land acquisition during construction of the Projects would ordinarily be capitalized as Allowance for Funds Used During Construction (AFUDC), depreciated over the service life of the facility at issue, and recovered in rates only after the facilities are placed into service. Under this traditional approach, CWIP and AFUDC balances will increase based on the cash requirements of the project.⁸⁴ When the CWIP balances are high, this results in a significantly large AFUDC balance, which comprises a major portion of non-cash earnings. Because investors prefer to invest in projects that provide for a quicker cash flow, SCE contends that without the inclusion of CWIP in rate base, investors become concerned about the quality of earnings, subsequent rate shock for customers, and burden on the ability of the utility to generate a prompt return of and on invested capital.⁸⁵

51. SCE argues that allowing it to recover 100 percent of CWIP in rate base will assist SCE with financing and improve its coverage ratios used by rating agencies to determine credit quality by replacing non-cash AFUDC with cash earnings. SCE contends that this, in turn, will enhance its debt ratings because the increased cash flow during construction will result in higher coverage ratios.⁸⁶ Recovery of 100 percent of CWIP also will allow SCE to avoid a potential rate shock by its customers. SCE states that, given the size and scope of its transmission investment plan relative to its current rate base of \$1.2 billion, there will be significant and sudden transmission rate increases as the Projects are completed and added to its rate base. Inclusion of CWIP in rate base would phase-in this increase in transmission rates during the construction period, and result in a lower future rate base and transmission rates after the in-service date of the Projects, compared to traditional ratemaking, i.e., AFUDC.⁸⁷ Accordingly, SCE states that allowing 100 percent of CWIP in its rate base will result in rate stability for customers.

⁸⁴ *Id.*

⁸⁵ *Id.* at 40.

⁸⁶ *Id.* at 39.

⁸⁷ SCE provides an illustration, in Exhibit Q to its Petition, of the potential cash flow and interest streams for the Projects for the construction period and the first few years of operation under both traditional ratemaking (accumulation of AFUDC until the in-service dates) and recovery of CWIP in rate base, which shows that CWIP treatment would enhance SCE's cash flow and reduce interest expense during construction of the projects. SCE notes that Exhibit Q is based on assumed construction timelines for the Projects, and that to the extent there are delays in securing required permits and approvals, the cash flow and interest expense benefits from CWIP treatment would increase relative to traditional ratemaking. This is because AFUDC under traditional ratemaking would continue to be applied and compound during any period of delay,

(continued...)

52. SCE also argues that the Commission previously held that CWIP is not an incentive rate, comparable to other incentive rates, and that instead, CWIP “is intended as a modest offset to the bias against new investment.”⁸⁸ Additionally, SCE states that in Order No. 679, the Commission explained that the primary purpose of allowing 100 percent CWIP in rate base is to assist the utility with cash flow issues and to prevent rate shock that typically occurs with large scale investment programs.⁸⁹ In that respect, SCE asserts that there is a nexus between the Projects and the requested CWIP. For the Tehachapi Project, SCE argues it is both the size of the investment and the significant lead time (final completion in 2013) that make CWIP particularly appropriate. With regard to the DPV2 Project, SCE states that the study and approval process for DPV2 has been so complex that the overall lead time for the project is significant, noting that both the CAISO and CPUC approval processes took several years, and it is uncertain how long the siting process for the Arizona portion of the line might take.

53. If the Commission approves its request to recover 100 percent of CWIP in rate base, SCE states that it will make a single-issue rate filing under section 205 of the FPA, pursuant to the Commission’s guidance in Order No. 679.⁹⁰ SCE states the future section 205 filing will propose to recover the CWIP revenue requirement associated with the construction and land expenditures of the Projects through a stand-alone balancing account mechanism.

b. Protests

54. TANC contends that SCE does not provide sufficient evidence of inadequate cash flow to support recovery of 100 percent of CWIP in rate base. It states that under Order No. 679, the Commission will consider granting recovery of 100 percent of CWIP in rate base in “appropriate situations,” i.e., where the utility has demonstrated an inadequate

whereas under CWIP treatment, SCE would earn a cash return during construction. Supplemental Filing at 22; Petition, Exhibit Q.

⁸⁸ Supplemental Filing at 5, citing *Boston Edison Co.*, 109 FERC ¶ 61,300, at P 32 (2004), *order on reh’g*, 111 FERC ¶ 61,266 (2005) (*Boston Edison*). SCE asserts that on rehearing, the Commission in *Boston Edison* specifically rejected the argument that CWIP in rate base was intended to be an alternative to higher rates of return. 111 FERC ¶ 61,266 at P 11.

⁸⁹ Supplemental Filing at 5, citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 116-17.

⁹⁰ Petition at 41.

cash flow for constructing the transmission project.⁹¹ TANC notes that the Commission denied utilities such incentives when the utilities were not able to demonstrate that they face financial risks associated with their proposed projects.⁹² TANC asserts that the Commission should reserve ruling on SCE's request for the 100 percent CWIP recovery incentive pending SCE's submission of a section 205 application so that it could determine the range of reasonableness for SCE's ROE if CWIP were allowed.⁹³

55. The CPUC states that it does not oppose SCE's request for 100 percent CWIP in rate base, stating that it will improve cash flow, assist in financing and reduce uncertainty and financial risk.⁹⁴

c. SCE Answer

56. SCE argues that TANC is attempting to reserve the right to relitigate SCE's recovery of 100 percent of CWIP when SCE makes a section 205 filing, which is contrary to Order No. 679.⁹⁵ SCE states that Order No. 679 gave utilities the option of filing petitions for declaratory order followed by a section 205 filing at a later date or making only a section 205 filing. It adds that declaratory order option would be meaningless if the Commission intended that orders approving such petitions could be reconsidered in the later, implementing section 205 filing. Accordingly, SCE asserts that the Commission should reject TANC's argument.

d. Commission Determination

57. In Order No. 679, the Commission established a policy that allows utilities to include, where appropriate, 100 percent of prudently-incurred transmission-related CWIP in rate base.⁹⁶ It noted that this rate treatment will further the goals of section 219 by providing up-front regulatory certainty, rate stability, and improved cash flow for applicants thereby reducing the pressures on their finances caused by investing in

⁹¹ TANC Protest at 22-23, citing Order No. 679, at P 29, 117.

⁹² *Id.* at 23-24, citing *Commonwealth Edison Co.*, 119 FERC ¶ 61,238, at P 64 (2007) (*ComEd*). TANC notes that SCE has a BBB+ credit rating and a large cash reserve. *Id.*

⁹³ *Id.*

⁹⁴ CPUC Protest at 5; CPUC Protest to Supplemental Filing at 2.

⁹⁵ SCE June 25 Answer at 17.

⁹⁶ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 29, 117.

transmission projects.⁹⁷ As discussed below, we find that SCE has shown a nexus between the proposed CWIP incentive and its investment in the three Projects, and therefore, we will accept SCE's proposal to recover 100 percent of CWIP in rate base, conditioned upon SCE fulfilling the Commission's requirements for CWIP inclusion for these transmission facilities in its future section 205 filing⁹⁸ and bound by the upper end of the zone of reasonableness as determined in that proceeding.

58. Consistent with Order No. 679, we find that authorizing 100 percent of CWIP treatment for SCE would enhance its cash flow, reduce interest expense, assist SCE with financing, and improve SCE's coverage ratios used by rating agencies to determine credit quality by replacing non-cash AFUDC with cash earnings. This, in turn, will reduce the risk of a down grade in SCE's debt ratings. We disagree with TANC's assertion that SCE's Projects do not justify recovery of CWIP in rate base. In Order No. 679, the Commission stated that it will consider each proposal on the basis of the particular facts of the case.⁹⁹ Considering the relative size of SCE's \$2.5 billion investment in these three Projects, as compared to its current transmission rate base of \$1.2 billion, we find that authorization of the CWIP incentive is appropriate to assist in the construction of new transmission facilities.

59. We also find that allowing SCE to recover 100 percent of CWIP in its rate base will result in better rate stability for customers. As we have explained in prior orders,¹⁰⁰ we find that, without CWIP in rate base, a new project has no direct effect on consumer prices until it begins being used to provide service. SCE's Projects are estimated to cost \$2.5 billion and take up to several years to complete. If the Commission did not permit SCE to recover CWIP in rate base, all of SCE's costs of borrowing associated with its \$2.5 billion in investment would be accrued over several years, and then capitalized after the Projects go into service, along with a return of the investment cost through depreciation, thereby producing a rate shock for consumers. By permitting SCE to recover CWIP, the Commission is mitigating this rate shock to consumers.

⁹⁷ *Id.* P 115.

⁹⁸ *Construction Work in Progress for Public Utilities; Inclusion of Costs in Rate Base*, Order No. 298, FERC Stats. & Regs. ¶ 30,455 (1983), *order on reh'g*, Order No. 298-B, FERC Stat. & Regs. ¶ 30,524 (1983).

⁹⁹ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 117.

¹⁰⁰ *See, e.g., AEP*, 116 FERC ¶ 61,059 at P 59, *order on reh'g*, 118 FERC ¶ 61,041 at P 27.

60. In regard to SCE's assertion that CWIP is not an "incentive rate," we clarify that CWIP is an incentive ratemaking treatment under Order No. 679. In Order No. 298, the Commission permitted utilities to request up to 50 percent of CWIP in rate base to recover carrying charges that utilities incur from investing in new construction projects. In particular, the Commission noted that CWIP is intended to offset the bias against new investment by easing the difficulty in financing construction programs.¹⁰¹ In Order Nos. 679 and 679-A, the Commission specifically identified certain rate treatments as incentives that would encourage transmission investment consistent with the goals of section 219. In that respect, the Commission stated that recovery of up to 100 percent of prudently-incurred CWIP in rate base is an incentive that will be considered under Order No. 679.¹⁰²

61. Finally, in its future section 205 filing to implement a stand-alone balancing account mechanism to recover the CWIP revenue requirement, SCE must provide a detailed explanation of its accounting methods and procedures to: (i) implement the stand-alone balancing account, (ii) comply with 18 C.F.R. § 35.13(h)(38) and § 35.25, and (iii) maintain comparability of financial information.¹⁰³

2. Incentive for Recovery of Abandoned Plant Costs

a. SCE's Proposal

62. Pursuant to Order No. 679, SCE seeks 100 percent recovery of its prudently-incurred costs for the DPV2 Project if the project is cancelled or abandoned in the limited circumstance that SCE is unable ultimately to obtain necessary approvals to build the DPV2 Project from the ACC or the United States Fish and Wildlife Service (USFWS), for reasons outside SCE's control. SCE seeks the same recovery for the Tehachapi Project if, for reasons outside of SCE's control, the project, or a portion thereof, is cancelled or abandoned due to an action or inaction by a governmental authority or

¹⁰¹ See case cited *supra* note 98.

¹⁰² See, e.g., Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 26, where the Commission stated that "each reform adopted by the Final Rule constitutes an 'incentive' as that term is used by section 219." (emphasis added).

¹⁰³ See, e.g., *American Transmission Co., LLC*, 105 FERC ¶ 61,388 (2003), *order providing clarification*, 107 FERC ¶ 61,117, at P 16-17 (2004) and *Trans-Allegheny Interstate Line Co.*, 119 FERC ¶ 61,219, at P 44-45 (2007), *denying rehearing*, 121 FERC ¶ 61,009 (2007) (*TrAILCo*).

regulatory agency or the CAISO that makes SCE's completion of these projects infeasible.¹⁰⁴

63. SCE maintains that the DPV2 Project demonstrates a clear nexus for abandoned plant recovery because it requires approvals from multiple regulatory bodies, including the USFWS, the CPUC, and the ACC. SCE contends that the multistate nature of the DPV2 Project, along with the requirement to obtain federal approvals, results in a higher regulatory risk than projects requiring approval from only one regulatory body.

64. SCE requests 100 percent abandoned plant recovery for Segments 3 through 11 of the Tehachapi Project. It states that, prior to the issuance of Order No. 679, the Commission approved 100 percent abandoned plant cost recovery only for Tehachapi Segments 1 and 2.¹⁰⁵ SCE argues that it meets the nexus for abandoned plant cost recovery because it has not received all of the necessary federal, state, and local approvals for this Project, thus creating increased regulatory risk. SCE states that it will incur costs in preparing for these governmental approvals. For example, SCE needs to prepare a study of transmission routings, needs to negotiate for ROWs, and faces many additional environmental and siting hurdles.¹⁰⁶ Given these uncertainties, SCE contends that the Tehachapi Project presents risks that warrant abandoned plant cost recovery and also satisfies the nexus test for abandoned plant recovery.

65. In response to the Deficiency Letter's request that SCE address whether certain incentives reduce the risk designed to be mitigated by other incentives, SCE states that recovery of 100 percent abandoned plant costs should not affect its request for ROE adders. It claims that recovery of abandoned plant costs mitigates against the risks in obtaining regulatory or other approvals for the Projects, but does not mitigate against other risks inherent in constructing the Projects. SCE argues that the Commission has effectively acknowledged that the risks mitigated by the two incentives are not the same by granting both ROE incentive adders and 100 percent abandoned plant cost recovery in

¹⁰⁴ Petition at 43. SCE does not seek this incentive for the Rancho Vista Project.

¹⁰⁵ *Southern California Edison Co.*, 112 FERC ¶ 61,014, at P 65 (2005) (*Antelope Order*). In that proceeding, the Tehachapi Project was referred to as the "Antelope Transmission Project," consisting of three segments. The Commission granted SCE's request for recovery of all its prudently-incurred costs in the case of abandonment or cancellation of the Antelope Project facilities for Segments 1 and 2, but found that Segment 3 was not a network upgrade. Therefore, the Commission determined that Segment 3 was not eligible for rolled-in transmission rate treatment. *Id.* P 42, 57-58.

¹⁰⁶ Petition at 46-47.

other orders applying Order No. 679.¹⁰⁷ SCE argues, moreover, that the 100 percent abandoned plant incentive and the ROE adder incentive are effectively mutually exclusive. That is, if the Tehachapi Project cannot be built due to the action or inaction of a regulatory agency or the CAISO, SCE will not receive the ROE adders sought.¹⁰⁸ It states that while 100 percent abandoned plant incentive reduces risk of complete non-recovery, the purpose of the ROE adders is to reward the utility for pursuing complex and difficult projects.

66. Further, SCE contends that, given that much smaller and less risky localized projects in *Duquesne* received both 100 percent abandoned plant and 100-basis point ROE adders, it states that its request for 150-basis point adder, in addition to the 100 percent abandoned plant cost recovery, is fully justified.¹⁰⁹

b. Protests

67. TANC contends that SCE is not eligible for recovery of any abandoned plant costs associated with the DPV2 Project because SCE's actions with respect to the DPV2 Project raise significant questions as to whether abandonment due to lack of approval from the ACC was within SCE's control. According to TANC, the ACC rejected SCE's application to construct the DPV2 Project, in part, due to SCE's failure to comply with the ACC's directive not to begin any construction of the DPV2 Project in Arizona. The ACC also fined SCE \$4.8 million for failure to follow the ACC's instructions. TANC asserts that noncompliance with regulatory authorities is within SCE's direct control, and rejection of the DPV2 Project by the ACC was a foreseeable consequence of such noncompliance. As such, argues TANC, SCE should not be eligible for recovery of abandoned plant costs for the DPV2 Project under Order No. 679 because of its failure to comply with the directives of state regulators.¹¹⁰

68. TANC additionally argues that SCE should not be allowed 100 percent abandoned plant recovery on Segments 3 through 11 of the Tehachapi Project because the Commission has already determined that Segment 3 is not eligible to receive 100 percent abandoned plant recovery and SCE's Petition is a collateral attack of the Commission's order in that proceeding.¹¹¹ Additionally, TANC argues that SCE does not need the

¹⁰⁷ Supplemental Filing at 4, citing, *Duquesne*, 118 FERC ¶ 61,087.

¹⁰⁸ *Id.* at 4.

¹⁰⁹ *Id.* at 5.

¹¹⁰ TANC Protest at 21.

¹¹¹ *Id.* at 22.

Commission's assurance of recovery for abandoned plant costs because it has already received similar assurance from the CPUC.¹¹² According to TANC, since SCE has the ability to recover abandoned plant cost, allowing SCE to recover abandoned plant costs for the Projects through two mechanisms would be unjust and unreasonable.

69. The CPUC states that it does not oppose SCE's request for abandoned plant recovery, stating that it will reduce uncertainty and financial risk.¹¹³

c. SCE Answer

70. SCE argues that TANC is incorrect in stating that the Commission determined that SCE could not obtain 100 percent abandoned plant recovery for Tehachapi Segment 3. SCE clarifies that in the *Antelope Order*, the Commission did not make a determination on recovery of prudently-incurred costs for Segment 3 because it was denying SCE's petition to roll in costs for Segment 3.¹¹⁴

d. Commission Determination

71. In Order No. 679, we found that this incentive is an effective means to encourage transmission development by reducing the risk of non-recovery of costs.¹¹⁵ We will grant SCE's request for recovery of 100 percent of prudently-incurred costs associated with abandonment of the DPV2 or Tehachapi Projects, provided that the abandonment is a result of factors beyond the control of SCE, which must be demonstrated in a subsequent section 205 filing for recovery of abandoned plant.¹¹⁶

72. We find that SCE has shown, consistent with Order No. 679, a nexus between the recovery of prudently-incurred costs associated with abandoned transmission projects and its planned investment. We find that this incentive will be an effective means to encourage the completion of SCE's Projects. For example, besides its scope and size, the DPV2 Project requires approvals from multiple jurisdictions, along with various federal

¹¹² According to TANC, SCE has the protection of section 399.25 of the California Public Utilities Code that provides for the recovery of costs from retail ratepayers for those costs disallowed at the Commission.

¹¹³ CPUC Protest at 5, CPUC Protest to Supplemental Filing at 2.

¹¹⁴ SCE June 25 Answer at 30-31, citing *Antelope Order*, 112 FERC ¶ 61,014 at 57-58.

¹¹⁵ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 163.

¹¹⁶ *Id.* P 165-66.

approvals. Dependence upon approval by multiple jurisdictions introduces a significant element of risk to the DPV2 Project that is not faced by utilities building transmission facilities within a single jurisdiction. Additionally, as explained by SCE, it is still uncertain whether SCE will ultimately secure approval from the USFWS and the ACC. Under these circumstances, we believe that authorization to expense and recover all prudently-incurred development and construction costs in the case of abandonment is appropriate to encourage this new investment and is fully consistent with Order No. 679.

73. We disagree with TANC's contention that SCE should not be eligible for recovery of abandoned plant costs for the DPV2 Project under Order No. 679 because of its failure to comply with the directives of the ACC. Order No. 679 places no such restriction on an applicant seeking recovery of abandoned plant costs. Moreover, SCE has limited itself to recovery of abandoned plant costs to circumstances out of its control. Therefore, TANC's request is premature because the Commission will not determine the justness and reasonableness of SCE's abandoned plant costs, if any, unless and until SCE seeks such recovery in a section 205 filing. Order No. 679 specifically reserves the prudence determination for the later section 205 filing which every utility is required to file if it wishes to make a case for abandonment recovery.¹¹⁷ At this stage of the proceeding, we are granting this incentive, subject to a future section 205 filing making the appropriate demonstration. TANC's concerns are more appropriately reserved for that later proceeding.

74. We reject TANC's argument that SCE's Petition is a collateral attack on the *Antelope Order*, which determined that Segment 3 of the Tehachapi Project should not receive 100 percent abandoned plant recovery. While the Commission found that Segment 3 was not eligible for rolled-in rate treatment due to its configuration as a radial line, it stated that it did not need to address "SCE's request herein for an advance prudence determination and its request to recover prudently-incurred costs" with respect to Segment 3.¹¹⁸ However, the project has now been redesigned to be a network facility and now qualifies for rolled in rate treatment under Commission policy.¹¹⁹ Further, the full project has been approved by the CAISO's transmission planning

¹¹⁷ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 165-66.

¹¹⁸ *Antelope Order*, 112 FERC ¶ 61,014 at P 57.

¹¹⁹ In *California Independent Sys. Oper. Corp.*, 119 FERC ¶ 61,061 (2007) (April 19 Order), the Commission granted the CAISO's petition for declaratory order seeking conceptual approval of a new mechanism to finance the construction of interconnection facilities to connect location-constrained resources to the CAISO-controlled grid.

process. As such, SCE's request for this incentive for Segment 3 does not constitute a collateral attack on the Commission's prior ruling in the *Antelope Order*.

75. Finally, we reject TANC's argument that SCE does not need the Commission's assurance of recovery for abandoned plant costs because it has already received similar assurance from the CPUC. We note that the costs recoverable under the state regulatory construct and this Commission's are not the same, and therefore, should not be presumptively dismissed as duplicative without further consideration. If parties are concerned that the abandoned plant costs SCE seeks to recover have already been recovered through retail rates, they should raise that claim when SCE makes its section 205 filing to recover the costs through wholesale rates.

3. ROE Incentives

a. SCE's Proposal

76. SCE requests that the Commission grant a 150-basis point ROE adder for the DPV2 and Tehachapi Projects and a 100-basis point ROE adder for the Rancho Vista Project. SCE asserts that the Projects as a total package meet the nexus requirement under Order No. 679. SCE contends that the Projects face significant and unique financial, regulatory and other risks.¹²⁰ Also, SCE states that all three Projects are beneficial and cost-effective, will reinforce and expand the transmission capacity of the CAISO-controlled grid, and therefore benefit all users of the CAISO-controlled grid.

77. SCE states that over the next five years, it expects to spend about \$4.3 billion in transmission investment, which represents a level of investment that is more than triple the size of SCE's existing transmission rate base of \$1.2 billion.¹²¹ SCE's total projected expenditures for the DPV2, Tehachapi and Rancho Vista Projects comprise \$2.5 billion. It contends that such an unprecedented capital investment program presents a significant financing challenge for SCE because it increases the risk that SCE faces. Therefore, granting these ROE incentives will enhance SCE's cash flow, improve SCE's financial metrics, and support SCE's overall credit quality.

78. Additionally, SCE contends that it faces regulatory and other risks for these Projects. For example, SCE notes that it faces risks and challenges due to internal competition for financing with other projects. In particular, it explains that if a utility undertakes multiple significant capital-intensive projects, "each non-routine transmission project likely will be subject to greater internal scrutiny and place even greater stress on

¹²⁰ SCE Petition at 32.

¹²¹ *Id.* at 1-2.

the company management than otherwise would be the case.”¹²² Additionally, the projects may impact the company’s ability to secure financing for transmission projects as the utility’s borrowing needs increase. At the same time, SCE is undertaking significant investment in generation and distribution infrastructure, including a “Smart Connect” program for advanced metering that costs \$1.7 billion.¹²³ Further, SCE asserts that projects involving siting issues, including ROW approvals, merit an ROE adder to ensure that utilities are willing to expend not only the time, money, and legal resources to obtain ROWs, but also to reflect the potential loss of goodwill with the public associated with this condemnation.¹²⁴

79. Thus, SCE argues that the requested ROE incentives are appropriate because they reasonably compensate SCE for the risks attributable to the Projects, aid in the financing of the Projects, preserve SCE’s credit quality, and facilitate the completion of the Projects.

80. SCE also asserts that it has narrowly tailored its request by asking for only three of the seven investment incentives made available in Order No. 679 for the Tehachapi and DPV2 Projects, and only two of the seven available incentives for the Rancho Vista Project. According to SCE, each of those incentives serves to mitigate distinct risks SCE faces in constructing the Projects, and taken together, those incentives will encourage SCE to continue to place a high priority on these transmission investments in its capital budgeting process.¹²⁵ SCE further states that the Commission has approved all three of the requested incentives, and more, for other transmission projects that were less challenging and involved fewer capital dollars than the projects for which SCE is seeking incentives.¹²⁶

81. For the DPV2 and Tehachapi Projects, SCE contends that they are entitled to a 150-basis point ROE adder because they are more expansive, complex, and risky than the Rancho Vista Project or the project approved in *Duquesne*. SCE states that the DPV2 Project requires approvals from two state commissions, namely the CPUC and ACC, and a federal authorization from the USFWS to construct through a national wildlife

¹²² Supplemental Filing at 13.

¹²³ *Id.*

¹²⁴ *Id.* at 20.

¹²⁵ *Id.* at 2-3.

¹²⁶ *Id.* at 2. For example, SCE notes that in *Duquesne*, the Commission granted an enhanced ROE, 100 percent CWIP and 100 percent abandoned plant recovery.

refuge.¹²⁷ SCE notes that approvals from these authorities are difficult to obtain, creating unique risks and challenges that go beyond those normally associated with a routine transmission investment.

82. Also, SCE notes that the Tehachapi Project consists of numerous segments being constructed over several years, and that it has not received all of the regulatory approvals that will be needed to construct all eleven segments. In particular, SCE states that it still needs to obtain local and federal approval, including a CPCN for segments 4-11 from the CPUC, ROWs, and other permits.¹²⁸

83. SCE states that the magnitude of the DPV2 and Tehachapi Projects is far greater than most transmission projects. SCE argues that while the projects the Commission approved in *Duquesne* were intended to improve service within the Duquesne system for its customers, the three Projects proposed by SCE will not only enhance reliability on the SCE system, they will also enhance CAISO grid reliability for all CAISO grid users and increase their ability to access renewable and other low cost resources located outside of the load centers.¹²⁹ Given the inherent risks and the size of these Projects that represent a much greater risk than the investment in *Duquesne*, SCE argues that a 150 basis point adder is warranted.¹³⁰

84. In its Supplemental Filing, SCE further explains the risks and challenges facing each project.

i. DPV2 Project

85. SCE asserts that the DPV2 Project is subject to the following risks: (1) large size of financial investment; (2) involvement of multiple entities/jurisdictions; (3) regulatory risks; (4) internal competition for financing with other projects; (5) siting; and (6) long lead times.

86. SCE notes that it needs to finance and manage a \$560 million investment, for which it needs to raise capital through the capital markets. It argues that projects

¹²⁷ *Id.*

¹²⁸ *Id.* at 36.

¹²⁹ *Id.* at 37.

¹³⁰ *Id.* at 36-37.

involving large dollar investment merit an ROE adder to ensure that utilities are willing to entertain the risks of obtaining financing for such projects.¹³¹

87. Additionally, the DPV2 Project required approval from numerous entities, including the CAISO and the Southwest Transmission Expansion Plan (STEP).¹³² SCE states that these approvals involved many steps and that each step presented risks and challenges as SCE tried to convince the public and the CAISO that the Project should be undertaken. SCE asserts that projects involving many entities merit an ROE adder to ensure that utilities are willing to put forth the extensive time and effort associated with ensuring that stakeholders' interests are satisfied.¹³³

88. SCE states that the DPV2 Project also faced regulatory risks due to the necessity of obtaining approvals from both state and federal entities, including the CPUC, the federal government (under the National Environmental Policy Act of 1969), the ACC, the U.S. Bureau of Land Management (BLM) and the USFWS. SCE asserts that the CPUC's CPCN proceedings presented innumerable risks and challenges, as evidenced by their length and expense,¹³⁴ and notes that it had to deal with a wide range of issues, including archaeological sites, noise issues, air quality, and electromagnetic fields.¹³⁵ SCE states that the Arizona Siting Committee's proceeding was likewise rigorous, requiring numerous public hearings before it granted approval for the DPV2 Project. SCE notes that despite the Arizona Siting Committee's approval, the ACC denied the CEC for the

¹³¹ *Id.* at 17.

¹³² According to SCE, STEP is a subregional planning group with 300 members. Projects that are approved by STEP must go through the Transmission Economic Assessment Methodology, which was the subject of four months of public stakeholder process. SCE states that STEP analyzed 26 combinations of facilities to increase transmission capability between Southern California and the rest of the West. *Id.* at 18, citing Petition, Exhibit D.

¹³³ *Id.*

¹³⁴ SCE states it filed for a CPCN in April 2005, and that the CPUC issued its Final Decision approving DPV2 in January 2007. SCE also notes that the ratepayer advocate alone spent over \$300,000 on consultants in this case. *Id.*, citing SCE Petition, Exhibit G at 101-102.

¹³⁵ *Id.* at 19, citing to SCE Petition, Exhibit G at 78-92.

DPV2 Project.¹³⁶ SCE asserts that the necessity of obtaining approvals from numerous entities increases the challenges and risks associated with completing the transmission project. Therefore, it contends that such projects merit ROE adders to ensure that utilities are willing to expend the time, money and legal resources to obtain the necessary approvals.¹³⁷

89. SCE notes that the DPV2 Project faced many other siting challenges, including an ROW from the BLM, permits from other state, federal, and local jurisdictions, and a compatibility determination from the USFWS.¹³⁸

90. Finally, SCE states that long lead times present financial risks because a significant time period may pass before any costs are recovered. SCE notes that discussions about the DPV2 Project began in the STEP process during 2003, and that prior to the ACC's decision, the projected in-service date of the DPV2 Project was 2009, four years after the approval by the CAISO and CPUC. SCE notes that the ACC decision rejecting the Project will result in another delay in the in-service date.¹³⁹ SCE notes it faces the challenge of internal competition for financing with other projects.

ii. Tehachapi Project

91. SCE asserts that the Tehachapi Project is subject to risks and challenges that include: (1) large size of financial investment; (2) involvement of multiple entities/jurisdictions; (3) siting; (4) internal competition for financing with other projects; (5) long lead times; and (6) regulatory risks.

92. According to SCE, the Tehachapi Project is the most costly single transmission project that SCE has ever undertaken. SCE notes that to obtain approval from the CAISO, SCE had to undertake the challenge of proving to the CAISO board and stakeholders that the project was needed and that it was the best among many alternatives. The Tehachapi Project also involved many entities that were interested in, and often opposed to, the unique financing proposals developed by both SCE and the CAISO. The Tehachapi Project also presents siting challenges as it requires ROWs to be obtained in various locations. According to SCE, portions of the Tehachapi Project run

¹³⁶ SCE notes that given that reconsideration has been denied by the ACC, SCE and other supporters of the DPV2 project are left with several options, all of which raise costs and increase risks. *Id.*

¹³⁷ *Id.* at 19-20.

¹³⁸ *Id.*, citing SCE Petition, Exhibit G at 9.

¹³⁹ *Id.*

through dense urban areas where SCE has faced significant public opposition, and some portions also require the expansion of current ROWs through lands managed by the BLM. SCE argues that obtaining the necessary ROWs is both protracted and challenging, and that obtaining ROWs, which often must be obtained through condemnation, also involves financial, legal, and regulatory risks and challenges.

93. With respect to long lead times raising financial risk, SCE states that the Tehachapi Project was conceived in 2002,¹⁴⁰ the first elements of the project are planned to be in service in December 2008, and the final element of the project is expected to be in service about November 2013. SCE also states that the Tehachapi Project also faces internal competition for financing with other projects.

94. According to SCE, the regulatory risks faced by the Tehachapi Project are largely due to environmental reviews under the California Environmental Quality Act (CEQA) and the National Environmental Policy Act of 1969 as part of the CPCN process at the CPUC. SCE highlights that it is required to mitigate certain impacts of the Project, and notes that environmental concerns cause the need to study a number of routing approaches. SCE notes that such approvals increase costs. To underscore how complex and challenging a CPCN proceeding can be, SCE notes that it filed its application for Segments 2 and 3 on December 9, 2004 and the CPUC issued its final decision on March 15, 2007.¹⁴¹

iii. Rancho Vista Project

95. SCE believes that the appropriate ROE adder for the Rancho Vista Project is a 100-basis point, based on the Commission's determinations in *Duquesne*. It notes that the risks associated with the Rancho Vista Project are on par with the risks described in *Duquesne* for its project.¹⁴² SCE states that the Rancho Vista Project is not routine, and includes the construction of the first new 500 kV substation by SCE in over 20 years. As in *Duquesne*, SCE states that it is under no state obligation to construct the Rancho Vista Project and the estimated cost for the Rancho Vista Project is the "same order of

¹⁴⁰ *Id.* at 16, citing Petition, Exhibit J at 5.

¹⁴¹ SCE notes that Tehachapi siting and approval issues required SCE to address issues related to the relocation of residences, land use, noise, air quality, electromagnetic fields, visual impacts, and forest management.

¹⁴² See *Duquesne*, 118 FERC ¶ 61,087 at P 12 (describing the risks involved in the project).

magnitude as the project proposed in *Duquesne*.”¹⁴³ Therefore, given the 100-basis point adder granted in *Duquesne*, SCE argues that similar rate treatment is warranted for the Rancho Vista Project.

96. According to SCE, the risks and challenges facing the Rancho Vista Project are: (1) the significant level of investment (\$200 million); (2) internal competition for financing with other projects; (3) the increase in transfer capability; (4) the voltage size of the substation; (5) the rarity of the project; and (6) the long lead time.

97. SCE states that, as a general rule, the higher the value of the investment, the less routine it is. In that respect, it notes that projects of \$20 million or more are rare and must be approved by the CAISO.¹⁴⁴ Within that category, the CAISO board approved only 17 projects of \$20 million or more within the 2000-2004 period.¹⁴⁵ SCE additionally notes that the Rancho Vista Project will increase transfer capability on the congested South of Lugo path by 300 MW. It asserts that the greater the increase in transfer capacity, the less routine a project is. SCE also notes it has not constructed such a large electrical-sized project, a 500 kV substation, for more than 20 years.¹⁴⁶ SCE cites the long lead time of the Rancho Vista Project, noting that SCE first proposed the substation in 2004. Finally, SCE notes the challenge of internal competition for financing with other projects.

98. SCE also provides a contrast of these risks with the risks faced by more routine projects. SCE notes that in a typical transmission plan, many projects are in the \$1 million to \$10 million price range, that many projects do not require the involvement of multiple entities and jurisdictions, and that some projects do not require the utility to acquire ROW or obtain governmental permits for siting authority. Finally, SCE highlights that California’s “well-recognized status as having a pro-environment

¹⁴³ Petition at 35, citing *Duquesne*, 118 FERC ¶ 61,087 at P 52 (noting that the *Duquesne* project will require an investment of approximately \$184 million).

¹⁴⁴ SCE also cites the \$20 million threshold under the FERC-730 reporting requirement for utilities to report transmission investment data. Supplemental Filing at 11-12.

¹⁴⁵ In its Supplemental Filing, SCE provides excerpts from the CAISO’s most recent Final Transmission Expansion Plan (2007) that show cost estimates of CAISO-approved projects for PG&E and SCE, which shows that the Rancho Vista Project is among the most expensive projects. See Petition at 11-12, Exhibit P.

¹⁴⁶ SCE notes that there are currently only eight 500 kV substations on SCE’s system, and just 19 on the entire CAISO grid. Supplemental Filing at 10.

population and being a leading state in environmental protection matters means that any project that requires environmental review is fraught with political risk.”¹⁴⁷

b. Protests on ROE Adders

i. Comparing Relative Size of Projects to Projects Approved in Prior Cases

99. TANC contends that the Commission’s findings in *Duquesne* do not support SCE’s request for ROE adders because, according to TANC, the Commission’s approval in *Duquesne* was based on the magnitude of the transmission investment related to the utility’s current net transmission plant in service.¹⁴⁸ TANC contends that SCE’s costs represent only approximately 10 percent of SCE’s total electric plant balance,¹⁴⁹ compared to Duquesne’s 76 percent of current net transmission plant in service.¹⁵⁰ Additionally, TANC notes that in *ComEd*, the Commission rejected ComEd’s petition for incentive rate treatment in part because the total proposed investment amounted to “only 14 percent of ComEd’s net transmission plant, and is not multiples of, but equivalent to, the amount of expenditures it has made over four years.”¹⁵¹ Accordingly, TANC contends that SCE’s transmission investment at 10 percent of total electric plant balance is also insufficient.¹⁵²

ii. Disagreeing With Level of Stated Regulatory, Siting and Political Risks

100. Parties assert that SCE exaggerates the risks and challenges it faces in constructing the Projects. Six Cities contend that the risks and challenges that SCE cites for its

¹⁴⁷ *Id.* at 21.

¹⁴⁸ TANC Protest at 17.

¹⁴⁹ *Id.*, citing SCE 2006 FERC Finance Report Form No. 1 at 206-07, lines 47-104.

¹⁵⁰ *Id.*, citing *Duquesne*, 118 FERC ¶ 61,087 at P 52.

¹⁵¹ *Id.*, citing *ComEd*, 119 FERC ¶ 61,238 at P 66.

¹⁵² TANC asserts that because the Commission does not distinguish among electric plant in service in determining an allowed rate of return, total electric plant is a more suitable measure of the magnitude of an investment to the financial capability of a utility. *Id.* at 18 (footnote omitted).

Projects are generic to many transmission projects.¹⁵³ CEOB also asserts that the risks involved in SCE's Projects, i.e., multiple entities and jurisdictions, siting challenges, and long lead times, are nothing new; rather, these are issues that any company will face in constructing any type of energy asset in California. Thus, according to CEOB, SCE's risks represent the normal course of business in California.¹⁵⁴ The CPUC additionally objects to SCE's assertion of siting risks, stating that obtaining siting approvals are a routine part of the transmission business.¹⁵⁵ Accordingly, the parties claim that SCE's Petition does not establish unusual risks or challenges sufficient to warrant incentives under Order Nos. 679 and 679-A.

101. The CPUC argues that the regulatory risks faced by SCE are minimal. It contends that the Commission helped SCE by granting 100 percent rate recovery for any stranded costs for its investment in Tehachapi Segments 1 and 2.¹⁵⁶ Moreover, it states that the CPUC helped facilitate and shepherd the Tehachapi Project by making the CPCN process for Segments 1-3 extremely streamlined and efficient. The CPUC states that both the Rancho Vista Project and the Tehachapi Project are located entirely within the State of California so they do not face exceptional problems of multiple state and local authority approvals. Further, the CPUC notes that transmission is the least risky of an integrated utility's three components (generation, transmission and distribution), and accordingly, the additional ROE adder sought by SCE would reward its least risky investment capital much higher than its overall company is receiving from its investments.¹⁵⁷

102. With regard to SCE's stated political risk of "the potential loss of goodwill with the public often associated with condemnation activities," the CPUC asserts that the loss

¹⁵³ Six Cities Protest to Supplemental Filing at 4; *see also* SWP Protest to Supplemental Filing at 9-10.

¹⁵⁴ CEOB Protest to Supplemental Filing at 3.

¹⁵⁵ CPUC Protest to Supplemental Filing at 11. The CPUC states that it is routine for transmission lines to cross many jurisdictions, including city, state, county and federal property. It also states that "[i]f obtaining ROWs in multiple locations was a qualifier for ROE adders, then nearly every transmission project in the country would be eligible for an enhanced ROE." Moreover, it adds that SCE has eminent domain power under California law. *Id.*

¹⁵⁶ *Id.* at 13, citing *Antelope Order*, 112 FERC ¶ 61,014.

¹⁵⁷ *Id.* at 10. The CPUC notes that it has approved SCE's overall ROE of 11.7 percent. The CPUC also argues that large dollar investments bring more rewards, and therefore, the more expensive the project, the less deserving it is of rate incentives. *Id.*

of goodwill does not in any way affect the company's financial risk because SCE is a monopoly and has guaranteed rate recovery.¹⁵⁸ Finally, the CPUC disagrees that long lead times are a risk justifying ROE adders, asserting that long lead times are a routine part of transmission construction and moreover, such risk is eliminated by CWIP and abandoned plant incentives.

103. The CPUC argues that the DPV2 and Tehachapi applications have been the result of a coordinated process with both the CPUC and the CAISO, and that SCE should not be additionally "rewarded" for conduct it would have had to pursue under its service obligations.¹⁵⁹ Similarly, CEOB argues that all three Projects are routine investments because SCE has the legal obligation to build the transmission upgrades and expansions once it has received approvals from the CPUC and the CAISO.¹⁶⁰ CEOB asserts that any projects approved by the CPUC and the CAISO must be designated as routine investments, and therefore, SCE is only complying with its obligation to serve.¹⁶¹ CEOB and the CPUC assert that if necessary, the Commission should compel SCE action pursuant to California Public Utilities Code Section 761, which grants the CPUC broad authority to require SCE to construct facilities necessary to serve its customers.

¹⁵⁸ *Id.* at 11-12.

¹⁵⁹ CPUC Protest to Supplemental Filing at 4-5.

¹⁶⁰ CEOB Protest at 5. According to CEOB, SCE previously acknowledged its obligation to serve the public and to build all approved transmission system upgrades and expansions when it joined with PG&E and SDG&E to create the CAISO.

¹⁶¹ CEOB asserts that portions of the Tehachapi Project may not constitute routine investment because TWRA presents a unique circumstance regarding the implementation of California's policy on renewables. Due to uncertainty of whether California will meet its goals on RPS and greenhouse gas legislation, portions of the Tehachapi Project may face risks unseen with routine transmission investment in California. CEOB notes that such uncertainties may justify a risk premium, and therefore, proposes a temporary and conditional incentive to mitigate the need for a risk premium. In that regard, CEOB contends that segments of the Tehachapi Project that must be built to interconnect wind generation to the CAISO grid should receive incentives for two years. It states that the two-year period will allow California to design into state law a mechanism that better guarantees costs for facilitating its greenhouse and renewable portfolio policies. *Id.* at 8-9.

iii. Disagreeing with Stated Financial Risk

104. Parties argue that SCE has not demonstrated a financial risk that would warrant the requested incentives. Specifically, Six Cities, TANC and the CPUC state that the Commission, in granting Duquesne's petition, found that Duquesne had provided sufficient evidence detailing: (1) how the financing of Duquesne's project would impact Duquesne's credit quality; and (2) how the incentive-based rate treatments would help preserve Duquesne's credit ratings and support its ability to economically issue debt and raise equity.¹⁶² However, they contend that, unlike in *Duquesne*, SCE has not presented any evidence that the requested incentives are needed to mitigate specific financial challenges such as borrowing costs due to a minimum level investment rating.

105. The CPUC states that in *ComEd*, the Commission found that the applicant did not make a sufficient showing of financial risks given that the company has an investment-grade rating, and the applicant failed to provide a cash flow analysis to demonstrate that its credit rating will be negatively impacted.¹⁶³ In that respect, the CPUC contends that the same characteristics that distinguished *ComEd* from *Duquesne* – the lack of financial need or any proper financial analysis on ROE impacts – are also reasons why SCE's ROE proposals should be denied.

106. Additionally, parties argue that SCE has not demonstrated a need for the ROE adders to obtain the financing necessary for the transmission investment. The CPUC and Six Cities assert that SCE has not demonstrated that the cost of the Projects harms the company's finances or that it has difficulty raising capital. They state that SCE enjoys a solid credit rating of BBB+, which is a stable credit rating for a utility company.¹⁶⁴

107. Further, Metropolitan contends that SCE has not established a *prima facie* showing that its financial conditions will be adversely affected by the Projects it has undertaken or by the absence of incentive rates.¹⁶⁵ TANC asserts that SCE has no risk associated with its investments because it can recover 100 percent of its investment costs

¹⁶² E.g., Six Cities Protest to Supplemental Filing at 9, citing *Duquesne*, 118 FERC ¶ 61,087 at P 52-53, 55, 59 & n. 41-42, 45; TANC Protest at 17-18; CPUC Protest to Supplemental Filing at 5-7.

¹⁶³ CPUC Protest to Supplemental Filing at 6-7, citing *ComEd*, 119 FERC ¶ 61,238 at P 64.

¹⁶⁴ CPUC Protest to Supplemental Filing at 10; Six Cities Protest to Supplemental Filing at 6.

¹⁶⁵ Metropolitan Protest at 9.

from its retail ratepayers. TANC and Metropolitan state that, under Section 399.25 of the California Code,¹⁶⁶ the CPUC authorized a 100 percent cost recovery for the DPV2 Project and the Tehachapi Project (Segments 1-3) because they help California achieve its legislated renewable power goals.¹⁶⁷ TANC notes that the Rancho Vista Project will presumably also be eligible for cost recovery, and as such, SCE can recover all of the transmission investment from retail ratepayers. The CPUC asserts that this backstop mechanism greatly reduces SCE's risk and should be considered when analyzing whether or not SCE's transmission projects warrant ROE adders.¹⁶⁸

iv. Protests Specific to the DPV2 Project Nexus

108. The CPUC states that it has helped facilitate the DPV2 Project, thus reducing the complexity and riskiness of the Project on the California side. The CPUC argues that despite the ACC rulings, the DPV2 Project's risk is mitigated by SCE's ability to recover abandoned plant cost and CWIP incentives.¹⁶⁹ Moreover, according to the CPUC, despite the ACC's denial of the DPV2 Project, it is confident the project will be built because the ACC's decision violates the Commerce Clause of the United States Constitution,¹⁷⁰ and the Supreme Court has already ruled against a similar state action.¹⁷¹

109. SWP argues that the DPV2 Project will be built regardless of whether the incentives are granted. According to SWP, SCE first presented a report to the CAISO regarding the DPV2 Project in 2004, and the project was a subject of the CAISO Board Report in April 2005, before the Notice of Proposed Rulemaking on Order No. 679 was issued. Therefore, SWP states that this refutes any contention that there is a nexus between the investment being made and the incentives requested.

¹⁶⁶ Cal. Pub. Util. Code § 399.25 (2007). Under this section, the CPUC has the authority to implement a backstop cost mechanism, which allows utilities to recover through retail rates any costs of facilities that are not approved by the Commission for recovery through transmission rates.

¹⁶⁷ TANC Protest at 19; Metropolitan Protest at 9.

¹⁶⁸ CPUC Protest at 10.

¹⁶⁹ CPUC Protest to Supplemental Filing at 13-14.

¹⁷⁰ U.S. CONST. art. 1, § 8, cl.3.

¹⁷¹ CPUC Protest to Supplemental Filing at 14, citing *New England Power Co. v. New Hampshire*, 455 U.S. 331, 338 (1982).

110. Additionally, SWP argues that SCE's request for incentive rate treatment for the DPV2 Project is premature. SWP notes that SCE has entered into negotiations with the ACC to explore options for building the line. According to SWP, "[t]hese actions strongly suggest that the iteration of the DPV2 line envisioned in SCE's Petition is no longer certain, and that SCE's request is therefore premature at best."¹⁷²

v. **Protests Specific to the Tehachapi Project Nexus**

111. Parties claim that the Tehachapi Project facilities are interconnection facilities as defined in Order No. 2003.¹⁷³ They argue that, under an April 19, 2007 Commission Order,¹⁷⁴ SCE's facilities (including portions of the Tehachapi Project) should not be eligible for any type of incentive rate treatment. They assert that there is no risk to these facilities because SCE is assured that all costs associated with the construction of the trunkline facilities will be recovered through the CAISO's Transmission Access Charge.¹⁷⁵ Under the April 19 Order, all users of the California-controlled grid would pay the initial costs of certain non-network facilities and portions of the Tehachapi Project that meet the criteria for this special rate treatment. SWP argues that in approving the special financing mechanism for Participating Transmission Owners within the CAISO, the Commission did not contemplate an additional large financial benefit.¹⁷⁶ Therefore, Golden State and SWP argue that providing additional incentives in this proceeding would constitute a bonus or a handout to SCE at ratepayers' expense.¹⁷⁷

¹⁷² SWP Protest to Supplemental Filing at 13-14.

¹⁷³ SWP Protest to Supplemental Filing at 6. TANC states that "SCE itself concedes that certain [S]egments [of the Tehachapi Project] should not qualify for transmission rate incentives." TANC Protest at 14. *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

¹⁷⁴ April 19 Order, 119 FERC ¶ 61,061.

¹⁷⁵ E.g., Golden State Protest at 7; SWP Protest to Supplemental Filing at 6-9.

¹⁷⁶ SWP Protest to Supplemental Filing at 8.

¹⁷⁷ *Id.*; Golden State Protest at 7.

vi. **Protests Specific to the Rancho Vista Project Nexus**

112. Parties claim that the requested incentives for the Rancho Vista Project are not justified because the Project is a routine investment.¹⁷⁸ They state that the proposed Project is a basic upgrade to SCE's system that is necessary to ensure that SCE continues to fulfill its fundamental obligation to serve its growing load reliably and efficiently.¹⁷⁹ They assert that the fact the SCE has not built a 500 kV substation in twenty years does not mean that the Rancho Vista Project presents any unique challenges warranting incentives.¹⁸⁰ Six Cities state that SCE must provide ". . . specific evidence of a risk or challenge or a supported explanation of why it faces a particular risk or challenge."¹⁸¹ It argues that the Rancho Vista Project is a routine upgrade from the existing Mira Loma substation which, in the near future, will be inadequate to serve SCE's growing load.¹⁸² Moreover, the CPUC notes that in the proceeding before the CPUC, SCE portrayed the Rancho Vista Project as being so routine that it asked the CPUC to waive the environmental review.¹⁸³ Therefore, the parties argue that the Rancho Vista Project is an investment that SCE should make in the ordinary course of its business.¹⁸⁴

113. Six Cities further argue that the cost of the Rancho Vista Project does not represent a particularly large investment for SCE. It states that the estimated \$200 million cost for the Rancho Vista project is barely more than the \$184 million project for which the Commission granted transmission incentives in *Duquesne*, "yet SCE is a substantially larger company and does not face the financial challenges that Duquesne experienced as a result of its investment project."¹⁸⁵ Therefore, they claim that the fact

¹⁷⁸ E.g., Six Cities Protest at 5-9; Six Cities Protest to Supplemental Filing at 9-10; CPUC Protest to Supplemental Filing at 7-9; SWP Protest to Supplemental Filing at 9; TANC Protest to Supplemental Filing at 6-7.

¹⁷⁹ E.g., TANC Protest to Supplemental Filing at 6; Six Cities Protest at 5; Six Cities Protest to Supplemental Filing at 9-10.

¹⁸⁰ Six Cities Protest at 5.

¹⁸¹ Six Cities Protest to Supplemental Filing at 9.

¹⁸² Six Cities Protest at 7-8.

¹⁸³ CPUC Protest to Supplemental Filing at 8.

¹⁸⁴ Six Cities Protest at 9, citing Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 60.

¹⁸⁵ Six Cities Protest to Supplemental Filing at 9.

that the Rancho Vista Project is more costly than the Duquesne projects is irrelevant due to the difference in company size. Six Cities request the Commission to reject SCE's request for any transmission incentives for the Rancho Vista Project.

114. TANC objects to SCE's argument that the Rancho Vista Project is not routine because, as a new bulk power network substation, it does more than replace component parts. According to TANC, SCE would have the Commission determine that, because a project consists of installing new facilities that may be larger than the replaced facilities, the project is not routine. TANC contends that SCE has a legal obligation to build transmission upgrades and expansions. TANC argues that "merely labeling" new facilities as not routine fails to demonstrate such, and asserts that SCE is wrong to argue that any "new" project is not routine. Additionally, TANC objects to SCE's argument that because a project requires a large monetary investment the project is not routine. TANC contends that Order Nos. 679 and 679-A do not address the amount of the investment in defining the criteria for determining whether an incentive is appropriate.¹⁸⁶

vii. Protests Regarding Total Package of Incentives

115. Parties assert that SCE did not sufficiently demonstrate a nexus between the incentive being requested and the transmission investment. Therefore, they argue that the package sought is excessive when considered as a whole.¹⁸⁷ Specifically, Parties contend that SCE has not satisfied Order No. 679-A's requirement that an applicant for incentive rate treatment must "demonstrate that the *total* package of incentives is tailored to address the demonstrable risks or challenges facing the applicant."¹⁸⁸ Parties add that SCE discusses why the individual incentives are necessary, but has not attempted to explain the interrelationship among the requested incentives, e.g., how granting CWIP or abandoned plant cost recovery should affect ROE.¹⁸⁹ The CPUC contends that both recovery of CWIP in rate base and abandoned plant costs largely reduce regulatory and economic risks.¹⁹⁰ Six Cities state that, under Order No. 679-A, if some of the incentives in the package reduce the risks of the transmission project, the Commission will take that

¹⁸⁶ TANC Protest to Supplemental Filing at 6-7.

¹⁸⁷ E.g., CPUC Protest at 3-4; Golden State Protest at 4-6; SMUD Protest at 5-6; Six Cities Protest at 9-11; SWP Protest at 14-15.

¹⁸⁸ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 21.

¹⁸⁹ E.g., Golden State Protest at 5; CPUC Protest at 3-4; CEOB Protest at 7.

¹⁹⁰ CPUC Protest at 4. The CPUC claims that "SCE is seeking double recovery for the same risks by seeking an enhanced ROE for risks which are greatly mitigated if not eliminated by the CWIP and abandoned plant incentives." *Id* at 6.

fact into consideration in evaluating the overall package of incentives.¹⁹¹ Hence, parties argue that SCE is not entitled to receive ROE incentive adders in addition to the 100 percent CWIP and abandoned plant recovery.¹⁹²

116. Six Cities also argue that SCE's contention that CWIP treatment is not an incentive, and therefore, cannot be considered as an appropriate alternative incentive to ROE adders is erroneous and inconsistent with the Commission's current policy. It states that Order Nos. 679 and 679-A identified 100 percent CWIP as one of several transmission incentives available for transmission projects. According to Six Cities, SCE's reliance on the Commission's holding in *Boston Edison* that CWIP is not an incentive rate predate the Commission's orders establishing transmission incentives and should not be relied upon to characterize recovery of 100 percent of CWIP in this instance.¹⁹³

117. Parties argue that SCE's Supplemental Filing provides no new support to justify its request for multiple incentives. They contend that the Commission should summarily reject, in its entirety, SCE's proposal for incentive rates.¹⁹⁴ Specifically, Golden State argues that SCE's Supplemental Filing uses overlapping justifications to support multiple incentives.¹⁹⁵ SWP also asserts that the Supplemental Filing raises new questions about the credibility of information upon which SCE would have the Commission rely, arguing that the cost information provided by SCE is not supported by credible references. As an example, SWP submits copies of recent business presentations made by SCE's parent company that, according to SWP, make no mention of risks. According to SWP, this

¹⁹¹ Six Cities Protest at 9, citing Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 107.

¹⁹² E.g., Six Cities Protest at 9; SWP Protest at 15; CPUC at 4-5.

¹⁹³ Six Cities Protest to Supplemental Filing at 8.

¹⁹⁴ E.g., TANC Protest to Supplemental Filing at 9, NCPA Protest to Supplemental Filing at 4, SWP Protest to Supplemental Filing at 2, CEOB Protest to Supplemental Filing at 5.

¹⁹⁵ Golden State Protest to Supplemental Filing at 2-3. Golden State adds that SCE cites lead times as a risk factor for both CWIP and the ROE adders, yet makes no attempt to reconcile the fact that presumably, CWIP would decrease the risks associated with lead times. *Id.*

suggests that the risks associated with these Projects are not of a nature to warrant incentive rate treatment.¹⁹⁶

c. SCE Answer

118. SCE contends that the Projects merit the package of incentives under the Commission's nexus test. It asserts that it has made a strong nexus showing that particular incentives are warranted for the Projects. It states that it has considered the appropriate risks associated with each Project and narrowly tailored its requests to assemble a reasonable package that reflects the types of proposals that had been approved in prior cases.¹⁹⁷ SCE asserts that in comparison to the projects that were previously approved for incentive rate treatment by the Commission, its proposed Projects would create broader regional benefits, use more advanced technologies, and entail at least as much risk as the previously approved projects.¹⁹⁸ Therefore, SCE argues that the package of incentives sought is not excessive.

119. SCE also disputes the arguments that ROE adders are not justified given its request for CWIP and abandoned plant cost recovery. It asserts that under the protesters' reasoning, no utility could justify an ROE adder if CWIP or abandoned plant recovery are provided as incentives.¹⁹⁹ SCE argues that it has provided detailed and voluminous information that fully supports its requests for incentives.

120. SCE argues that TANC's assertions about the size of SCE's investments in comparison to *Duquesne* and *ComEd* are misplaced. It states that in *Duquesne* and

¹⁹⁶ SWP Protest to Supplemental Filing at 10-11.

¹⁹⁷ SCE June 25 Answer at 15-16 & n. 52-53. SCE notes that in *Duquesne*, the company sought: (1) a 150-basis point ROE adder; (2) CWIP; (3) recovery of prudently-incurred pre-commercial costs; and (4) recovery of abandoned plant costs. *Duquesne*, 118 FERC ¶ 61,087 at P 2. It also notes that in *TrAILCo*, the Commission approved a package of incentives that included: (1) ROE to be set at the high end of reasonableness; (2) CWIP; (3) pre-construction/pre-commercial costs; and (4) abandoned plant costs. *TrAILCo*, 119 FERC ¶ 61,219 at P 1 & n. 2.

¹⁹⁸ SCE June 25 Answer at 4. SCE also notes that its Petition can be readily distinguished from *ComEd*, where "the Commission denied incentive rate treatment to a relatively-small, on-system investment in transmission that was already nearly completed and had none of the special attributes of the SCE Projects at issue in this proceeding." *Id.* at 3, citing *ComEd*, 119 FERC ¶ 61,238, at P 53-71.

¹⁹⁹ SCE September 20 Answer at 3.

ComEd, the Commission's relevant comparison was the size of the transmission investment for which incentives were requested to the existing transmission plant in service. For SCE, its investments for the Projects are more than twice the size of SCE's current transmission rate base. In addition, SCE states that TANC calculated Duquesne's and ComEd's investments using the ratio of new investment/transmission plant in service while it used the ratio of new investment/total electric plant balance for SCE.²⁰⁰ Based on such calculations, SCE notes that the latter will produce a lower percentage because the divisor includes all electric plant and not just transmission. SCE contends that while TANC stated that total electric plant balance is a more suitable measure of the capability of a utility, it did not explain why it used transmission in the divisor for Duquesne and ComEd. SCE notes that if TANC's calculation were applied to Duquesne and ComEd, SCE's Projects would constitute a higher percentage of total electric plant in service than either of ComEd's or Duquesne's projects. Therefore, SCE argues that TANC's misplaced calculations would actually support SCE's position.²⁰¹

121. Contrary to protesting parties' arguments that SCE's risks are reduced, it argues that it faces specific risks and challenges for each Project that merit the ROE adders. SCE asserts that the ACC's denial of the DPV2 Project is precisely the type of evidence that demonstrates that SCE is facing serious and complex challenges with regard to constructing the DPV2 Project.²⁰² Moreover, SCE argues that SWP's assertion that the future of the line is uncertain based on SCE's out-of-court negotiations with the ACC in fact helps to prove that the proposed project is risky, uncertain and extremely challenging.²⁰³

122. SCE also disputes the CPUC's argument that the involvement of multiple entities/jurisdictions in the project approval and siting process lessens risk. SCE argues that while the CPUC is correct that the CAISO's approval of a project may simplify the CPUC's review of the need for a project, the CAISO has no environmental authority, and the CPCN process at the CPUC focuses heavily on the environmental aspects of siting, which SCE argues can be more procedurally onerous and time-consuming than just proving need. SCE argues that when a project has to obtain separate approvals from the CAISO and the CPUC, the approval process is more difficult and expensive, not less.

²⁰⁰ SCE June 25 Answer at 22.

²⁰¹ Using TANC's calculations, SCE notes that the approximate ratios to compare to SCE's 10 percent figure are 8 percent for Duquesne and 3 percent for ComEd. *Id.* at 22.

²⁰² DOE's designation is no longer preliminary, DOE announced its designation of NIETC for the Mid-Atlantic and the Southwest areas. *See supra* note 67.

²⁰³ SCE September 20 Answer at 5-6.

Moreover, SCE asserts that these approvals are in addition to the numerous other separate and distinct federal, state and local agency approvals that are required to construct the DPV2 Project, all of which have made the DPV2 Project quite difficult and non-routine.²⁰⁴

123. SCE disputes the argument that its risks have been reduced by the CPUC's backstop provision. It notes that the legality of that provision has not been tested and that only Tehachapi Segments 1-3 have received approval for such treatment.²⁰⁵ It also disputes the claim that the April 19 Order results in a reduction of regulatory and financial risk.²⁰⁶ SCE contends that, but for the April 19 Order, generators would bear the risk associated with portions of the Tehachapi Project that do not qualify as integrated network transmission because they would be directly assigned the cost of the generation tie segment and would also pay the up-front costs of the segments that are network transmission under Order No. 2003. However, in contrast to the April 19 Order, SCE states that it will finance and build the entire project, including the generation tie components.

124. Additionally, SCE disputes arguments that SCE's stated risks are common issues faced by other utilities in constructing transmission facilities. SCE asserts that under such reasoning, none of the factors would be relevant for demonstrating the right to an ROE incentive.²⁰⁷ According to SCE, these arguments ignore the roadmap to satisfying Order No. 679's nexus test provided in *BG&E*.²⁰⁸ Moreover, SCE notes that the protesting parties do not offer examples of what would be a non-routine project if the Projects are routine.

125. SCE argues that the factors it used to show the risks and challenges facing these Projects are all relevant factors recognized by the Commission.²⁰⁹ For example, contrary

²⁰⁴ *Id.* at 11-12.

²⁰⁵ SCE June 25 Answer at 19.

²⁰⁶ *Id.*

²⁰⁷ SCE September 20 Answer at 7.

²⁰⁸ *Id.* at 6, citing *Baltimore Gas and Electric Co.*, 120 FERC ¶ 61,084 (2007) (*BG&E*).

²⁰⁹ SCE notes that factors such as siting, internal competition for financing with other projects, long lead times, regulatory and political risks, specific financing challenges, and other impediments are relevant to evaluating the risks and challenges faced by a particular project. *Id.* at n. 21, citing *BG&E*, 120 FERC ¶ 61,084 at 52.

to the CPUC's claim that long lead times should not be considered as a risk to the Projects, SCE argues that long lead times increase the risk of not obtaining cost recovery and require the expenditure of significant amounts of capital before a utility knows whether a project will be approved. Moreover, SCE argues that long lead times for obtaining these approvals is directly correlated to the size and complexity of a project or, asserts SCE, its non-routine nature. Further, while some protesters argue that regulatory and political risks are issues found in the normal course of business in California, SCE argues that such factors are relevant for measuring whether an investment is routine or non-routine. For example, it asserts that the need to obtain a CPCN should be considered strong evidence that a project is non-routine. SCE disagrees with the CPUC's claim that it is routine for transmission lines to cross many jurisdictions; rather, it states that projects in California that cross state jurisdictional lines are rare, not routine.²¹⁰

126. SCE additionally argues that SWP's questioning of the accuracy of the cost estimates provided with the Petition and Supplemental Filing is not relevant to the instant proceeding.²¹¹ It asserts that Order No. 679 does not provide for Commission inquiries into the reasonableness of transmission cost estimates in a forum established to evaluate a Petition for Declaratory Order for incentives; those issues are more appropriately considered in connection with a subsequent FPA section 205 filing to implement the incentive rates.²¹² Therefore, it asserts that SWP's attack on the costs and rate impact is a collateral attack on Order No. 679.

127. SCE argues that its financial condition is not grounds to deny incentives. Contrary to the contention that SCE does not merit incentives because of its financial strength, SCE states that Order No. 679 did not require a showing of financial weakness or that a utility must be near bankruptcy to be entitled to incentive rate treatments.²¹³ SCE asserts that such an approach to granting incentives would not reflect the intent of Congress in enacting Section 219. According to SCE, a utility should not be penalized because it is engaging in an aggressive transmission expansion plan while it is in relatively good financial health, and the requested incentives will assist SCE to continue to maintain its

²¹⁰ SCE September 20 Answer at 12.

²¹¹ *Id.* at 17.

²¹² Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 79, 80.

²¹³ SCE June 25 Answer at 28-29. SCE notes that the level of credit rating implies little or nothing about the stability of that credit rating. For example, SCE notes that its Standard & Poor's corporate credit rating dropped from A+ to D in less than two weeks during the California energy crisis. *Id.* n. 95. *See also* SCE September 20 Answer at 4.

credit rating.²¹⁴ It states that the need for incentives is supported by the fact that SCE will be investing billions of dollars for needed transmission investments and needed generation and distribution in Southern California. Further, even if SCE enjoys a sound credit rating, preventing deterioration of SCE's credit rating through incentives will benefit ratepayers.²¹⁵

128. Finally, SCE disagrees with the argument that the Rancho Vista Project is routine. SCE notes that aside from the other two projects at issue in this filing, the Rancho Vista Project constitutes one of the most costly transmission projects in SCE's history. Moreover, SCE disputes Six Cities' claim that the fact that the Rancho Vista Project is more costly than those projects at issue in *Duquesne* is irrelevant due to the difference in company size.²¹⁶ According to SCE, this argument ignores the fact that the Rancho Vista Project is being pursued simultaneously with other even larger projects, unlike in *Duquesne*, and that together, the projects for which SCE is proposing incentives are more costly than the projects in *Duquesne* even as a percentage of the increase in each utility's transmission rate base. While the CPUC is correct that the Rancho Vista Project may not face the same siting risks and challenges of the other two projects for which incentives have been requested, SCE asserts that this difference is reflected in its request for lesser incentives for the Rancho Vista Project.²¹⁷

d. Commission Determination

129. As discussed below, we find that SCE has adequately demonstrated a nexus between the total package of proposed rate incentives and its investment in the three Projects. Specifically, we find that SCE has made a sufficient showing that, in constructing these three Projects, it faces significant risks and challenges that warrant the requested incentives. However, we also find that, based on the facts of this case, the CWIP and abandoned plant cost recovery reduces SCE's overall risk. We therefore conclude that a reduction in SCE's proposed ROE adders is appropriate.²¹⁸ Accordingly, we grant 125-basis point ROE incentive adder for the DPV2 and Tehachapi Projects, and

²¹⁴ SCE September 20 Answer at 4.

²¹⁵ SCE June 25 Answer at 29.

²¹⁶ SCE September 20 Answer at 19.

²¹⁷ *Id.*

²¹⁸ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 6 (“[i]f some of the incentives in the package reduce the risks of the project, that fact will be taken into account in any request for an enhanced ROE”).

75-basis point ROE incentive adder for the Rancho Vista Project, to be bound by the upper end of the zone of reasonableness, to be determined when SCE makes its future section 205 filing.

i. Nexus Requirement and SCE's Projects

130. As noted earlier, in Order No. 679-A, the Commission clarified that its nexus test is met when an applicant demonstrates that the total package of incentives requested is “tailored to address the demonstrable risks or challenges faced by the applicant.”²¹⁹ The Commission noted that this nexus test is fact-specific and requires the Commission to review each application on a case-by-case basis.

131. The Commission recently provided clarification on the nexus test. Specifically, it noted that in evaluating whether the total package of incentives requested is “tailored to address the demonstrable risks or challenges faced by the applicant,” the question of whether a project is routine is probative.²²⁰ The Commission elaborated on how it will evaluate projects to determine whether they are routine and the effect this evaluation has on an applicant’s request for incentives.²²¹ The Commission stated that: (1) it will

²¹⁹ *Id.* P 40.

²²⁰ *BG&E*, 120 FERC ¶ 61,084 at P 48.

²²¹ In that respect, the Commission explained its determinations regarding routine investments in Order Nos. 679 and 679-A:

[W]e held in Order No. 679 that routine investments “may not always qualify” for incentives. However, we did not find that they would never qualify. Similarly, in Order No. 679-A, we held that projects with “special risks and challenges” present “the most compelling case” for incentives, but did not hold they are the only projects that can qualify for incentives. Second, we held that routine investments “to meet existing reliability standards” may not always qualify for incentives. However, we did not hold that, if a project's primary or sole purpose is to maintain reliability, it should not be eligible for incentives. Indeed, to do so would have been to disregard the plain language of section 219, which required the Commission to adopt a rule that “promote[s] reliable and economically efficient transmission and generation of electricity by promoting capital investment in the enlargement, improvement, maintenance, and operation of all facilities for the transmission of electric energy in interstate commerce.”

Id. P 51 (footnotes omitted).

consider all relevant factors presented by the applicant to determine whether or not a project is routine;²²² and (2) applicants must provide detailed factual information in support of the factors they rely upon.²²³ Additionally, the Commission clarified that “when an applicant has adequately demonstrated that the project for which it requests an incentive is not routine, that applicant has, for purposes of the nexus test, shown that the project faces risks and challenges that merit an incentive.”²²⁴ Finally, the Commission stated that if it determines that a project is routine, an applicant is not foreclosed from the requested incentive; it may show that its project faces risks and challenges or provides sufficient benefits to warrant incentive rate treatment.²²⁵

ii. The DPV2 Project

132. We find that the DPV2 Project is not routine in nature, but rather, has far-reaching scope and regional benefits. The DPV2 Project emerged from the STEP group,²²⁶ including participants from several states as well as Mexico. It is a \$560 million project that involves the construction of two major transmission lines that provide additional interconnection between southern California and Arizona and the desert Southwest. One of the transmission lines, the Devers-Harquahala 500 kV line, will be approximately 230 miles long. The Project will provide an additional 1,200 MW of import capability to the

²²² These factors include, but are not limited to: (1) the scope of the project (e.g., dollar investment, increase in transfer capability, involvement of multiple entities or jurisdictions, size, effect on region); (2) the effect of the project (e.g., improving reliability or reducing congestion costs); and (3) the challenges or risks faced by the project (e.g., siting, internal competition for financing with other projects, long lead times, regulatory and political risks, specific financing challenges, other impediments). *Id.* P 52.

²²³ *See id.* P 53.

²²⁴ *Id.* P 54.

²²⁵ *Id.* P 55.

²²⁶ STEP is a collaborative ad-hoc study group that was created to “provide a forum where all interested parties are encouraged to participate in the planning, coordination, and implementation of a robust transmission system between the Arizona, Nevada, Mexico and southern California areas that is capable of supporting a competitive, efficient, and seamless west-wide wholesale electricity market while meeting established reliability standards.” *See Southwest Transmission Expansion Plan* (January 17, 2003), available at <http://www.2.caiso.com/docs/2003/01/22/2003012211380012544.pdf>.

CAISO-controlled grid from the Southwest and a 1,200 MW increase in the Southern California Import Transmission (SCIT) Nomogram Limit.²²⁷

133. Consistent with our finding that the Project meets the rebuttable presumption that it enhances reliability or reduces congestion, we note that the DPV2 Project provides reliability benefits which also bear on our finding regarding the nexus requirement and whether a project is routine. The DPV2 Project will improve the reliability of the CAISO grid by increasing voltage support in Southern California and enhancing system operational flexibility for the CAISO operators by providing them with more options in responding to transmission and generation outages.²²⁸ The additional transfer capability is expected to help the CAISO reliably serve growing demands in Southern California. Record evidence also indicates that the DPV2 Project also is expected to provide important benefits to Arizona and the Southwest by avoiding loss of load during extreme contingencies if a major generating facility or high-voltage transmission line or substation were lost.²²⁹ As described by SCE, this new path will increase exports of Arizona utilities' generation resources during off-peak and shoulder periods, which will spread recovery of a portion of the fixed costs of Arizona resources to California ratepayers.

²²⁷ See Petition, Exhibit N, which discusses in detail the existing system conditions and system conditions after the DPV2 Project goes into service. The DPV2 Accepted Path 46 Rating Study Report, performed by WECC and the Western Arizona Transmission System (WATS), found that the Path 46 rating can be increased by 1,200 MW from 10,623 MW to 11,823 MW on a non-simultaneous and simultaneous basis, while meeting the NERC/WECC Planning Standards and the regional WATS planning requirements. Similarly, the Path 49 Rating Study Report found that it is adequate to increase the Path 49 non-simultaneous rating by 1,200 MW from 8,055 MW to 9,255 MW, while meeting the NERC/WECC Planning Standards and the regional WATS planning requirements. This study also finds that with the inclusion of reactive support equipment in the DPV2 Plan of Service, the Southern California Import Transmission path simultaneous capability as defined in the SCIT Nomogram will also be increased by 1,200 MW.

²²⁸ SCE Petition, Exhibit E at 1.

²²⁹ According to SCE, during such extreme contingencies, the DPV2 Project could provide a path so power may flow to Arizona load centers from California or the Pacific Northwest.

134. Additionally, we find that the DPV2 Project faces significant risks related to the magnitude of the financial investment required,²³⁰ the involvement of multiple entities/jurisdictions, and regulatory risks.²³¹ As described by SCE, the DPV2 Project also faces significant siting issues such as the difficulty in obtaining ROW approvals in various locations, which can be both protracted and challenging.²³² The DPV2 Project requires a long lead time, which presents financial risks because a significant time period may pass before any costs are recovered and the extended time period exposes the project potentially to additional regulatory, siting, cost increase, and other risks.²³³ Additionally, in undertaking multiple significant capital-intensive projects, SCE's ability to secure financing for transmission projects may be impacted as its borrowing needs increase overall.²³⁴ We find here that granting the ROE incentive as modified, together with CWIP, will encourage investors to invest in a transmission project with substantial financial risks, like the DPV2 Project. Due to the number of projects involved and the increase of such large amounts of debt, SCE is exposed to greater risk to project failure and, thereby, increased risks of equity holders.

²³⁰ The DPV2 Project will require SCE to finance and manage a \$560 million investment, for which SCE needs to raise capital through the capital markets.

²³¹ For example, due to the DPV2 Project's geographic footprint, SCE must seek approval from entities including the CAISO, STEP, the CPUC, the federal government, the ACC, the BLM and the USFWS. Furthermore, given the ACC's denial of approval for the DPV2 Project, SCE must seek alternative courses of action if it wishes to continue to pursue the DPV2 Project.

²³² For example, the DPV2 Project requires the expansion of current ROWs through lands managed by the BLM. As noted by SCE, obtaining ROWs, which often must be obtained through condemnation, also involves financial and legal risks and challenges.

²³³ As noted by SCE, discussions about the DPV2 Project began in the STEP process during 2003, and the projected in-service date of the DPV2 Project was 2009, four years after the approval by the CAISO and CPUC. According to SCE, the rejection by the ACC will result in another delay in the in-service date.

²³⁴ As discussed above, SCE states that it plans to spend approximately \$1.8 billion in transmission investment over the next five years, while at the same time, undertaking significant investment in generation and distribution infrastructure, including a "Smart Connect" program for advanced metering that costs \$1.7 billion.

iii. The Tehachapi Project

135. We find that the Tehachapi Project is not routine in nature, but rather, has far-reaching scope and regional benefits. The Tehachapi Project is a \$1.7 billion project distributed into eleven segments, which consists of more than 200 miles of 500 kV transmission line, approximately 10 miles of 220 kV transmission line, and three new substation facilities. This Project will provide the least-cost solution to connect up to 4,500 MW of generating resources, consisting primarily of wind generation, that are expected to locate in the Tehachapi and Big Creek Corridor areas.²³⁵

136. Consistent with our finding that the Project meets the rebuttable presumption that it enhances reliability or reduces congestion, we note that the Tehachapi Project provides reliability benefits which also bear on our finding regarding the nexus requirement and whether the project is routine. The Tehachapi Project will address reliability needs of the CAISO-controlled grid due to projected load growth (about 5 percent per year) in the Antelope Valley area and transmission constraints South of Lugo, which are an ongoing reliability concern for the Los Angeles basin.²³⁶ Additionally, the Tehachapi Project makes possible a low-cost expansion of transfer capability for Path 26²³⁷ by removing one of the limiting components on the existing Midway-Vincent No. 3 500 kV transmission line and increasing SCE's ability to move power from Vincent to the Los Angeles basin by eliminating the South of Lugo transmission constraint.²³⁸ The Tehachapi Project also will improve the robustness of the California's aging electric transmission system.²³⁹

²³⁵ Petition at 13.

²³⁶ Concerns with the South of Lugo transmission constraints are expected to increase as additional generation resources are sited outside the Los Angeles basin. Delivery of this new generation to Los Angeles basin load will require significant transmission additions. *Id.* at 14, 29.

²³⁷ Path 26 is comprised of three 500 kV lines between PG&E's Midway Substation and SCE's Vincent Substation.

²³⁸ Petition at 14.

²³⁹ The Tehachapi Project provides the potential to expand Path 26 capability, provides more options for future transmission expansions, and integrates a large amount of planned renewable resources. *Id.*

137. Additionally, we find that the Tehachapi Projects faces significant risks related to the magnitude of the financial investment required,²⁴⁰ and regulatory risks.²⁴¹ SCE has submitted evidence that the Tehachapi Project also faces significant siting issues such as the difficulty in obtaining ROW approvals in various locations, which can be both protracted and challenging.²⁴² Similar to the DPV2 Project, the Tehachapi Project requires a long lead time, which presents financial risks because a significant time period may pass before any costs are recovered.²⁴³ Additionally, in undertaking multiple significant capital-intensive projects, SCE's ability to secure financing for transmission projects may be impacted as its borrowing needs increase. Investing in a project of this magnitude requires SCE to commit its financial efforts to a few critical projects, rather than dispersing its efforts among various potentially shorter-term projects that may not be as critical but that provide a more immediate, lower-risk return. As evidenced by the experience of recent years, companies were not sufficiently motivated to make sufficient investments in critical infrastructure, which led to Congress' enactment of section 219 to provide for rate incentives.²⁴⁴ We find here that granting the ROE incentive as modified, together with CWIP, will encourage investors to invest in a transmission project with substantial financial risks, like the Tehachapi Project.

138. Furthermore, the Tehachapi Project will facilitate the ability of California utilities to comply with the State of California's RPS by providing access to planned renewable resources in the TWRA. Any load-serving entity that enters into a contract for generation

²⁴⁰ According to SCE, the Tehachapi Project is the most costly single transmission project that SCE has ever undertaken. Supplemental Filing at 15.

²⁴¹ E.g., environmental reviews under the California Environmental Quality Act (CEQA) and the National Environmental Policy Act as part of the CPCN process at the CPUC.

²⁴² For example, portions of the Tehachapi Project run through dense urban areas, which can elicit significant public opposition. As noted by SCE, obtaining ROWs, which often must be obtained through condemnation, also involves financial and legal risks and challenges.

²⁴³ As noted by SCE, the Tehachapi Project was conceived in 2002. The first elements of the multi-phase project were approved by the CAISO and CPUC for construction in 2006. While the first elements of the Project are planned to be in service in December 2008, the final elements of the Project are not expected to be in-service until late in 2013.

²⁴⁴ Order No. 679, FERC Stats & Regs. ¶ 31,222 at P 10 (footnotes omitted).

located in the TWRA would be able to use the Tehachapi facilities to deliver that energy on an open access basis under the CAISO tariff.

iv. The Rancho Vista Project

139. We find that the Rancho Vista Project is not routine in nature, but rather, has far-reaching scope and regional benefits. The Rancho Vista Project is a new 500 kV substation which will increase transfer capability on the congested South of Lugo path from 5,600 MW to 5,900 MW. The Project, the first 500 kV substation built by SCE in about 21 years, is projected to cost approximately \$200 million. The Project is needed to relieve loading on the existing Mira Loma 500/230 kV substation. The Mira Loma substation is nearing its design capacity of 4,000 MW while the load in the area served by this substation continues to grow at approximately 100 MW per year. We find that SCE has demonstrated that the Rancho Vista Project is not a routine investment for SCE, but rather is a significant investment not present in the ordinary course of business.

140. Consistent with our earlier finding that the Project meets the rebuttable presumption that it enhances reliability or reduces congestion, we note that the Rancho Vista Project provides reliability benefits which also bear on our finding regarding the nexus requirement and whether the project is routine. We note that the CAISO identified the mitigation of reliability criteria violations in approving the Rancho Vista Project.²⁴⁵ The CAISO Board of Governors, in its January 21, 2007 Memorandum approving the Rancho Vista Project, stated that the Project was needed to reliably serve load on the SCE transmission system. Further, the CAISO Board of Governors confirmed in its August 31, 2006 Memorandum on the Rancho Vista Project that the Project was the least-cost transmission alternative to meet load growth in the Eastern area of the Los Angeles Basin.

141. Finally, we find that the Rancho Vista Project, both in terms of the amount of SCE's investment required (\$200 million) and in terms of the size of the Project (new 500 kV substation), faces challenges not present in the ordinary course of business. Further, while the Rancho Vista Project may not face all of the same siting risks and challenges of the other two Projects for which incentives have been requested, the Rancho Vista Project faces specific risks and challenges, including the large cost,²⁴⁶ a

²⁴⁵ When San Onofre Nuclear Generating (SONG) Unit No. 2 is out of service, the Mira Loma 500/230 kV transformer #4 would exceed its emergency limit under the contingency of Mira Loma 500/230 kV transformer #3. Starting in 2009, up to 450 MW of load would have to be dropped in order to bring the transformer loading to within its acceptable emergency rating.

²⁴⁶ SCE provided evidence that the CAISO board approved only 17 projects over \$20 million from 2000-2004.

significant increase in corporate debt, as well as internal competition for financing with other projects and the long lead time associated with the project. Accordingly, we here grant the lesser ROE incentive adder than that granted for the DPV2 and Tehachapi Projects, which face greater risks.

v. **Total Package**

142. As discussed above, we find that SCE has shown that, consistent with Order No. 679-A, the total package of incentives is tailored to address the demonstrable risks or challenges faced by SCE.²⁴⁷ The incentive rate treatments proposed by SCE are not mutually exclusive. Consistent with Order No. 679,²⁴⁸ the Commission has, in prior cases, approved multiple rate incentives for particular projects.²⁴⁹ This is consistent with our interpretation of FPA section 219 as authorizing the Commission to approve more than one incentive rate treatment for an applicant proposing a new transmission project, as long as each incentive is justified by a showing that it satisfies the requirements of the FPA section 219 and that there is a nexus between the incentives being proposed and the investment being made. Here, as discussed above, SCE has explained why it is seeking each incentive and how each is relevant to the proposed Projects. As discussed above, we find that SCE faces significant risks and challenges in constructing the DPV2, Tehachapi, and Rancho Vista Projects. Thus, we find that SCE has shown a nexus for the total package of incentives, as modified below.

143. Under the facts presented here, however, we will reduce Applicants' requested ROE. Order No. 679-A provides that if some of the incentives in the total package reduce the risk of the project, that fact will be taken into account in any request for an enhanced ROE.²⁵⁰ While SCE's requested incentives fall within the scope of incentives

²⁴⁷ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 21, 27.

²⁴⁸ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 55.

²⁴⁹ See, e.g., *Allegheny*, 116 FERC ¶ 61,058 at P 60, 122 (approving ROE at the upper end of the zone of reasonableness and 100 percent abandoned plant recovery); *Duquesne*, 118 FERC ¶ 61,087 at P 55 (granting an enhanced ROE, 100 percent CWIP, and 100 percent abandoned plant recovery).

²⁵⁰ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 8. Applicants' reliance on *Boston Edison* is inapposite. In *Boston Edison*, the Commission found that the CWIP incentive and the ROE incentive were not mutually exclusive. *Boston Edison*, 111 FERC ¶ 61,266 at P 11. However, we also premised our finding on Order No. 298, which states that "whatever the size of any effect that the inclusion of CWIP in rate base will have on the cost of capital, [it] will generally provide a downward pressure on those costs." Order No. 298, FERC Stats. & Regs. ¶ 30,455 at 30,515.

outlined in Order No. 679, consistent with Order No. 679-A, we conclude that CWIP and abandonment of plant cost incentives serve to reduce SCE's overall risk. First, because of increased cash infusion resulting from the CWIP incentive, SCE will have less financial risk during the construction period. Moreover, an entity allowed to include CWIP in rate base is not required to refund the prudently-incurred costs collected.²⁵¹ Second, the abandoned plant recovery ensures that investors will recover a return *on* and *of* investment, thereby further reducing financial risk associated with these investments. For this reason, we stated in Order No. 679 that "a utility that receives approval to recover abandoned plant in rate base would likely face lower risk and thus may warrant a lower ROE than would otherwise be the case without this assurance."²⁵² Therefore, under the facts of this proceeding, we find that a 125-basis point adder (rather than 150 basis points) for the DPV2 and Tehachapi Projects and 75-basis point adder (rather than 100 basis points) for the Rancho Vista Project are warranted.

144. With regard to TANC's contention that SCE's proposal does not constitute as much of a risk as that of Duquesne, and that SCE's costs are a much smaller percentage of its total plant in comparison to both Duquesne and ComEd, we note that TANC is attempting to compare apples to oranges. TANC argues that the projects represent only approximately 10 percent of SCE's total electric plant balance, compared to Duquesne's 76 percent of current net transmission plant in service. TANC similarly contends that if ComEd's 14 percent of transmission investment, related to its current net transmission plant in service, was found to be insufficient to warrant an ROE adder, then SCE's transmission investment at 10 percent of total electric plant balance should also be found insufficient. The distinction, however, between *net transmission plant in service* and *total electric plant balance*, is significant. We concur with SCE that, if TANC's calculation were to be applied with consistent divisors, SCE's Projects constitute a higher percentage of total electric plant in service than either of ComEd's or Duquesne's projects. Further, TANC ignores that we evaluate each request for incentives on its own unique facts and on a case-by-base basis.

²⁵¹ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 116 "...where an applicant has satisfied our nexus requirement and has been granted authority to recover CWIP or abandoned plant, and subsequently the applicant's project is unable to obtain state or federal siting authority (and thus no showing is made with respect to ensuring reliability or reducing the cost of delivered power by reducing congestion because the applicant was relying upon those processes) we would not require refunds for the costs already prudently-incurred by the applicant. To require refunds in such circumstances would be contrary to our long-standing policy, which permits recovery of all prudently-incurred costs." (footnote omitted).

²⁵² Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 167.

145. Additionally, we disagree with the protestors' argument that because SCE's financial condition is strong, it fails to demonstrate the need for the ROE incentive due to poor cash flow or the need to attract investment. As discussed above, the Commission clarified in *BG&E* that when an applicant has adequately demonstrated that the project for which it requests an incentive is not routine, that applicant has, for purposes of the nexus test, shown that the project faces risks and challenges that merit an incentive. Specifically, we stated in *BG&E*, "[b]y definition, projects that are not routine under our analysis. . . . face inherent risks and challenges and/or provide benefits that are worthy of incentives."²⁵³ While in certain circumstances the Commission may find that an applicant's financial position is relevant, Order Nos. 679 and 679-A do not require a showing of financial weakness to be entitled to incentive rate treatment. In addition, while SCE's BBB+ credit rating demonstrates an investment grade rating, this rating is not significantly above a non-investment grade rating. SCE's financial position could be stressed as it takes on a large amount of additional debt to support the Projects especially in light of the numerous financial, regulatory and other risks related to the Projects.

146. Also, with regard to the argument that incentives would somehow represent a double recovery of costs, we disagree. Order No. 679 incentives are allowances that are added to otherwise recoverable investment costs. Pursuant to section 219, these allowances are designed to spur investment in needed infrastructure. Such allowances do not constitute a double recovery, they are simply additional costs of a project.²⁵⁴

147. We also reject protestors' arguments that projects with guaranteed cost recovery should not receive incentives. Congress enacted section 219, and we subsequently issued Order No. 679, because the existing cost-based recovery mechanisms have been insufficient to stimulate investment in infrastructure to ensure reliability and/or reduce congestion costs. Section 219 does not exclude transmission projects with guaranteed cost recovery from eligibility for incentives. The protestors arguments on this point are a collateral attack to the final rule, and are rejected on this basis.

148. Accordingly, we find that SCE's Projects merit the requested incentives as modified herein and that SCE has shown that its total package of incentives is tailored to address the demonstrable risks or challenges that it faces in constructing the three

²⁵³ *BG&E*, 120 FERC ¶ 61,084 at P 54 (footnotes omitted).

²⁵⁴ Section 219(c) of the FPA provides that "[t]he Commission shall ensure that any costs recoverable pursuant to this subsection may be recovered by such [transmitting utility or electric utility] through the transmission rates charged by such [transmitting utility or electric utility] or through the transmission rates charged by the Transmission Organization that provides transmission service to such [transmitting utility or electric utility]."

proposed Projects. We find that SCE has made a compelling case for the incentives because its proposed projects present special risks or challenges and, thus, are not routine investments made in the ordinary course of business.²⁵⁵

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

D. 50-Basis Point ROE Incentive for Continued Participation in the CAISO

150. In Order No. 679, the Commission stated that it will authorize, when justified, an incentive-based rate treatment, in the form of a higher ROE, for public utilities that join and/or continue to be a member of an Independent System Operator (ISO), Regional Transmission Organization (RTO), or other Commission-approved Transmission Organization.²⁵⁶ The Commission also stated that it will not create a generic adder for such membership, but instead consider appropriate ROE incentives on a case-by-case basis. The Commission affirmed that finding in Order No. 679-A, noting that the incentive applies to all utilities that join a Transmission Organization, irrespective of the date they join.²⁵⁷ The Commission stated that an inducement for utilities to join, and remain in, a Transmission Organization is consistent with the purpose of section 219, which is to provide incentive-based rate treatments that benefit consumers by ensuring reliability and reducing the cost of delivered power.²⁵⁸

1. SCE's Proposal

151. SCE requests a 50-basis point incentive adder in recognition of its continued membership in CAISO, pursuant to Order No. 679. It asserts that the Commission should grant the 50-basis point adder, subject to a cap at the upper end of the zone of reasonableness, consistent with the level of ROE incentives that the Commission has

²⁵⁵ See Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 27, 60.

²⁵⁶ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 326.

²⁵⁷ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 86.

²⁵⁸ *Id.*

approved recently. For example, it notes that in *Duquesne*, the Commission approved a 50-basis point adder for Duquesne's continued membership in the PJM RTO, which taken together with a 100-basis point adder for certain projects, will be at the upper end of the zone of reasonableness.²⁵⁹ Additionally, it states that the Commission recently granted SDG&E a 50-basis point incentive for continued membership in the CAISO.²⁶⁰ Likewise, as a Participating Transmission Owner in the CAISO, SCE argues that it should receive the 50-basis point adder for its entire transmission rate base.

2. Protests

152. The CPUC argues that SCE should not be granted the 50-basis point adder for its participation in the CAISO. It argues that such an incentive simply provides windfall profits to a utility that already belongs to a transmission organization.²⁶¹ It states that SCE will not incur any additional risks by continuing its membership in the CAISO; rather, it will enjoy the benefits of CAISO membership *vis a vis* system-wide reliability, California's market redesign and technology upgrade, and other economic benefits. Further, it asserts that SCE is legally obligated to stay within the CAISO pursuant to a previous CPUC decision.²⁶² The CPUC asserts that the 50-basis point adder is not appropriate for SCE because it is not joining the CAISO as a new Transmission Owner; SCE has already transferred its transmission facilities to CAISO, and therefore, does not need this incentive.²⁶³

153. TANC and the CPUC claim that SCE's reliance on *SDG&E* to support its request for 50-basis point adder for its participation in CAISO is inapposite.²⁶⁴ TANC states that in that proceeding, SDG&E provided testimony discussing the risks and benefits of remaining a member of the CAISO and the Commission granted the requested 50-basis point adder to ensure *continued* participation in the CAISO. It states that SCE provided no such justification that it faces similar risks. Therefore, it argues that SCE has not demonstrated a nexus between its request for the 50-basis point ROE adder and its

²⁵⁹ Petition at 33, citing *Duquesne*, 118 FERC ¶ 61,087 at P 57.

²⁶⁰ *Id.* at 33, citing *San Diego Gas and Electric Co.*, 118 FERC ¶ 61,073, at P 25-26 (2007).

²⁶¹ CPUC Protest at 21.

²⁶² *Id.*, citing California Public Utilities Commission Decision 95-12-063, December 20, 1995.

²⁶³ CPUC Protest at 22.

²⁶⁴ TANC Protest at 14-15; CPUC Protest at 20.

continued membership in the CAISO.²⁶⁵ Additionally, TANC states that the proceeding in *SDG&E* resulted in an offer of settlement, in which SDG&E itself agreed to not request any transmission incentive until 2013.²⁶⁶ Further, all parties in that proceeding agreed that both the request for a 50-basis point adder and the Commission's decision on the CAISO membership adder were rendered moot for the purposes of the settlement.²⁶⁷ Therefore, TANC contends that SCE's reliance on *SDG&E* to support its requested 50-point adder is belied by the results of the settlement in that proceeding.

154. Additionally, CEOB argues that there is no justification for granting an incentive for CAISO membership given that SCE was one of three founding members of CAISO.²⁶⁸ It states that the CAISO was created in 1996 pursuant to a joint application by PG&E, SDG&E, and SCE. The three companies created the CAISO to mitigate their market power and receive authorization from the Commission to sell electric energy at market-based rates. Therefore, CEOB contends that granting an adder in this instance is contrary to the justification of using this ROE to encourage Transmission Owners to join an ISO or RTO.²⁶⁹ Further, Metropolitan states that because the underlying basis for the incentive is the assumption that benefits flow from participation in an ISO or RTO, any applicant should show that its participation in an ISO or RTO does in fact benefit customers. However, SCE fails to address the impact of its participation in the CAISO on wholesale customers.²⁷⁰ It also notes that in 2006, the Commission denied SCE's request for an incentive rate for ISO participation.²⁷¹ For the foregoing reasons, parties argue that 50-basis point adder for participating in the CAISO is unwarranted.

²⁶⁵ TANC Protest at 15.

²⁶⁶ *Id.*

²⁶⁷ CPUC Protest at 20. It states that SDG&E's ROE was reduced from 12.5 percent to 11.35 percent in that settlement. *San Diego Gas & Electric Co.*, 119 FERC ¶ 63,005, at P 19 (2007) (*SDG&E*).

²⁶⁸ CEOB Protest at 3-4.

²⁶⁹ *Id.* at 4-5.

²⁷⁰ Metropolitan Protest at 8.

²⁷¹ *Id.* at 8, citing *Southern California Edison Co.*, 114 FERC ¶ 61,018, at P 15 (2006) (January 9 Order).

3. SCE's Answer

155. SCE asserts that its request for ROE incentive for continued membership in the CAISO is consistent with section 219, Order No. 679, and Commission precedent.²⁷² It argues that the Commission granted SDG&E a 50-basis point ROE adder and there is no reason to treat SCE differently when both SDG&E and SCE joined CAISO on the same date. Additionally, SCE claims that the fact that the proceeding in *SDG&E* resulted in a settlement among the parties does not undermine the Commission's determination that SDG&E is entitled to an ROE adder for participating in the CAISO.²⁷³

156. SCE challenges arguments that SCE needs to show risks and/or benefits for the CAISO membership. SCE states that the Commission has already established the benefits of membership in the CAISO.²⁷⁴ It also asserts that the Commission has shown that the incentive is not merely a reward for taking on risk, but for continuing to make the benefits of ISO or RTO membership available.²⁷⁵

157. Further, SCE argues that it is incorrect that it joined the CAISO to obtain authorization to sell electric energy at market-based rates. SCE states that many utilities have obtained such authorization without joining an ISO or RTO. Even if that were true, SCE states that under Order No. 679, utilities that join ISOs or RTOs due to merger conditions or market-based rate requirements may still be entitled to the 50-basis point membership incentive.²⁷⁶ It also contends that its requested ROE incentive is warranted here even though it previously was denied this incentive.²⁷⁷ According SCE, the Commission found that SCE's request for a 50-basis point ROE adder was premature, as Order No. 679 had not been issued.²⁷⁸ SCE argues that the Commission's finding that SCE's prior request was premature should have no impact on its current request.

²⁷² SCE June 25 Answer at 4, citing *Duquesne* at P 57; *SDG&E* at P 25; *Maine Pub. Utils. Comm'n v. FERC*, 454 F.3d 278 (D.C. Cir. 2006).

²⁷³ *Id.* at 5.

²⁷⁴ *Id.*, citing *California Independent System Operator Corp.*, 103 FERC ¶ 61,114, at P 25 (2003).

²⁷⁵ *Id.* at 5.

²⁷⁶ *Id.* at 6, citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 331 & n. 180.

²⁷⁷ *Id.* at 4.

²⁷⁸ *Id.* at n. 11.

4. Commission Determination

158. We approve SCE's proposal to increase its ROE by 50-basis points for continued participation in the CAISO, to be bound by the upper end of the zone of reasonableness, to be determined when SCE makes its future section 205 filing. First, as we stated in Order No. 679-A, we will authorize incentive-based rate treatment for public utilities that continue to be a member of a Transmission Organization.²⁷⁹ Section 219 of the FPA specifically provides that the Commission shall provide for incentives to each transmitting utility that joins a Transmission Organization. The consumer benefits, including reliable grid operation, provided by such organizations are well documented and consistent with the purpose of section 219.

159. As explained in Order No. 679-A, the decision to provide incentives for participation in a Transmission Organization is a policy one, aimed at promoting particular policy objectives, unrelated to any particular project. Parties' protest that SCE should not be rewarded for its continued participation in the CAISO or that SCE needs to make a showing of risks and benefits of CAISO membership is a collateral attack on Order No. 679-A;²⁸⁰ thus, we reject these arguments. In that respect, we also reject Metropolitan's argument that SCE should be denied this incentive because the Commission previously rejected SCE's request for incentive rate for CAISO participation. Since the January 9 Order, eligibility for this incentive has been modified to permit adders for not only *existing* membership in a transmission organization, but also to encourage *continued* membership, as specified in Order No. 679. SCE's participation in the CAISO meets this standard for eligibility for the Transmission Organization incentive. We further note that the level of the requested incentive, 50-basis points, is the same as that approved for similar utilities, such as BG&E, Duquesne, and ComEd.²⁸¹

²⁷⁹ Order 679-A, FERC Stats. & Regs. ¶ 31,236 at P 86. Under Order No. 679, an independent system operator such as CAISO qualifies as a Commission-approved Transmission Organization for purposes of eligibility for the Transmission Organization incentive. Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 328.

²⁸⁰ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 79.

²⁸¹ See, e.g., *BG&E*, 120 FERC ¶ 61,084, at P 31; *Duquesne*, 118 FERC ¶ 61,087 at P 50; *ComEd*, 119 FERC ¶ 61,238 at P 72.

The Commission orders:

We hereby grant SCE's petition for a declaratory order, as discussed in the body of this order.

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

(S E A L)

Kimberly D. Bose,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Southern California Edison Company

Docket No. EL07-62-000

(Issued November 16, 2007)

KELLY, Commissioner, *concurring in part and dissenting in part*:

This order addresses a Southern California Edison (SCE) request for transmission rate incentives for three transmission projects. Based on the record in this proceeding, I conclude that SCE has demonstrated that the DVP2 Line and the Tehachapi Project warrant incentive rate treatment. SCE has also demonstrated that its requested CWIP and abandonment costs incentives, as well as its CAISO participation incentive, are warranted. Therefore, I concur with this order's grant of these incentives for these desirable transmission projects, which will benefit a large proportion of the California public by greatly enhancing reliability and by bringing more generation, including renewable wind-powered generation, to the California market.

In contrast, SCE has not demonstrated that these projects warrant basis point ROE adders beyond that for participation in the CAISO. I also disagree that the Rancho Vista transmission substation project merits incentive rate treatment. Accordingly, for the reasons set forth below, I dissent in part on this order.

The evidence presented in this case indicates the DVP2 Line and the Tehachapi Project warrant SCE's proposed incentive rate treatment with regard to (1) 100% of CWIP in ratebase, (2) construction and development cost recovery of these projects even if the projects are abandoned before completion, and (3) a 50 basis point ROE adder for SCE's participation in the CAISO. CWIP and pre-granted abandonment costs are appropriate incentives because they will significantly mitigate the primary risks of the DVP2 Line and the Tehachapi Project, i.e., their long/uncertain lead times, and the possibility that they might not be completed. Order 679-A requires applicants seeking incentive rate treatment to satisfy a nexus requirement by demonstrating that the "incentive(s) sought must be tailored to address the demonstrable risks and challenges faced by the applicant in undertaking the project."¹ SCE has done a good job of explaining how these incentives are tailored to address the demonstrable risks and challenges faced by SCE in undertaking these projects.

¹ Order No. 679-A, 117FERC ¶ 61,345 at P 21.

However, SCE has not justified why additional project-specific incentive ROE adders of 150 basis points are necessary to encourage investment in these projects. In adopting Order 679, the Commission explained: “In many instances, an incentive-based ROE is appropriate because our traditional policies are not sufficient to encourage new investment.”² In this case, SCE has failed to explain why its standard return on equity is not sufficient to encourage its investment in these projects. On the contrary, SCE largely bases its request for 150 basis point adders on the Commission’s approval of an ROE adder in *Duquesne*.³ I find this argument particularly unconvincing because, as I stated in my dissent in that case, I do not believe incentives were appropriate for Duquesne. Additionally, if anything, the evidence in this case tends to discredit any argument that SCE’s standard ROE is insufficient to encourage its investment in these projects. First, the other incentives granted in this case appear to account for most of the risks attached to the projects. The incentive to allow recovery of abandonment costs will cover the risk of failed projects, and including 100 percent of CWIP in rate base will account for much of the risk of the lead times required to plan and construct these projects. Given these risk-reducing incentives, and the fact that SCE will have an enhanced rate of return on equity with the 50 basis point adder for CAISO participation, I struggle to find justification in the record to further raise SCE’s return on equity. Finally, it appears SCE is under an obligation to build these transmission lines without an incentive rate of return.⁴ For all these reasons, I find that SCE’s request for additional ROE adders has not met our requirement to provide “sufficient explanation and support to allow the Commission to

² Order No. 679, 117 FERC ¶ 31,222 at P 94.

³ *Duquesne Light Co.*, 118 FERC ¶ 61,087 (2007). Duquesne requested an upward adjustment of 150 basis points to its authorized base-level ROE; the Commission granted 100 basis points. SCE states in its petition it is “entitled to the 150 basis point ROE adder for the DPV2 and Tehachapi Projects because these projects are far more expansive and risky than the Rancho Vista Project or the project proposed in Duquesne.” (Petition at p. 35)

⁴ The California Public Utility Commission, an intervenor in this case that protested the grant of incentive ROE adders to SCE, has stated that “SCE is a CPUC-regulated investor-owned public utility. The CPUC has made clear that SCE needs to build the Tehachapi and DPV2 transmission projects. If necessary, the Commission could compel SCE action pursuant to California Public Utilities Code Section 761, which grants the CPUC the broad authority to require SCE and other California utilities to construct facilities necessary to serve its customers.” Notice of Intervention and Protest of the California Public Utilities Commission at 11. SCE did not take issue with this statement.

evaluate each element of the package and the interrelationship of all elements of the package.”⁵

In Order No. 679-A, the Commission discussed the care that must be taken in granting incentive ROEs. We said “[a]lthough the Commission has broad discretion to establish returns on equity anywhere within the zone of reasonableness, we must be careful in the manner in which we exercise this discretion. The Commission clarifies that we do not intend to grant incentive returns ‘routinely’ or that, when granted, they will always be at the ‘top’ of the zone of reasonableness.”⁶ I do not believe the Commission has acted carefully in this case. Indeed, I am concerned that it has begun doing what it said it would not do: granting incentive returns as a matter of course. Routinely granting incentive returns will quickly morph them from incentives to entitlements. In this case, the CPUC estimates the ROE incentives proposed by SCE would increase its revenue requirement by at least \$75 million a year. This should not be approved unless, under a rigorous examination, the Commission is convinced the incentive is required to get the projects built. SCE has not given us the evidence necessary to conduct such a rigorous examination, and we have not insisted on receiving it.

Finally, with respect to SCE’s Rancho Vista project, I disagree that any incentive whatsoever should be granted because I do not find SCE has satisfied the threshold nexus requirement for incentive rate treatment. This project appears to fall into the category of “routine investments made in the ordinary course” as discussed in Order. No. 679-A.⁷ The primary driver of the Rancho Vista project is the need to meet load growth. SCE concedes in its petition that the project is “needed primarily to serve load growth in fast-growing San Bernardino and Riverside counties.”⁸ Moreover, in response to the Commission’s deficiency letter, SCE elaborates:

This load growth will lead to the need for additional 500/230 kV transformer capacity by the summer of 2011. Additionally, with high levels of generation retirements (the scenario studied included the retirement of 1,400 MW of high and medium risk generation in the Los Angeles Basin),

⁵ Order No. 679-A at P 27.

⁶ Order No. 679-A at P 7.

⁷ Order No. 679-A at P 60.

⁸ Petition at p. 19.

the need for this new substation could be accelerated to as early as the summer of 2009.⁹

Building transmission to meet load growth is consistent with a public utility's normal course of operations. In addition, the cost of the Rancho Vista project in absolute terms is \$200 million and the cost relative to the current transmission ratebase is less than 17 percent, which are not exceptionally large by public utility standards. Based on the record evidence, I conclude the Rancho Vista project is not only required as part of SCE's normal course of operations, but would also be built to address near-term reliability issues without any incentives.

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

Suedeem G. Kelly

⁹ Supplemental Information Supporting Petition For Declaratory Order For Incentive Rate Treatment at p. 8.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Southern California Edison Company

Docket No. EL07-62-000

(Issued November 16, 2007)

WELLINGHOFF, Commissioner, *concurring*:

As I have stated in previous cases, in considering an incentive ROE adder for transmission, the Commission should focus on encouraging investment decisions beyond upgrades simply required to meet a utility's service obligations or the minimum standard of good utility practice. An incentive adder should be more narrowly targeted to transmission investments that provide incremental benefits, such as benefits that result from the deployment of "best available technologies" that increase operational and energy efficiency, enhance grid operations, and result in greater grid flexibility.¹ Such investments recognize that efficient transmission facilities and state-of-the-art transmission technologies are essential to solving our energy delivery problems. Promoting such investments is also consistent with the Congressional directive set forth in section 1223 of EAct 2005 that requires the Commission to encourage the use of advanced transmission technologies in infrastructure improvements of both existing and new transmission facilities.²

The investments for which SoCal Edison is seeking incentive ROE adders in this proceeding reflect a commitment to advanced technologies. For example, as part of both its Devers-Palo Verde II (DPV2) Project and its Tehachapi Project, SoCal Edison plans to employ Static VAR Compensators (SVCs) to damp power oscillations resulting from a postulated system fault. SoCal Edison states that the SVCs will improve dynamic and transient network stability, among other benefits. SoCal Edison also states that the SVCs will use power electronics and related software, as identified in section 1223 of EAct 2005, to monitor system conditions at various substations, to provide the proper amount of reactive support for the network, and to provide voltage control. In addition, both the DPV2 Project and the Tehachapi Project will feature special protection systems that use fiber optic technologies to provide reliable high speed data communications between switching stations and allow the monitoring systems to trip load in the event of outage

¹ See *American Elec. Power Serv. Corp.*, 118 FERC 61,041 (2007) (concurring statement of Commissioner Wellinghoff at 5).

² See Pub. L. No. 109-58, § 1223, 119 Stat. 594, 953-54 (2005).

contingencies. I commend SoCal Edison for incorporating such technologies into its plans, as well as for detailing its consideration of these technologies in a Technology Statement that complies with the Commission's requirements.³

It is also important to incorporate into the consideration of incentives in this case another incremental benefit associated with the Tehachapi Project. Amid heightened concerns about climate change and dependence on foreign oil, it is essential that our country take steps to accelerate the integration of clean, reliable, domestic renewable energy resources into our energy portfolio. Such resources, including wind and geothermal generation, are usually found in economically developable quantities at dispersed locations remote from load centers. As a result of these characteristics, large-scale investments in transmission are often necessary to deliver renewable energy to market. The Tehachapi Project is such an investment, as it will enable the interconnection of up to 4,500 MW of dispersed wind resources for generation. In light of the broad and substantial benefits associated with increasing the availability of renewable energy resources, I believe that it is appropriate for the Commission to provide investment incentives in this area.

For these reasons, I concur with today's order.

Jon Wellingshoff
Commissioner

³ Order No. 679 at P 302 ("In as much as EAct 2005 requires the Commission to encourage the deployment of transmission technologies, we will require applicants for incentive rate-treatment to provide a technology statement that describes what advanced technologies have been considered and, if those technologies are not to be employed or have not been employed, an explanation of why they were not deployed.").