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FERC Affirms Transmission Incentives to California Utilities for Regional Transmission Organization Participation.

On September 30, 2019, FERC issued two orders denying requests for rehearing of orders that respectively granted Pacific Gas & Electric Company ("PG&E") and Southern California Edison Company ("SCE") 50-basis point return-on-equity adders for their continued participation in the California Independent System Operator Corporation ("CAISO") ("RTO-Participation Incentive"). PG&E requested the RTO-Participation Incentive as part of its nineteenth transmission owner tariff filing; SCE requested the RTO-Participation Incentive as part of its 2018 transmission revenue requirement filing. FERC granted both requests in two separate orders issued in 2017. The California Public Utilities Commission ("CPUC") and Transmission Agency of Northern California requested rehearing of both 2017 orders; the Sacramento Municipal Utility District ("SMUD") also requested rehearing of the 2017 order granting PG&E the RTO-Participation Incentive (CAISO, CPUC and SMUD are collectively referred to as the "California Parties"). FERC's September 30, 2019 orders denying the California Parties' rehearing requests concluded that it is appropriate to grant both PG&E and SCE the RTO-Participation Incentive because California law does not mandate that either utility participate in CAISO.

In denying the California Parties' rehearing requests, FERC referred to a separate proceeding that began in 2007 when, following the issuance of Order No. 679 (addressing pricing reforms to promote transmission investment), PG&E first requested the RTO-Participation Incentive as part of its near-annual transmission owner tariff filing. FERC granted PG&E's request for the RTO-Participation Incentive over objections from the CPUC that California law required PG&E's participation in CAISO. On appeal, the U.S. Court of Appeals for the Ninth Circuit remanded the proceedings and instructed FERC to develop a record on whether California law permitted PG&E to unilaterally leave the CAISO, and whether the RTO-Participation Incentive could induce its participation in CAISO. In an order on remand issued on July 18, 2019, FERC concluded that the relevant provisions of California's Public Utilities Code encouraged and facilitated PG&E's participation in CAISO, but did not require its continuing membership or obligate PG&E to seek CPUC approval before withdrawing from CAISO.

Applying the same reasoning as in the Ninth Circuit proceeding and July 18, 2019 order on remand, FERC's September 30, 2019 orders denying the California Parties' rehearing requests concluded that it is appropriate to grant PG&E and SCE the RTO-Participation Incentive because California law does not mandate the utilities' continued participation in CAISO. FERC also rejected the California Parties' arguments that FERC has no authority to second-guess the CPUC's interpretation of California law as requiring PG&E's/SCE's membership in CAISO. FERC explained that whether to grant the RTO-Participation Incentive is an issue involving the transmission and sale of energy at wholesale in interstate commerce and is therefore subject to its exclusive jurisdiction. Finally, FERC disagreed with the California Parties' arguments that granting PG&E/SCE the RTO-Participation Incentive would constitute a failure to comply with FERC's duties to ensure just and reasonable rates. FERC pointed out that regional transmission organizations benefit consumers by providing open, non-discriminatory transmission service, addressing congestion-related issues, mitigating market power, and managing the transmission planning and generator interconnection processes.

While Commissioner Glick originally dissented from the order granting SCE the RTO-Participation Incentive, he issued a short concurring statement in the September 30, 2019 order denying rehearing of challenges to SCE's request for an RTO-Participation Incentive. Commissioner Glick explained his belief that it is appropriate to grant SCE the RTO-Participation Incentive now that FERC has developed a record indicating that SCE's participation in CAISO is voluntary and not required by California law or regulation.

FERC's September 30 orders are available [here](#) (PG&E) and [here](#) (SCE).

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