

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Pacific Gas and Electric Company

Docket No. ER19-2582-001

ORDER ADDRESSING ARGUMENTS RAISED ON REHEARING

(Issued July 16, 2020)

1. On January 17, 2020, the Commission granted in part, and denied in part, a request by Pacific Gas and Electric Company (PG&E) filed pursuant to section 205 of the Federal Power Act (FPA)¹ to recover 100% of its abandoned plant costs associated with its Central Valley Power Connect Project (Project).² On February 14, 2020, PG&E sought rehearing of the Commission's determination that PG&E is only entitled to recover 50% of the costs of the Project that were prudently incurred prior to the date the Commission granted PG&E's request pursuant to section 219 of the FPA³ for an abandoned plant incentive.⁴

2. Pursuant to *Allegheny Defense Project v. FERC*,⁵ the rehearing request filed in this proceeding may be deemed denied by operation of law. As permitted by section 313(a)

¹ 16 U.S.C. § 824d (2018).

² *Pac. Gas and Elec. Co.*, 170 FERC ¶ 61,017 (2020) (January 2020 Order).

³ *Pac. Gas and Elec. Co.*, 148 FERC ¶ 61,195 (2014) (September 2014 Order); *Promoting Transmission Investment through Pricing Reform*, Order No. 679, 116 FERC ¶ 61,057, *order on reh'g*, Order No. 679-A, 117 FERC ¶ 61,345 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

⁴ PG&E Rehearing Request at 2.

⁵ *Allegheny Defense Project v. FERC*, No. 17-1098 (D.C. Cir. June 30, 2020).

of the FPA,⁶ however, we are modifying the discussion in the January 2020 Order and continue to reach the same result in this proceeding, as discussed below.⁷

I. Background

3. In the September 2014 Order, the Commission granted, among other incentives, PG&E's request for an abandoned plant incentive pursuant to section 219 of the FPA and Order No. 679 for its Project in Central California.⁸ In granting PG&E's request, the Commission stated that PG&E was eligible to recover prudently incurred costs associated with the Project in the event that the Project was abandoned for reasons beyond PG&E's control, subject to PG&E filing for recovery of such costs pursuant to section 205 of the FPA.⁹

4. On August 12, 2019, PG&E filed a request pursuant to section 205 of the FPA to recover 100% of its abandoned plant costs associated with the Project.¹⁰ PG&E indicated that the Project was put on hold on March 17, 2017, and the California Independent System Operator Corporation (CAISO) formally canceled the Project in March 2019.¹¹ PG&E sought to recover \$9,225,300 of Project costs incurred from October 2011 through March 2017.¹²

5. In the January 2020 Order, the Commission granted PG&E's request to recover 100% of the costs incurred as a result of the Project's abandonment, for costs incurred

⁶ 16 U.S.C. § 825l(a) (2018) ("Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.").

⁷ *Allegheny Defense Project*, slip op. at 30. The Commission is not changing the outcome of the January 2020 Order. See *Smith Lake Improvement & Stakeholders Ass'n v. FERC*, 809 F.3d 55, 56-57 (D.C. Cir. 2015).

⁸ September 2014 Order, 148 FERC ¶ 61,195 at PP 1, 15; Order No. 679, 116 FERC ¶ 61,057 at PP 163-166.

⁹ September 2014 Order, 148 FERC ¶ 61,195 at P 15.

¹⁰ PG&E Transmittal at 1.

¹¹ *Id.* at 3.

¹² *Id.* at 4-5.

after September 18, 2014, the date of issuance of the September 2014 Order.¹³ As the Commission explained, Order No. 679, issued pursuant to section 219 of the FPA, requires that costs recovered under the abandoned plant incentive be prospective.¹⁴ For costs incurred before the Commission grants an abandoned plant incentive in a declaratory order, the Commission's policy set forth in Opinion No. 295 controls, under which prudently incurred abandoned plant costs should be equitably allocated between ratepayers and shareholders, and this allocation is typically limited to 50% of pre-declaratory order costs, absent any unique circumstances that warrant deviation from this general principle.¹⁵ Therefore, in the January 2020 Order, the Commission determined that PG&E is entitled to recover 50% of the costs incurred prior to the September 2014 Order.¹⁶

II. Discussion

6. On rehearing, PG&E argues that the Commission erred in the January 2020 Order in limiting PG&E's recovery of prudently incurred costs to 50% of those costs incurred prior to the September 2014 Order. PG&E claims that the Commission conflated the requirements for an abandoned plant incentive granted under section 205 of the FPA with what is required for an incentive granted under section 219 of the FPA.¹⁷ In support, PG&E asserts that precedent cited in the January 2020 Order, *MidAmerican Transco*¹⁸ and *PJM II*,¹⁹ is inapposite because in those cases the Commission denied the full retroactive recovery of abandonment costs when the Commission issued declaratory orders under section 205, not section 219, of the FPA.²⁰ PG&E claims that the distinction between declaratory orders issued under sections 205 and 219 of the FPA is

¹³ January 2020 Order, 170 FERC ¶ 61,017 at P 27.

¹⁴ *Id.* PP 29-30.

¹⁵ *New England Power Co.*, Opinion No. 295, 42 FERC ¶ 61,016, *order on reh'g*, Opinion No. 295-A, 43 FERC ¶ 61,285 (1988).

¹⁶ January 2020 Order, 170 FERC ¶ 61,017 at PP 29-33.

¹⁷ PG&E Request for Rehearing at 4-5.

¹⁸ *MidAmerican Cent. Cal. Transco, LLC*, 168 FERC ¶ 61,197 (2019) (*MidAmerican Transco*).

¹⁹ *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,156 (2013) (*PJM II*).

²⁰ PG&E Request for Rehearing at 4-5.

relevant because section 205 prohibits retroactive ratemaking, but section 219 does not.²¹ In support, PG&E argues that the Commission established an explicit effective date for the abandonment incentives in both *MidAmerican Transco* and *PJM II*, but not in the September 2014 Order.²²

7. We are unpersuaded by these arguments. The January 2020 Order is consistent with both *MidAmerican Transco* and *PJM II*. In both of those decisions, the Commission explained that the utilities had been granted the abandoned plant incentive in previous declaratory orders under section 219 and Order No. 679, not section 205 of the FPA, as PG&E contends.²³ As discussed in the January 2020 Order, *PJM II* articulated the Commission's position that the abandoned plant incentive generally supports the recovery of 100% of costs prudently incurred only insofar as those costs were incurred after the effective date of the declaratory order approving a utility's request for the incentive,²⁴ a policy which was subsequently applied in *MidAmerican Transco*.²⁵ As discussed in both *MidAmerican Transco* and *PJM II*, as well as the January 2020 Order, Order No. 679 requires a nexus between the abandonment incentive and that incentive's role in securing future financing for transmission infrastructure.²⁶ The abandoned plant incentive is therefore generally prospective to ensure incentive rates are just and reasonable, an interpretation that has been affirmed by the U.S. Court of Appeals for the D.C. Circuit (D.C. Circuit) in *San Diego Gas and Electric Company v. FERC*.²⁷

²¹ *Id.*

²² *Id.* at 5.

²³ *PJM II*, 142 FERC ¶ 61,156 at P 53 (citing *Pepco Holdings, Inc.*, 125 FERC ¶ 61,130, at P 59 (2008)); *MidAmerican Transco*, 168 FERC ¶ 61,197 at P 2 (citing *MidAmerican Cent. Cal. Transco, LLC*, 147 FERC ¶ 61,179, at PP 41-42 (2014)). We note that no effective date was established for the abandoned plant incentive in *MidAmerican Cent. Cal. Transco, LLC*, 147 FERC ¶ 61,179, and although in ordering paragraph (A) of *Pepco Holdings, Inc.*, 125 FERC ¶ 61,130, the Commission granted the utility's requested incentives and established an effective date for the utility's tariff sheets, the Commission was under no obligation to establish an effective date for the utility's abandoned plant incentive.

²⁴ January 2020 Order, 170 FERC ¶ 61,017 at P 30; *PJM II*, 142 FERC ¶ 61,156 at P 53.

²⁵ *MidAmerican Transco*, 168 FERC ¶ 61,197 at PP 11-13.

²⁶ Order No. 679, 116 FERC ¶ 61,057 at P 77.

²⁷ *San Diego Gas & Elec. Co. v. FERC*, 913 F.3d 127 (D.C. Cir. 2019). We note

8. PG&E next argues that *PJM II* is not persuasive because the Commission never had to reach the merits of rehearing arguments in that case, given that the requests for rehearing of that order were ultimately withdrawn in accordance with a settlement agreement.²⁸ PG&E argues that the Commission should carefully review excerpts of the PHI Companies' rehearing application in that proceeding, filed as an attachment to PG&E's September 10, 2019 answer (September 10 Answer), and reverse its ruling here.²⁹

9. We disagree. As discussed in the January 2020 Order, *PJM II* is a final Commission order that has been applied by the Commission in subsequent orders, which have been affirmed by the D.C. Circuit.³⁰ As the Commission explained previously, the fact that the rehearing requests were ultimately withdrawn in that proceeding does not diminish the precedential value of that order.³¹ As for PG&E's request that the Commission examine the PHI Companies' rehearing request attached to PG&E's September 10 Answer, as discussed, *PJM II* was a final order that has been applied in other proceedings. The main argument raised in the pleading, that prudently incurred

that in PG&E's statement of issues it asserts that the Commission's decision in the January 2020 Order conflicts with *San Diego Gas & Elec. Co. v. FERC*, because the Commission stated in orders on review in that proceeding that each abandoned plant incentive is granted on a case-by-case basis and there is no "dividing line" policy between costs incurred before and after a declaratory order. PG&E Rehearing Request at 4 (citing *San Diego Gas & Elec. Co. v. FERC*, 913 F.3d at 146). The Commission does assess such cost recovery on a case-by-case basis. It did so here, and, as discussed, PG&E has not shown that it is eligible to recover every cost associated with the Project. Moreover, PG&E cites to a dissenting opinion, not to the majority decision that upheld the Commission's determination that the abandoned plant incentive under Order No. 679 is generally prospective but that pre-declaratory order costs could be recovered as prescribed by Opinion No. 295. *San Diego Gas & Elec. Co. v. FERC*, 913 F.3d at 137.

²⁸ PG&E Rehearing Request at 5.

²⁹ *Id.* at 6.

³⁰ January 2020 Order, 170 FERC ¶ 61,017 at P 31 & n. 44 (discussing *PJM II*); *see also San Diego Gas & Elec. Co. v. FERC*, 913 F.3d 127 (D.C. Cir. 2019).

³¹ January 2020 Order, 170 FERC ¶ 61,017 at P 31 & n. 44. An initial order issued by the Commission constitutes binding precedent. *See, e.g., Pac. Gas & Elec. Co. v. FPC*, 506 F.2d 33, 38 (D.C. Cir. 1974) (noting that an agency may establish binding policy through adjudications which constitute binding precedents); *cf.* 16 U.S.C. § 825l(c) (2018) (filing of request for rehearing does not stay order being challenged); 18 C.F.R. § 385.713(e) (2019) (same).

project costs should be 100% recoverable even though they were incurred before the order granting an incentive, was resolved in *PJM II*, and subsequently followed in later Commission decisions as well as *San Diego Gas & Electric Company v. FERC*.³² PG&E's arguments, including those described in PHI Companies' rehearing request, do not change our determination here.

10. Finally, PG&E requests that the Commission defer its ruling on rehearing pending the resolution of issues raised in a recent Commission Notice of Inquiry seeking comment on the scope and implementation of its electric transmission incentives regulations and policy.³³ PG&E notes that it has asked the Commission to revise its approach to the abandoned plant incentive and that the Commission asked whether it should grant such incentives for projects selected in a regional transmission planning process from the date that the projects are selected, rather than the date of a declaratory order granting an incentive, which would include the Project at issue here.

11. We decline to grant PG&E's request. During the pendency of the transmission incentives rulemaking proceeding, the Commission continues to process pending transmission incentive matters consistent with existing policy, and to make determinations on the issues raised in those proceedings on a case-by-case basis.³⁴

³² In *San Diego Gas & Elec. Co. v. FERC*, the D.C. Circuit affirmed the Commission's determination that the abandoned plant incentive under Order No. 679 was prospective but that pre-declaratory order costs could be recovered as prescribed by Opinion No. 295. *San Diego Gas & Elec. Co. v. FERC*, 913 F.3d at 137.

³³ PG&E Rehearing Request at 7 (citing *Inquiry Regarding the Commission's Electric Transmission Incentives Policy*, 84 Fed. Reg. 11,759 (Mar. 28, 2019), 166 FERC ¶ 61,208 (2019)). We note that the Commission subsequently issued a notice of proposed rulemaking in March 2020. *Elec. Transmission Incentives Policy Under Section 219 of the Fed. Power Act*, 85 Fed. Reg. 18784 (Apr. 2, 2020), 170 FERC ¶ 61,204 (2020). This rulemaking proceeding is currently pending before the Commission.

³⁴ And even if the Commission, in that proceeding, were to opt to change its approach, such a change would necessarily be effective prospectively and not retroactively in previously decided cases like the instant case.

The Commission orders:

In response to PG&E's request for rehearing, the January 2020 Order is hereby modified and the result sustained, as discussed in the body of the order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.