

168 FERC ¶ 61,206  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Southern California Edison Company

Docket Nos. ER18-169-001  
EL18-44-001

ORDER ON REHEARING

(Issued September 27, 2019)

1. On December 29, 2017, the Commission accepted for filing Southern California Edison Company's (SoCal Edison) tariff revisions to implement a new formula rate (Proposed Formula Rate) and proposed 2018 base Transmission Revenue Requirement (TRR) (TO18 Filing), suspended the revisions for a nominal period to be effective January 1, 2018, subject to refund, and established hearing and settlement judge procedures.<sup>1</sup> In that order, the Commission also granted SoCal Edison's request for a 50 basis point return-on-equity (ROE) adder 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 January 29, 2018, the California Public Utilities Commission (CPUC) and the Transmission Agency of Northern California (TANC) (collectively, CPUC/TANC) filed a request for rehearing of the December 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> *Southern Cal. Edison Co.*, 161 FERC ¶ 61,309 (2017) (December 2017 Order). The Commission also instituted an investigation pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. § 824e (2018), in Docket No. EL18-44-000 to determine whether SoCal Edison's proposed TRR reduction is just and reasonable, and consolidated the proceeding with Docket No. ER18-169-000 for purposes of hearing and settlement judge procedures.

<sup>2</sup> *Id.* P 25.

<sup>3</sup> CPUC/TANC January 29, 2018 Request for Rehearing (Rehearing Request).

## I. Background

### A. PG&E TO Tariff Proceedings

3. Following the issuance of Order No. 679 in 2007, Pacific Gas and Electric Company (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 FPA<sup>6</sup> and Order No. 679.<sup>7</sup> In granting the 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 PG&E's specific circumstances, i.e., whether it could unilaterally leave [CAISO] and

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

<sup>5</sup> See *Pac. Gas & Elec. Co.*, 148 FERC ¶ 61,245 (2014) (PG&E TO16 Order), *reh'g denied*, 154 FERC ¶ 61,119 (2016) (PG&E TO16 Rehearing Order), *remanded sub nom. CPUC v. FERC*, 879 F.3d 966 (9th Cir. 2018); *Pac. Gas & Elec. Co.*, 152 FERC ¶ 61,252 (2015) (PG&E TO17 Order), *reh'g denied*, 154 FERC ¶ 61,118 (2016) (PG&E TO17 Rehearing Order), *remanded sub nom. CPUC v. FERC*, 879 F.3d 966; *Pac. Gas & Elec. Co.*, 156 FERC ¶ 61,238 (2016) (PG&E TO18 Order), *reh'g denied*, 160 FERC ¶ 61,090 (2017) (PG&E 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 PG&E's 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 PG&E TO18 proceeding in Docket No. ER16-2320-000, which the court granted on March 28, 2018.

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<sup>14</sup> 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>15</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>16</sup>

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

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

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

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

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

<sup>14</sup> California Parties include CPUC, the Sacramento Municipal Utility District, and TANC.

<sup>15</sup> *Id.* P 43.

<sup>16</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>17</sup>

8. In the Order on Remand, the Commission stated that the language of these statutory provisions does not mandate participation in CAISO.<sup>18</sup> Rather, the Commission found that these provisions speak in terms of encouragement and facilitation of participation.<sup>19</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.

9. The Commission also found unpersuasive California Parties' argument that the California Transfer Authorization Order<sup>20</sup> interprets section 851 of the California Code as requiring PG&E to seek CPUC approval before withdrawing from CAISO.<sup>21</sup>

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<sup>17</sup> *Id.* § 365 (emphasis added).

<sup>18</sup> Order on Remand, 168 FERC ¶ 61,038 at P 45.

<sup>19</sup> *Id.*

<sup>20</sup> CPUC, Decision No. 98-01-053, 78 CPUC 2d 307, 1998 WL 242747 (Jan. 21, 1998) (California Transfer Authorization Order).

<sup>21</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

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 (\$5,000,000) or less, filed an advice letter and obtained approval from [CPUC] authorizing it to do so.<sup>22</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>23</sup> determine that

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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).

<sup>22</sup> Cal. Pub. Util. Code § 851.

<sup>23</sup> Specifically, the courts may apply *noscitur a sociis* (a word is known by the company it keeps) and *ejusdem 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*, 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

transfers of *operational* control are outside the scope of section 851.<sup>24</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>25</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 directives of FPA section 219."<sup>26</sup> Accordingly, the Commission reaffirmed the continuation of PG&E's 50 basis point ROE adder.<sup>27</sup>

## **B. Current Proceeding**

12. As noted above, in the December 2017 Order, the Commission accepted for filing SoCal Edison's tariff revisions to implement its Proposed Formula Rate and TRR as proposed in its TO18 Filing, suspended the revisions for a nominal period to be effective January 1, 2018, subject to refund, and established hearing and settlement judge procedures.<sup>28</sup> The Commission summarily granted the RTO-Participation Incentive for the TO18 Filing:

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*ejusdem generis*). See also 58 Cal. Jur. 3d Statutes §§ 142-143; 7 Witkin, Summary of Cal. Law (11th ed. 2019) Const. Law § 136.

<sup>24</sup> Order on Remand, 168 FERC ¶ 61,038 at PP 47-50.

<sup>25</sup> *Id.* P 50.

<sup>26</sup> *Id.* P 52.

<sup>27</sup> *Id.*

<sup>28</sup> December 2017 Order, 161 FERC ¶ 61,309 at P 1. On September 16, 2019, SoCal Edison submitted an Offer of Settlement (Settlement) in Docket No. ER18-169-000 intended to resolve all issues in Docket Nos. ER18-169-000 and EL18-44-000. The Settlement, which is pending, provides for an ROE for SoCal Edison's Proposed Formula Rate of 11.2 percent, but notes that, "[i]f the Commission determines, in an order not subject to rehearing or appeal, that [SoCal Edison] is not entitled to the [RTO

With respect to SoCal Edison's request for a 50 point ROE adder incentive for its continued participation in CAISO, we grant this request, subject to the adder being applied to a base ROE that has been shown to be just and reasonable, as determined in the hearing ordered below. The CPUC's arguments that SoCal Edison should not be granted a 50 basis point ROE adder have been considered and rejected by the Commission in earlier orders, and we reject them for the same reasons here. On the merits of SoCal Edison's request for a 50 basis point ROE adder incentive in this proceeding, we find that SoCal Edison's request satisfies the criteria of Order No. 679: SoCal Edison is a member of CAISO, an independent system operator, and its membership is ongoing; therefore, SoCal Edison is presumed to be eligible for this incentive adder in accordance with Order No. 679. We note that SoCal Edison's membership in CAISO supports CAISO's efforts to manage the transmission grid efficiently and provides benefits to customers in the CAISO footprint. Therefore, we reject the protests on this issue and conclude that under the circumstances here, granting SoCal Edison's request for the 50 basis point incentive adder is reasonable. We also note that companies continue to confront decisions about whether to form and join ISO/RTOs, and we believe the stability of the incentive adder for ISO/RTO participation (albeit capped by the top of the zone of reasonableness) is important to the Congressional and Commission policy of promoting ISO/RTO membership.<sup>29</sup>

13. On January 29, 2018, CPUC/TANC filed their Rehearing Request of the December 2017 Order.

## II. Discussion

### A. Procedural Matters

14. On March 14, 2018, SoCal Edison filed a motion for leave to answer and answer to the request for rehearing filed in this proceeding. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure prohibits answers to a request for rehearing.<sup>30</sup> Accordingly, we deny SoCal Edison's motion and reject its answer.

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Participation Incentive], then [SoCal Edison] will reduce its ROE . . . to 10.7 [percent] retroactive to January 1, 2018." Settlement at 3.

<sup>29</sup> December 2017 Order, 161 FERC ¶ 61,309 at P 25 (internal citations omitted).

<sup>30</sup> 18 C.F.R. § 385.713(d)(1) (2019).

**B. Substantive Matters**

15. CPUC/TANC filed the Rehearing Request on January 29, 2018, 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 SoCal Edison's request for the RTO-Participation Incentive for its TO18 Filing on the same basis provided for in the Order on Remand.<sup>31</sup> Accordingly, we are not persuaded by rehearing arguments which assert that, in the December 2017 Order, the Commission inappropriately relied on statements from PG&E's TO18 Order, which in turn relied on PG&E's TO16 and TO17 cases to grant the incentive.<sup>32</sup>

16. On rehearing, CPUC/TANC argue that the December 2017 Order departed from Commission precedent by granting SoCal Edison's request for the RTO-Participation Incentive. Specifically, CPUC/TANC argue that the Commission erred by failing to adhere to Order No. 679 requirements that: (a) the presumption for incentive eligibility may be rebutted; (b) a "case-by-case" review must be conducted in determining whether to grant the incentive as opposed to granting generic incentives; and (c) the basis for the incentive is a recognition of the benefits that flow from membership in transmission organizations and the fact that continuing membership is generally voluntary.<sup>33</sup> CPUC/TANC also argue 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 December 2017 Order departed from Commission precedent. In Order No. 679, the Commission stated:

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<sup>31</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>32</sup> Rehearing Request at 24-25.

<sup>33</sup> *Id.* at 20-21, 28-34.

<sup>34</sup> *Id.* at 35-37 (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)).



[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 that its membership is ongoing.<sup>36</sup> SoCal Edison is presumed eligible to receive the RTO-Participation Incentive because it has already joined and remains a member of CAISO. CPUC/TANC have not rebutted the presumption of eligibility.

19. Specifically, in the Order on Remand, the Commission reviewed the briefs submitted by California Parties, of which CPUC and TANC are a part, to determine whether PG&E “could unilaterally leave [CAISO] and thus whether an incentive addercould induce it to remain in [CAISO].”<sup>37</sup> The Commission examined provisions of the California Code, including 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. As CPUC/TANC concede, “[SoCal Edison’s] situation is identical to PG&E’s, including that they are both California investor-owned utilities subject to the CPUC’s orders and California state

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<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).

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

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

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

law.”<sup>41</sup> Here, we find, on the same basis as the Order in Remand, California law does not mandate SoCal Edison’s participation in CAISO, and SoCal Edison could unilaterally leave CAISO without obtaining CPUC authorization. Thus, in order to incentivize SoCal Edison to continue its membership in CAISO, the RTO-Participation Incentive for the TO18 Filing is appropriate. In contrast to CPUC/TANC’s claims, it is not a reward to SoCal Edison 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 SoCal Edison to continue its membership, consistent with the purpose of section 219 of the FPA.<sup>42</sup> Moreover, in contrast to claims by CPUC/TANC,<sup>43</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 CPUC/TANC’s argument that the Commission has exceeded its statutory authorization under section 219 by creating a “perpetual windfall” to utilities.<sup>44</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>45</sup> The Commission is acting consistent with this statutory provision by determining that the RTO-Participation Incentive for the TO18 Filing is justified because it induces SoCal Edison to continue its membership in an RTO.

22. CPUC/TANC argue next that the Commission has no authority to “second-guess” CPUC’s conclusion that SoCal Edison’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>46</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

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<sup>41</sup> Rehearing Request at 24-25.

<sup>42</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>43</sup> Rehearing Request at 34.

<sup>44</sup> *Id.* at 25-28.

<sup>45</sup> 16 U.S.C. § 824s(c) (2018).

<sup>46</sup> Rehearing Request at 40-41.

commerce, over which the FPA provides exclusive jurisdiction to this Commission.”<sup>47</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 CPUC/TANC’s argument that SoCal Edison was not entitled to the RTO-Participation Incentive because the CPUC may not authorize SoCal Edison’s exit from CAISO without a change in law.<sup>48</sup> Thus, we do not view the Commission’s ruling in this proceeding as “improperly interfer[ing] with . . . CPUC’s regulatory authority over [SoCal Edison].”<sup>49</sup> Moreover, CPUC/TANC provide no precedent which supports their position. Rather, CPUC/TANC 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>50</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.

23. We also find no merit to CPUC/TANC’s argument that the Commission erred in stating “[w]e reiterate that the 50 basis point adder continues to provide the desired incentive effect. To find otherwise assumes that SoCal Edison’s RTO participation is,

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<sup>47</sup> Order on Remand, 168 FERC ¶ 61,038 at P 41.

<sup>48</sup> See *supra* PP 6-10.

<sup>49</sup> Rehearing Request at 40. We further note that CPUC/TANC 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>50</sup> Rehearing Request at 40-41 (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 Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,872 (1996), *order on reh’g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *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)).

in fact, involuntary, and ignores the fact that SoCal Edison has the right to petition to withdraw from CAISO at any time.”<sup>51</sup> CPUC/TANC 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 SoCal Edison’s conduct.<sup>52</sup> As explained above and in the Order on Remand, from the Commission’s perspective, California law does not mandate SoCal Edison’s participation in CAISO.<sup>53</sup> With regard to Section 3.3.3 of the Transmission Control Agreement, 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>54</sup> CPUC/TANC do not provide any argument on rehearing to persuade us otherwise. Moreover, contrary to CPUC/TANC’s argument, we do not suggest that “[SoCal Edison] can withdraw on its own nor that only FERC approvals are required.”<sup>55</sup>

24. We also disagree that the Commission failed to comply with its statutory duty to ensure just and reasonable rates.<sup>56</sup> CPUC/TANC 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 more than needed, for the purpose.”<sup>57</sup> CPUC/TANC also assert that the Commission has not explained how the incentive provides “benefits to customers.”<sup>58</sup>

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<sup>51</sup> Rehearing Request at 39 (citing December 2017 Order, 161 FERC ¶ 61,309 at n.49).

<sup>52</sup> *Id.* at 39.

<sup>53</sup> *See supra* P 20; Order on Remand, 168 FERC ¶ 61,038 at P 2.

<sup>54</sup> Order on Remand, 168 FERC ¶ 61,038 at P 51, n.129.

<sup>55</sup> Rehearing Request at 39, 40.

<sup>56</sup> *Id.* at 37-38.

<sup>57</sup> *Id.* (citing *City of Detroit 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>58</sup> *Id.* at 27-28, 37.

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>59</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 SoCal Edison, 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 the entire CAISO footprint. CPUC/TANC have provided no argument on rehearing to persuade us otherwise.

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<sup>59</sup> Order No. 679-A, 117 FERC ¶ 61,345 at P 86 (emphasis added).

The Commission orders:

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

By the Commission. Commissioner Glick is concurring with a separate statement attached.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Southern California Edison Company

Docket Nos. ER18-169-001  
EL18-144-001

(Issued September 30, 2019)

GLICK, Commissioner, *concurring*:

1. Although I dissented from the underlying order in this proceeding,<sup>1</sup> I concur in today's order denying rehearing because I believe that the Commission has now adequately addressed the arguments against awarding Southern California Edison Company (SoCal Edison) a 50 basis point RTO participation adder. In the underlying order, the Commission took the position that the voluntariness of SoCal Edison's membership in CAISO was irrelevant to whether an RTO-Participation Incentive was just and reasonable; all that mattered was that SoCal Edison remained a CAISO member.<sup>2</sup> I dissented from that order because, assuming that the California Public Utilities Commission was correct in arguing that SoCal Edison was required to remain in CAISO—an argument that the Commission at that point did not dispute<sup>3</sup>—there was nothing for the RTO-Participation Incentive to incentivize.<sup>4</sup> I concluded that awarding a 50 basis point ROE adder under those circumstances was unjust and unreasonable and not the product of reasoned decisionmaking.

2. Shortly thereafter, the U.S. Court of Appeals for the Ninth Circuit issued its decision in a substantively similar proceeding involving Pacific Gas & Electric (PG&E). The court held that the Commission was arbitrary and capricious in awarding PG&E an

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<sup>1</sup> *S. Cal. Edison Co.*, 161 FERC ¶ 61,309 (2017) (Glick, Comm'r, dissenting) (SoCal Edison Order).

<sup>2</sup> *Id.* P 25; *see also Cal. Pub. Utilities Comm'n v. FERC*, 879 F.3d 966, 974 (9th Cir. 2018) (*CPUC v. FERC*) (explaining that, under the Commission's interpretation in place at the time, a transmission owner's "ongoing membership itself is the sole criterion for receipt of an incentive adder").

<sup>3</sup> SoCal Edison Order, 161 FERC ¶ 61,309 at P 25 & n.49.

<sup>4</sup> *Id.* (Glick, Comm'r, dissenting at 2).

RTO-Participation Incentive.<sup>5</sup> The court explained that the Commission has “a longstanding policy that incentives should only be awarded to induce future behavior”<sup>6</sup> and that awarding an RTO-Participation Incentive to a utility that is required to remain in an RTO conflicted with that policy.<sup>7</sup> In addition, the court held that by granting PG&E an RTO-Participation Incentive without addressing the California Public Utilities Commission’s arguments that there was nothing to incentivize, the Commission had created a “generic incentive” in violation of its own clearly articulated policy.<sup>8</sup>

3. On remand from the Ninth Circuit, the Commission concluded that PG&E’s membership in CAISO is voluntary and not required by California law or regulation.<sup>9</sup> As a result of that conclusion, PG&E was presumptively eligible for an RTO-Participation Incentive.<sup>10</sup> The Commission further found that no party rebutted that presumption and it awarded PG&E a 50 basis point ROE adder.<sup>11</sup> I joined those conclusions in full.

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<sup>5</sup> *CPUC v. FERC*, 879 F.3d at 977-79.

<sup>6</sup> *Id.* at 977; *see id.* at 979 (“FERC needed to inquire into PG&E’s specific circumstances, i.e., whether it could unilaterally leave the Cal-ISO and thus whether an incentive adder could induce it to remain in the Cal-ISO.”)

<sup>7</sup> *Id.* at 978-79 (explaining that the Commission’s award of an incentive adder to PG&E was an unexplained departure from the Commission’s longstanding policy).

<sup>8</sup> *Id.* at 979.

<sup>9</sup> *Pac. Gas & Elec. Co.*, 168 FERC ¶ 61,038, at P 42 (2019).

<sup>10</sup> *See Promoting Transmission Investment through Pricing Reform*, Order No. 679, Promoting Transmission Investment through Pricing Reform, Order No. 679, 116 FERC ¶ 61,057, at P 327, *order on reh’g*, Order No. 679-A, 117 FERC ¶ 61,345 (2006), *order on reh’g*, 119 FERC ¶ 61,062 (2007)) (“An entity will be presumed to be eligible for the incentive if it can demonstrate that it has joined an RTO, ISO, or other Commission-approved Transmission Organization, and that its membership is on-going.”).

<sup>11</sup> *Pac. Gas & Elec. Co.*, 168 FERC ¶ 61,038 at P 52.



4. The same conclusions apply to this proceeding. For the reasons explained in today's order, SoCal Edison's membership in CAISO is voluntary and not required by California law or regulation. As a result, under Commission precedent, SoCal Edison is presumptively eligible for an RTO-Participation Adder. Again for the reasons explained in today's order, no party has successfully rebutted that presumption and SoCal Edison is, therefore, entitled to a 50 basis point ROE adder. For these reasons, I respectfully concur.

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Richard Glick  
Commissioner