

168 FERC ¶ 61,217  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Richard Glick and Bernard L. McNamee.

Pacific Gas and Electric Company

Docket No. ER17-2154-001

ORDER ON REHEARING

(Issued September 30, 2019)

1. On September 28, 2017, the Commission accepted for filing Pacific Gas and Electric Company's (PG&E) tariff revisions to implement a rate increase under its nineteenth transmission owner tariff filing (TO19 Filing), suspended the revisions for five months to be effective March 1, 2018, subject to refund, and established hearing and settlement judge procedures.<sup>1</sup> In that order, the Commission also granted PG&E's request for a 50 basis point return-on-equity (ROE) adder to its transmission rates for its continued participation in a Regional Transmission Organization (RTO)/Independent System Operator (ISO) (RTO-Participation Incentive), subject to the RTO-Participation Incentive being applied to a base ROE that has been shown to be just and reasonable, as determined at hearing.<sup>2</sup>
2. On October 30, 2017, the California Public Utilities Commission (CPUC), the Sacramento Municipal Utility District (SMUD) and Transmission Agency of Northern California (TANC) (collectively, California Parties) filed a request for rehearing of the September 2017 Order, arguing that the Commission erred by granting the RTO-Participation Incentive.<sup>3</sup> In this order, we deny that rehearing request.

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<sup>1</sup> *Pac. Gas and Elec. Co.*, 160 FERC ¶ 61,128 (2017) (September 2017 Order).

<sup>2</sup> *Id.* P 26.

<sup>3</sup> CPUC, SMUD, and TANC October 30, 2017 Request for Rehearing (Rehearing Request).

## I. Background

### A. Prior TO Tariff Proceedings

3. Following the issuance of Order No. 679 in 2007, PG&E began requesting the RTO-Participation Incentive for its ongoing participation in the California Independent System Operator Corporation (CAISO) as part of its near-annual transmission owner tariff filing.<sup>4</sup> As relevant here, in a series of orders,<sup>5</sup> the Commission summarily granted PG&E's requests for a 50 basis point ROE adder for its continuing membership in CAISO, pursuant to section 219 of the Federal Power Act (FPA)<sup>6</sup> and Order No. 679.<sup>7</sup> In granting PG&E's requests, the Commission disagreed with CPUC's argument that PG&E was not eligible for the incentive because California law required PG&E to participate in CAISO.

4. On appeal, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) remanded the underlying proceedings<sup>8</sup> and instructed the Commission to "inquire into

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<sup>4</sup> As relevant here, PG&E requested the RTO-Participation Incentive for its sixteenth transmission owner tariff filing (TO16 Filing), seventeenth transmission owner tariff filing (TO17 Filing), and eighteenth transmission owner filing (TO18 Filing).

<sup>5</sup> See *Pac. Gas and Elec. Co.*, 148 FERC ¶ 61,245 (2014) (TO16 Order), *reh'g denied*, 154 FERC ¶ 61,119 (2016) (TO16 Rehearing Order), *remanded sub nom. CPUC v. FERC*, 879 F.3d 966 (9th Cir. 2018); *Pac. Gas and Elec. Co.*, 152 FERC ¶ 61,252 (2015) (TO17 Order), *reh'g denied*, 154 FERC ¶ 61,118 (2016) (TO17 Rehearing Order), *remanded sub nom. CPUC v. FERC*, 879 F.3d 966; *Pac. Gas and Elec. Co.*, 156 FERC ¶ 61,238 (2016) (TO18 Order), *reh'g denied*, 160 FERC ¶ 61,090 (2017) (TO18 Rehearing Order), *remanded sub nom. CPUC v. FERC*, No. 17-72853 (9th Cir. Mar. 28, 2018).

<sup>6</sup> 16 U.S.C. § 824s (2018).

<sup>7</sup> *Promoting Transmission Investment through Pricing Reform*, Order No. 679, 116 FERC ¶ 61,057 (Order No. 679), *order on reh'g*, Order No. 679-A, 117 FERC ¶ 61,345 (2006) (Order No. 679-A), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

<sup>8</sup> The Ninth Circuit remanded the proceedings involving the TO16 and TO17 Filings. Following the Ninth Circuit's remand, the Commission filed an unopposed motion for voluntary remand of the Commission's orders in the TO18 proceeding in Docket No. ER16-2320-000, which the court granted on March 28, 2018.

PG&E's specific circumstances, i.e., whether it could unilaterally leave [CAISO] and thus whether an incentive adder could induce it to remain in [CAISO]."<sup>9</sup> On August 20, 2018, the Commission issued an initial order on remand establishing briefing procedures regarding those issues.<sup>10</sup>

5. Following review of the record, on July 18, 2019, the Commission issued its Order on Remand.<sup>11</sup> The Commission concluded that California law does not mandate PG&E's participation in CAISO, and that the RTO-Participation Incentive induces PG&E to continue its membership.<sup>12</sup> The Commission therefore affirmed its prior grant of PG&E's request for the RTO-Participation Incentive.<sup>13</sup>

6. Specifically, the Commission stated that California Parties pointed to no provision in the California Public Utilities Code (California Code) that mandates RTO/ISO membership, and the Commission's survey of the relevant provisions revealed none.<sup>14</sup> For example, section 330(m) of the California Code provides:

It is the intention of the Legislature that California's publicly owned electric utilities and investor-owned electric utilities *should* commit control of their transmission facilities to the Independent System Operator. These utilities *should* jointly advocate to the *Federal Energy Regulatory Commission* a pricing methodology for the Independent System Operator that results in an equitable return on capital investment in transmission facilities for all Independent System Operator participants.<sup>15</sup>

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<sup>9</sup> *CPUC v. FERC*, 879 F.3d at 979.

<sup>10</sup> *Pac. Gas and Elec. Co.*, 164 FERC ¶ 61,121 (2018).

<sup>11</sup> *Pac. Gas and Elec. Co.*, 168 FERC ¶ 61,038 (2019) (Order on Remand).

<sup>12</sup> *Id.* P 2.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* P 43.

<sup>15</sup> Cal. Pub. Util. Code § 330(m) (emphasis added).

7. Further, section 365 of the California Code provides:

The actions of the [CPUC] pursuant to this chapter shall be consistent with the findings and declarations contained in Section 330. In addition, the [CPUC] *shall do* all of the following: . . . *Facilitate* the efforts of the state's electrical corporations to *develop and obtain authorization from the Federal Energy Regulatory Commission* for the creation and operation of an Independent System Operator and an independent Power Exchange, for the determination of which transmission and distribution facilities are subject to the exclusive jurisdiction of the [CPUC], and for approval, to the extent necessary, of the cost recovery mechanism established as provided in Sections 367 to 376, inclusive. The [CPUC] *shall also participate* fully in all proceedings before the *Federal Energy Regulatory Commission* in connection with the Independent System Operator and the independent Power Exchange, and *shall encourage* the *Federal Energy Regulatory Commission* to adopt protocols and procedures that strengthen the reliability of the interconnected transmission grid, *encourage all publicly owned utilities in California to become full participants*, and maximize enforceability of such protocols and procedures by all market participants.<sup>16</sup>

8. In the Order on Remand, the Commission stated that the language of these statutory provisions does not mandate participation in CAISO.<sup>17</sup> Rather, the Commission found that these provisions speak in terms of encouragement and facilitation of participation.<sup>18</sup> The Commission stated that these provisions also did not speak to any requirements regarding PG&E's continuing membership in CAISO, such as any obligation to obtain CPUC approval if it wishes to cease its membership.

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<sup>16</sup> *Id.* § 365 (emphasis added).

<sup>17</sup> Order on Remand, 168 FERC ¶ 61,038 at P 45.

<sup>18</sup> *Id.*

9. The Commission also found unpersuasive California Parties' argument that the California Transfer Authorization Order<sup>19</sup> interprets section 851 of the California Code as requiring PG&E to seek CPUC approval before withdrawing from CAISO.<sup>20</sup> The Commission found that California Parties' interpretation of the California Transfer Authorization Order was not supported by, and would be inconsistent with, the California Code, including section 851. Section 851 states:

A public utility . . . shall not sell, lease, assign, mortgage, or otherwise dispose of, or encumber the whole or any part of its . . . line, plant, system, or other property necessary or useful in the performance of its duties to the public . . . without first having either secured an order from [CPUC] authorizing it to do so for qualified transactions valued above five million dollars (\$5,000,000), or for qualified transactions valued at five million dollars

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<sup>19</sup> CPUC, Decision No. 98-01-053, 78 CPUC 2d 307, 1998 WL 242747 (Jan. 21, 1998) (California Transfer Authorization Order).

<sup>20</sup> See California Parties Initial Brief, Docket No. ER14-2529-005, at 8-17 (filed Sept. 19, 2018); CPUC Protest, Docket No. ER16-2320-000, at 9-17 (filed Aug. 19, 2016); CPUC Protest, Docket No. ER15-2294-000, at 8-14 (filed Aug. 19, 2015); CPUC Protest, Docket No. ER14-2529-000, at 9-12 (filed Aug. 20, 2014). The relevant passage of the California Transfer Authorization Order states:

[W]e note that any future transfer of operational control of the transmission facilities from the ISO will, itself, be subject to review under [California Code] Section 851, whether it is to the joint applicants or to some other party. We note that Section 3.3.3 of the Transmission Control Agreement provides that any withdrawal from the Transmission Control Agreement is expressly conditioned upon the withdrawing party obtaining any necessary regulatory approvals for such withdrawal.

California Transfer Authorization Order, 1998 WL 242747, at \*7. In the California Restructuring Order, CPUC also invoked its authority to approve such transfers under section 851 of the California Code. See CPUC, Decision No. 95-12-063, 64 CPUC 2d 1, 31, 1995 WL 792086 at \*15 (Dec. 20, 1995) (California Restructuring Order).

(\$5,000,000) or less, filed an advice letter and obtained approval from [CPUC] authorizing it to do so.<sup>21</sup>

10. The Commission disagreed with California Parties' reliance on the language "or otherwise dispose of" to assert that CPUC must approve transfers of operational control of PG&E's transmission facilities. The Commission stated that the language of section 851 does not explicitly give CPUC jurisdiction over transfers of *operational* control, and that, when interpreting the language "or otherwise dispose of," the California Supreme Court may, while applying traditional canons of statutory construction,<sup>22</sup> determine that transfers of *operational* control are outside the scope of section 851.<sup>23</sup> Thus, the Commission was not persuaded by the argument that section 851 of the California Code requires CPUC to approve transfers of operational control over transmission facilities. Accordingly, the Commission found that section 851 of the California Code did not support California Parties' position, and California Parties had failed to point to any other section of the California Code that requires PG&E to seek CPUC's approval before withdrawing from CAISO.<sup>24</sup>

11. In light of the voluntary nature of RTO/ISO membership from the Commission's perspective and the lack of any relevant mandate under California law, the Commission thus concluded that PG&E could unilaterally leave CAISO without obtaining CPUC authorization. As a result, the Commission found that "the RTO-Participation Incentive induces PG&E to remain a participating member of CAISO and is consistent with the

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<sup>21</sup> Cal. Pub. Util. Code § 851.

<sup>22</sup> Specifically, the courts may apply *noscitur a sociis* (a word is known by the company it keeps) and *eiusdem generis* (general terms in a list are limited by the meaning of specific terms). California courts have often applied these canons of construction. See, e.g., *Sierra Club v. Superior Court of Orange County*, 57 Cal. 4th 157, 169-70 (2013) (applying *noscitur a sociis*); *In re Corrine W. v. Y.C.*, 45 Cal. 4th 522, 531 (2009) (applying *eiusdem generis*). See also 58 Cal. Jur. 3d Statutes §§ 142-143; 7 Witkin, Summary of Cal. Law (11th ed. 2019) Const. Law § 136.

<sup>23</sup> Order on Remand, 168 FERC ¶ 61,038 at PP 47-50.

<sup>24</sup> *Id.* P 50.

directives of FPA section 219.”<sup>25</sup> Accordingly, the Commission reaffirmed the continuation of PG&E’s 50 basis point ROE adder.<sup>26</sup>

## **B. Current Proceeding**

12. As noted above, in the September 2017 Order, the Commission accepted for filing PG&E’s tariff revisions to implement a rate increase as proposed in its TO19 Filing, suspended the revisions for five months to be effective March 1, 2018, subject to refund, and established hearing and settlement judge procedures.<sup>27</sup> The Commission summarily granted the proposed RTO-Participation Incentive for the TO19 Filing. The Commission stated:

[O]n the merits of PG&E’s request for a 50 basis point ROE adder incentive in this proceeding, we find that PG&E’s request satisfies the criteria of Order No. 679: PG&E is a member of CAISO, an independent system operator, and its membership is ongoing; therefore, PG&E is presumed to be eligible for this incentive adder in accordance with Order No. 679. We note that no party rebuts this presumption and that the CPUC raises nothing new in its argument that PG&E’s participation in CAISO is involuntary. As the Commission has also previously explained, PG&E’s membership in CAISO supports CAISO’s efforts to manage the transmission grid efficiently and provide benefits to customers in the CAISO footprint. That conclusion is unchanged here. Therefore, we . . . reject the CPUC’s arguments and conclude that under the circumstances here, granting PG&E’s request is reasonable.<sup>28</sup>

13. On October 30, 2017, California Parties filed their Rehearing Request of the September 2017 Order.

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<sup>25</sup> *Id.* P 52.

<sup>26</sup> *Id.*

<sup>27</sup> September 2017 Order, 160 FERC ¶ 61,128 at P 1. On December 20, 2018, the Commission accepted PG&E’s September 21, 2018 Offer of Settlement and Stipulation resolving all issues set for hearing and settlement judge procedures in the proceeding. *Pac. Gas and Elec. Co.*, 165 FERC ¶ 61,244 (2018).

<sup>28</sup> September 2017 Order, 160 FERC ¶ 61,128 at P 26 (internal citations omitted).

## II. Discussion

### A. Procedural Matters

14. On November 13, 2017, PG&E filed a motion for leave to answer and answer to the request for rehearing filed in this proceeding. On November 15, 2017, California Parties filed a response. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure prohibits answers to a request for rehearing.<sup>29</sup> Accordingly, we deny PG&E's motion and reject the answers.

### B. Substantive Matters

15. California Parties filed the Rehearing Request on October 30, 2017, prior to the issuance of the Commission's Order on Remand. Thus, since the time of the Rehearing Request, the Commission has a more fully developed record on the fundamental issues raised on rehearing, and in this order, we affirm PG&E's request for the RTO-Participation Incentive for its TO19 Filing on the same basis provided for in the Order on Remand.<sup>30</sup> Accordingly, we are not persuaded by rehearing arguments which assert that in the September 2017 Order, the Commission inappropriately relied on statements from PG&E's TO18 Order and TO18 Rehearing Order, which in turn relied on PG&E's TO16 and TO17 cases to grant the incentive.<sup>31</sup>

16. On rehearing, California Parties assert that the September 2017 Order departed from Commission precedent which requires that incentive requests be justified on a case-by-case basis by a showing of a nexus between the requested incentive and the action being performed.<sup>32</sup> Specifically, California Parties argue that the Commission failed to acknowledge and address evidence and arguments that the incentive was not justified

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<sup>29</sup> 18 C.F.R. § 385.713(d)(1) (2019).

<sup>30</sup> In this order, we address only those matters raised on rehearing in this proceeding. Therefore, we do not address additional issues discussed in the Order on Remand that are not before us here.

<sup>31</sup> Rehearing Request at 35-37.

<sup>32</sup> *Id.* at 28-31.



because PG&E was not free to leave CAISO without CPUC's consent.<sup>33</sup> California Parties also claim that the Commission erred by departing from Commission precedent under which regulated utilities are not rewarded for past conduct or for conduct which they are otherwise obligated to undertake.<sup>34</sup>

17. We disagree that the September 2017 Order departed from Commission precedent. In Order No. 679, the Commission stated:

[E]ntities that have already joined, and that remain members of, an RTO, ISO, or other Commission-approved Transmission Organization, are eligible to receive this incentive. The basis for the incentive is a recognition of the benefits that flow from membership in such organizations and the fact continuing membership is generally voluntary.<sup>35</sup>

18. Order No. 679 also stated that a utility “will be presumed eligible for the incentive” if it can demonstrate that it has joined a transmission organization and its membership is ongoing.<sup>36</sup> PG&E is presumed eligible to receive the incentive because it has already joined and remains a member of CAISO. California Parties have not rebutted the presumption of eligibility.

19. Specifically, in the Order on Remand, the Commission reviewed the briefs submitted by California Parties and others to determine whether PG&E “could unilaterally leave [CAISO] and thus whether an incentive adder could induce it to remain in [CAISO].”<sup>37</sup> The Commission examined provisions of the California Code, including

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<sup>33</sup> *Id.* at 28-29. California Parties argue that the Commission was required to acknowledge and address the CPUC's evidence and arguments that in PG&E's specific case, the presumption of voluntariness was inapplicable. *Id.* at 20.

<sup>34</sup> *Id.* at 31-35 (citing *New England Power Pool*, 97 FERC ¶ 61,093 (2001); *ISO New England, Inc.*, 96 FERC ¶ 61,359 (2001), *aff'd*, *Sithe New England Holdings, LLC v. FERC*, 308 F.3d 71, 78 (1st Cir. 2002); *Policy Statement on Incentive Regulation*, 61 FERC ¶ 61,168 (1992); *Maine PUC v. FERC*, 454 F.3d 278, 289 (D.C. Cir. 2006); *San Diego Gas & Elec. Co.*, 157 FERC ¶ 61,056 (2016)).

<sup>35</sup> Order No. 679, 116 FERC ¶ 61,057 at P 331.

<sup>36</sup> *Id.* P 327.

<sup>37</sup> Order on Remand, 168 FERC ¶ 61,038 at PP 1, 8 (citing *CPUC v. FERC*, 879 F.3d at 979).

section 330(m) and section 365, and determined that those provisions do not mandate participation in CAISO.<sup>38</sup> Rather, the Commission found those provisions speak in terms of encouragement and facilitation of participation. Further, the Commission reviewed the California Transfer Authorization Order and found that, contrary to California Parties' arguments, it could not be interpreted as requiring PG&E to seek CPUC approval before withdrawing from CAISO.<sup>39</sup> The Commission found that, from its perspective, "California law does not mandate PG&E's participation in CAISO, and . . . the RTO-Participation Incentive induces PG&E to continue its membership."<sup>40</sup>

20. The same reasoning applies in the instant proceeding. Here, we find, on the same basis as the Order in Remand, California law does not mandate PG&E's participation in CAISO, and PG&E could unilaterally leave CAISO without obtaining CPUC authorization. Thus, in order to incentivize PG&E to continue its membership in CAISO, granting the RTO-Participation Incentive for the TO19 Filing is appropriate. It is not a reward to PG&E for past conduct or for conduct which it is otherwise obligated to undertake. Rather, it is justified in this proceeding on the basis that the RTO-Participation Incentive induces PG&E to continue its membership, consistent with the purpose of section 219 of the FPA.<sup>41</sup> Moreover, in contrast to claims by California Parties,<sup>42</sup> no notice and comment procedures are necessary, as the Commission is not modifying Order No. 679, but rather applying Order No. 679 to make this determination.

21. We also find no merit to California Parties' argument that the Commission has exceeded its statutory authorization under section 219 by creating a "perpetual windfall" to utilities.<sup>43</sup> FPA section 219(c) provides, in part, that "the Commission shall, to the extent within its jurisdiction, provide for incentives to each transmitting utility or electric utility that joins a Transmission Organization."<sup>44</sup> The Commission is acting consistent

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<sup>38</sup> *Id.* P 45.

<sup>39</sup> *Id.* P 47.

<sup>40</sup> *Id.* P 2.

<sup>41</sup> *See CPUC v. FERC*, 879 F.3d at 970 ("[S]ection 219(c) require[s] FERC to provide incentives to induce utilities to join regional transmission organizations.").

<sup>42</sup> Rehearing Request at 25-26.

<sup>43</sup> *Id.* at 22-24.

<sup>44</sup> 16 U.S.C. § 824s(c) (2018).

with this statutory provision by determining that the RTO-Participation Incentive for the TO19 Filing is justified because it induces PG&E to continue its membership in an RTO.

22. California Parties argue next that the Commission has no authority to “second-guess” CPUC’s conclusion that PG&E’s membership is not voluntary and cannot be authorized without a change in state law, because the CPUC is interpreting state laws it is charged with enforcing.<sup>45</sup> As the Commission noted in the Order on Remand, “the issue here involves the transmission and sale at wholesale of electric energy in interstate commerce, over which the FPA provides exclusive jurisdiction to this Commission.”<sup>46</sup> The same is true here. In particular, the Commission’s action in granting the RTO-Participation Incentive carries out Congress’s specific directive in FPA section 219(c). We interpret the relevant provisions of the California Code only to the extent necessary to respond to California Parties’ argument that PG&E was not entitled to the RTO-Participation Incentive because the CPUC may not authorize PG&E’s exit from CAISO without a change in law.<sup>47</sup> Thus, we do not view the Commission’s ruling in this proceeding as “improperly interfer[ing] with . . . CPUC’s regulatory authority over PG&E.”<sup>48</sup> Moreover, California Parties provide no precedent which supports their position. Rather, California Parties point to Order No. 888 and a U.S. Supreme Court case referencing a House Committee Report that states the FPA “takes no authority from State commissions.”<sup>49</sup> Neither of these citations address what deference, if any, is owed to a state agency’s interpretation of a state law that it is charged with administering.

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<sup>45</sup> Rehearing Request at 37.

<sup>46</sup> Order on Remand, 168 FERC ¶ 61,038 at P 41.

<sup>47</sup> *See supra* PP 6-10.

<sup>48</sup> Rehearing Request at 37. We further note that California Parties do not explain how the Commission’s ruling interferes with CPUC authority. As in the Order on Remand, it is unnecessary for us to address whether the FPA preempts the California Code here, because we have determined that those provisions, from the Commission’s perspective, do not mandate participation in CAISO. *See* Order on Remand, 168 FERC ¶ 61,038 at P 52 n.132 (noting that the Commission did “not address[] the preemption arguments raised by certain parties, but may address that issue in the future, if warranted”).

<sup>49</sup> Rehearing Request at 37 (citing *Conn. Light & Power Co. v. FPC*, 324 U.S. 515 (1945) (quoting H.R. Rep. No. 1318, 74<sup>th</sup> Cong., 1<sup>st</sup> Sess., 7, 8, 27) and *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and*

23. California Parties also argue that the Commission does not explain how its own lack of authority to compel transmission organization participation has any bearing on the voluntariness of PG&E's conduct.<sup>50</sup> As explained above and in the Order on Remand, from the Commission's perspective, California law does not mandate PG&E's participation in CAISO.<sup>51</sup> With regard to Section 3.3.3 of the Transmission Control Agreement, which the California Parties claim imposes an obligation on PG&E to seek CPUC approval before withdrawing from CAISO, the Commission stated in the Order on Remand that, "[w]hile this provision of the Transmission Control Agreement references 'necessary regulatory approvals,' it notably does not reference any particular necessary approval, such as approval by CPUC."<sup>52</sup> California Parties do not provide any argument on rehearing to persuade us otherwise. Moreover, contrary to California Parties' argument, we do not suggest that "the [Transmission Control Agreement] provides that only FERC approvals are required."<sup>53</sup>

24. We also disagree that the Commission failed to comply with its statutory duty to ensure just and reasonable rates. California Parties assert that, when the Commission considers non-cost factors, such as the incentives provided for in FPA section 219, it must always relate its action to the primary aim of the FPA, which is to guard consumers against excessive rates, and "it must see to it that the increase is in fact needed, and no

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*Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,872 (1996), (cross-referenced at 75 FERC ¶ 61,080), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (cross referenced at 78 FERC ¶ 61,220), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002)).

<sup>50</sup> *Id.* at 36-37.

<sup>51</sup> *See supra* P 20; Order on Remand, 168 FERC ¶ 61,038 at P 2.

<sup>52</sup> Order on Remand, 168 FERC ¶ 61,038 at P 51, n.129.

<sup>53</sup> Rehearing Request at 37.

more than needed, for the purpose.<sup>54</sup> California Parties also assert that the Commission has not explained how the incentive provides “benefits to customers.”<sup>55</sup>

25. We find that the Commission, in fact, met its statutory obligations. In Order No. 679-A, the Commission stated:

[C]onsumer benefits, including reliability and cost benefits, provided by Transmission Organizations are well documented and the best way to ensure those benefits are spread to as many consumers as possible is to provide an incentive that is widely available to member utilities of Transmission Organizations and is effective for the entire duration of a utility’s membership in the Transmission Organization. To limit the incentive to only utilities yet to join Transmission Organizations offers no inducement to stay in these organizations for members with the option to withdraw, and hence risks reducing Transmission Organization membership and its attendant benefits to consumers. Because the incentive is applicable to utilities that join Transmission Organizations and is consistent with the requirements of section 219 of the FPA, *the incentive complies with EAct 2005 [Energy Policy Act of 2005] and the FPA.*<sup>56</sup>

26. The same consumer benefits that the Commission found compelling in Order No. 679 continue to remain relevant. Specifically, CAISO, like other ISOs and RTOs, manages an evolving and complex transmission grid and rapidly evolving power market. As the independent system operator, CAISO’s tariff requires it to provide open non-discriminatory transmission service, economically commit and dispatch resources to serve load, address congestion-related issues, mitigate market power, and manage the transmission planning and generator interconnection processes, as well as address a variety of other issues, all of which benefit consumers. As CAISO works to fulfill its duties as the transmission organization overseeing this rapidly evolving regional power market, the transmission facilities owned by participating transmission owners, such as PG&E, and operated by CAISO continue to play a critical role in supporting CAISO’s efforts to efficiently manage the transmission grid and provide benefits to customers in

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<sup>54</sup> *Id.* at 27 (citing *City of Detroit, Mich. v. FPC*, 230 F.2d 810, 817 (D.C. Cir. 1955) and *Farmers Union Central Exchange v. FERC*, 734 F.2d 1486, 1498-1520 (D.C. 1984)).

<sup>55</sup> *Id.* at 34.

<sup>56</sup> Order No. 679-A, 117 FERC ¶ 61,345 at P 86 (emphasis added).

the entire CAISO footprint. California Parties have provided no argument on rehearing to persuade us otherwise.

27. Finally, California Parties argue that the Commission erred by applying the incentive to all of PG&E's transmission assets.<sup>57</sup> Specifically, they argue that customers in the CAISO footprint do not receive all of the benefits of PG&E's CAISO membership because more than 60 percent of PG&E's transmission assets are not reviewed or approved in the CAISO transmission planning process, and there is no transparency into PG&E's costs or need for these projects until after PG&E proposes to recover for such projects in its annual TO rate cases. The Commission considered this matter separately, in response to a complaint brought by CPUC, Northern California Power Agency, City and County of San Francisco, State Water Contractors, and TANC, in Docket No. EL17-45.<sup>58</sup> Accordingly, we find California Parties' claims to be outside the scope of this proceeding.

The Commission orders:

The request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>57</sup> Rehearing Request at 38.

<sup>58</sup> *Cal. Pub. Utils. Comm'n v. Pac. Gas & Elec. Co.*, 164 FERC ¶ 61,161 (2018), *reh'g denied*, 168 FERC ¶ 61,171 (2019).

Document Content(s)

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